

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**MINI RECORD
VOLUME 1**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
<i>Vol. 15</i>	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
<i>003273</i>	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
<i>Thru Vol. 21</i>	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
<i>Vol. 22</i>				
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

(“Appellants”) from the *Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed By Charitable DAF Fund L.P. and CLO Holdco, Ltd.* [Docket No. 2506] entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021 in the above-styled bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

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

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/07/2020	321	Witness and Exhibit List for January 9, 2020 Hearing
01/09/2020	335	Court Admitted Exhibits: Date of Hearing January 9, 2020
07/10/2020	822	Debtor’s Witness and Exhibit List with Respect to (A) the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Developmental Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services <i>Nunc Pro Tunc</i> to March 15
07/16/2020	836	Court Admitted Exhibits: Date of Hearing July 14, 2020
07/17/2020	864	Transcript Regarding Hearing Held on July 14, 2020 re: Applications to Employ
07/20/20	881	Certificate of Service of Vincent Trang re: Documents Served on July 16, 2020
12/11/2020	1543	Transcript Regarding Hearing Held on January 9, 2020 re: Motion to Compromise Controversy
06/10/2021	2440	Transcript Regarding Hearing Held June 8, 2021 re: 1) Show Cause Hearing; 2) Motion to Modify Order; and 3) Motion to Extend Time

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

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Dated: July 30, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

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

The Charitable DAF Fund, L.P.
CLO Holdco, Ltd.

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

For appeals in an adversary proceeding:

- Plaintiff
 - Defendant
 - Other (describe)
-

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

- Debtor
- Creditor
- Trustee
- Other (describe)

Movant on a motion to modify a prior Order

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd.

2. State the date on which the judgment, order, or decree was entered: June 30, 2021

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

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

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

Telephone: (212) 561-7700

Fax: (212) 561-7777

And

Hayward & Associates PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy. Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Fax: (972) 755-7110

2. *Party/Appellants*: Plaintiffs: The Charitable DAF Fund, L.P.
CLO Holdco, Ltd.

Attorney:

SBAITI & COMPANY PLLC

Mazin A. Sbaiti (TX Bar No. 24058096)

000002

Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts): Not applicable.

Dated: July 2, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Plaintiffs

000003



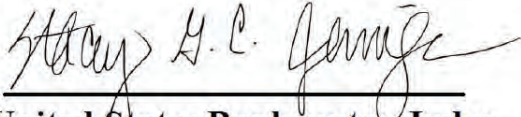
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 29, 2021


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER DENYING MOTION FOR MODIFICATION OF ORDER AUTHORIZING
RETENTION OF JAMES P. SEERY, JR. FILED BY CHARITABLE DAF FUND L.P.
AND CLO HOLDCO, LTD.**

This matter having come before the Court on the *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248] (the "Motion")² filed by Charitable DAF Fund, L.P. and CLO Holdco, Ltd. in the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the Motion; (b) the *Debtor's Objection to Motion for Modification of Order Authorizing Retention of*

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

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

James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Docket No. 2311] (the “Objection”) filed by Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor”); (c) the documents admitted into evidence during the hearing held on June 25, 2021 with respect to the Motion (the “Hearing”); and (d) the arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **DENIED** for the reasons stated on the record during the Hearing.
2. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

SEALEDEXH, APPEAL, DirectAppeal, 5thCircuitAppeal, SealedDocument, FUNDS, TRANSIN,
REFORM, ClaimsAgent, EXHIBITS, COMPLEX

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

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

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

Debtor
Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201
DALLAS-TX

represented by **Zachery Z. Annable**
Hayward PLLC
10501 N. Central Expressway
Suite 106
Dallas, TX 75231
(972) 755-7108
Fax : (972) 755-7108
Email: zannable@haywardfirm.com

Kenneth H. Brown
Pachulski Stang Ziehl & Jones LLP
150 California Street, 15th Floor
San Francisco, CA 94111-4500
415-263-7000
Fax : 415-263-7010
Email: sdhibbard@JonesDay.com

David Grant Crooks
Fox Rothschild LLP
5420 LBJ Freeway, Suite 1200
Dallas, TX 75240
(972) 991-0889
Fax : (972) 404-0516
Email: dcrooks@foxrothschild.com

Gregory V. Demo
Pachulski Stang Ziehl & Jones L.L.P.
780 Third Avenue
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: gdemo@pszjlaw.com

Robert Joel Feinstein
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: rfeinstein@pszjlaw.com

Eric Thomas Haitz

000006

Gibson, Dunn & Crutcher LLP
811 Main Street, Suite 3000
Houston, TX 77002
346-718-6648
Email: ehaitz@gibsondunn.com
TERMINATED: 12/09/2019

Melissa S. Hayward
Hayward PLLC
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
972-755-7104
Fax : 972-755-7104
Email: MHayward@HaywardFirm.com

Hayward & Associates PLLC
10501 N. Central Expwy., Ste 106
Dallas, TX 75231

Juliana Hoffman
Sidley Austin LLP
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 969-3581
Fax : (214) 981-3400
Email: jhoffman@sidley.com

Ira D Kharasch
10100 Santa Monica Boulevard
13th Floor
Los Angeles, CA 90067
310-227-6910
Fax : 310-201-0760
Email: ikharasch@pszjlaw.com

Alan J. Kornfeld
Pachulski Stang Ziehl & Jones LLPL
10100 Santa Monica Blvd., 13 Fl
Los Angeles, CA 90067
310-277-6910
Fax : 301-201-0760

Maxim B Litvak
Pachulski Stang Ziehl & Jones LLP
150 California Street
15th Floor
San Francisco, CA 94111
415-263-7000
Email: mlitvak@pszjlaw.com

John A. Morris
Pachulski Stang Ziehl & Jones, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: jmorris@pszjlaw.com

James E. O'Neill
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Fl.
Wilmington, DE 19801
302-652-4100

000007

Fax : 302-652-4400
Email: joneill@pszjlaw.com

Jeffrey N. Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
310-277-6910
Fax : 310-201-0760
Email: jpomerantz@pszjlaw.com

Jeffrey Nathan Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 11th Floor
Los Angeles, CA 90067
(310) 277-6910
Fax : (310) 201-0760
Email: jpomerantz@pszjlaw.com

Elissa A. Wagner
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
310-277-6910
Fax : 310-201-0760

Hayley R. Winograd
Pachulski Stang Ziehl & Jones LLP
780 3rd Avenue #36
New York, NY 10017
(212) 561-7700
Fax : (212) 561-7777
Email: hwinograd@pszjlaw.com

U.S. Trustee
United States Trustee
1100 Commerce Street
Room 976
Dallas, TX 75202
214-767-8967

represented by **Lisa L. Lambert**
Office of the United States Trustee
1100 Commerce St., Rm. 976
Dallas, TX 75242
(214) 767-8967 ext 1080
Fax : (214) 767-8971
Email: lisa.l.lambert@usdoj.gov

Creditor Committee
Official Committee of Unsecured Creditors

represented by **Sean M. Beach**
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
302-571-6600
Email: bankfilings@ycst.com

Jessica Boelter
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
212-839-5300
Fax : 212-839-5599
Email: jboelter@sidley.com

Matthew A. Clemente
Sidley Austin LLP
One South Dearborn

Chicago, IL 60603
(312) 853-7539
Email: mclemente@sidley.com

David Grant Crooks
(See above for address)

Gregory V. Demo
(See above for address)

Bojan Guzina
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
312-853-7323
Fax : 312-853-7036
Email: bguzina@sidley.com

Bojan Guzina
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
3128537323
Email: bguzina@sidley.com

Juliana Hoffman
(See above for address)

Paige Holden Montgomery
Sidley Austin LLP
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 981-3300
Fax : (214) 981-3400
Email: pmontgomery@sidley.com

Edmon L. Morton
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
1000 North King Street
Wilmington, DE 19801
302-571-6637
Fax : 302-571-1253
Email: emorton@ycst.com

Michael R. Nestor
YOUNG CONAWAY STARGATT &
TAYLOR, LL
Rodney Square
1000 North King Street
Wilmington, DE 19801
302-571-6600
Email: mnestor@ycst.com

Charles Martin Persons, Jr.
Sidley Austin LLP
2020 McKinney Avenue, Suite 2000
Dallas, TX 75210
(214) 981-3300
Fax : (214) 981-3400
Email: cpersons@sidley.com

Jeffrey N. Pomerantz

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(See above for address)

Penny Packard Reid
 Sidley Austin LLP
 2021 McKinney Avenue, Suite 2000
 Dallas, TX 75201
 (214) 981-3413
 Fax : (214) 981-3400
 Email: preid@sidley.com

Alyssa Russell
 Sidley Austin LLP
 One South Dearborn
 Chicago, IL 60603
 (312) 853-7422
 Fax : (312) 853-7036
 Email: alyssa.russell@sidley.com

Dennis M. Twomey
 Sidley Austin, LLP
 One South Dearborn Street
 Chicago, IL 60603
 (312) 853-7438
 Fax : (312) 853-7036
 Email: dtwomey@sidley.com

Jaclyn C. Weissgerber
 YOUNG CONAWAY STARGATT &
 TAYLOR, LLP
 Rodney Square
 1000 North King Street
 Wilmington, DE 19801
 302-571-6600
 Email: bankfilings@ycst.com

Sean M. Young Conway Stargatt & Taylor, LLP
 Young Conway Stargatt & Taylor, LLP
 Rodney Square
 1000 North King Street
 Wilmington, DE 19801
 302-571-6600
 Email: sbeach@ycst.com

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

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

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

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	DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>23</u> Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>24</u> Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>25</u> Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>26</u> Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>27</u> Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>28</u> Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>29</u> Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>30</u> Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>31</u> Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>32</u> Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>33</u> Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>34</u> Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>35</u> Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>36</u> Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>37</u> Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>38</u> Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>39</u> Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>40</u> Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # <u>1</u> Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>41</u> Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	<u>42</u> Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>43</u> Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>44</u> Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>45</u> Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County , Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	<u>46</u> Notice of hearing/ <i>scheduling conference</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1 Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	<u>47</u> Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s)2, 39) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>48</u> Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (related document(s)7, 43) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.)
12/04/2019	<u>49</u> Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>50</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>51</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s)5, 42) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR

	THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>52</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>53</u> Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>54</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	<u>55</u> Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # <u>1</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)

12/04/2019	<u>56</u> Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>57</u> Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>58</u> Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>59</u> Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # <u>1</u> Certification of United States Government Attorney # <u>2</u> Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>60</u> Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>61</u> Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>62</u> Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>63</u> Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>64</u> Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>65</u> Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>66</u> Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	

	<p><u>67</u> Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Form of Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p><u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A # <u>3</u> Exhibit B # <u>4</u> Exhibit C – Proposed Order # <u>5</u> 2016 Statement # <u>6</u> Declaration Frank Waterhouse # <u>7</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p><u>69</u> **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Hurst Declaration # <u>3</u> Exhibit B – Proposed Order # <u>4</u> 2016 Statement # <u>5</u> Declaration Frank Waterhouse # <u>6</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)</p>
12/04/2019	<p><u>70</u> Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # <u>1</u> Notice # <u>2</u> Rule 2016 Statement # <u>3</u> Declaration of Jeffrey N. Pomerantz in Support # <u>4</u> Declaration of Frank Waterhouse # <u>5</u> Proposed Form of Order # <u>6</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>71</u> Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>72</u> Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>73</u> Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by</p>

	11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Gershbein Declaration # <u>4</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>74</u> Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Engagement Letter # <u>3</u> Exhibit B – Sharp Declaration # <u>4</u> Exhibit C – Proposed Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – OCP List # <u>4</u> Exhibit C – Form of Declaration of Disinterestedness # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>76</u> **WITHDRAWN by # <u>360</u> ** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Appendix I # <u>3</u> Appendix II # <u>4</u> Proposed Form of Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>77</u> Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>78</u> Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>79</u> Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311–27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>80</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>81</u> Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>82</u> Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>83</u> Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>84</u> Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # <u>1</u> Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>85</u> Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E – Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>86</u> Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>87</u> Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>88</u> Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>89</u> Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>90</u> Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]

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

	Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>104</u> Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>106</u> Notice of Service – Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>107</u> Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # <u>1</u> Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>108</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>110</u> Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>111</u> Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>112</u> Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>113</u> Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>114</u> Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>115</u> Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

	<u>116</u> Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>117</u> Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>118</u> Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>119</u> Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>120</u> Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>121</u> Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # <u>1</u> Exhibit A # <u>2</u> Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>122</u> Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>123</u> Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>124</u> **WITHDRAWN per # 456** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)

	12/05/2019)
12/04/2019	<u>125</u> Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>126</u> Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>128</u> [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>130</u> Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>131</u> Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>132</u> Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

	<u>133</u> Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>134</u> Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>135</u> Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # <u>1</u> Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>136</u> Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>137</u> Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>138</u> Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>139</u> Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>140</u> Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>141</u> ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order

	Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>142</u> ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>143</u> ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENT OF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>144</u> Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>145</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>146</u> Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>147</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>148</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s) 136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>149</u> Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s) 86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>150</u> Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>151</u> Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>152</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>153</u> Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>154</u> Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>156</u> Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>158</u> Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>159</u> Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>162</u> Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>163</u> Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR

	THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>164</u> Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>165</u> Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>166</u> Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Redline Order Approving Ordinary Course Protocols Motion # <u>2</u> Exhibit B – Redline Order Approving Cash Management Motion # <u>3</u> Exhibit C – Redline Order Approving DSI Retention Motion # <u>4</u> Exhibit D – Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>168</u> Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>169</u> Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>170</u> Certification of Counsel Regarding Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P..(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>171</u> **WITHDRAWN** – 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate

	Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>172</u> Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>173</u> Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>174</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>175</u> FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>178</u> Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>179</u> Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Declaration of John Dempsey in Support # <u>4</u> Exhibit C – Highland Key Employee Incentives # <u>5</u> Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>181</u> Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>182</u> Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>183</u> ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014-1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>184</u> Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>185</u> Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

	12/05/2019)
12/04/2019	<u>186</u> ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>187</u> Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ([ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	<u>97</u> Motion to appear pro hac vice for Bojan Guzina. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228141, amount \$ 100.00 (re: Doc# <u>97</u>). (U.S. Treasury)
12/05/2019	<u>99</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	<u>100</u> Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	<u>105</u> Motion to appear pro hac vice for Alyssa Russell. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>100</u>). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>105</u>). (U.S. Treasury)
12/05/2019	<u>109</u> Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228644, amount \$ 100.00 (re: Doc# <u>109</u>). (U.S. Treasury)
12/05/2019	<u>129</u> Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	<u>155</u> Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	<u>157</u> Motion to appear pro hac vice for Marc B. Hankin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	<u>160</u> Motion to appear pro hac vice for Richard Levin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u>

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	Addendum) (Platt, Mark)
12/05/2019	<u>161</u> Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>157</u>). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>160</u>). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>161</u>). (U.S. Treasury)
12/05/2019	<u>167</u> Motion to appear pro hac vice for Gregory V. Demo. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27230422, amount \$ 100.00 (re: Doc# <u>167</u>). (U.S. Treasury)
12/05/2019	<u>188</u> Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	<u>189</u> Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27233957, amount \$ 100.00 (re: Doc# <u>189</u>). (U.S. Treasury)
12/06/2019	<u>190</u> Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: <u>189</u>) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	<u>191</u> Motion to appear pro hac vice for John A. Morris. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27233983, amount \$ 100.00 (re: Doc# <u>191</u>). (U.S. Treasury)
12/06/2019	<u>192</u> INCORRECT ENTRY – Incorrect Event Used; Refiled as Document <u>220</u> . Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	<u>193</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Edmond, Michael)
12/06/2019	<u>194</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs,

	introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)
12/06/2019	<u>195</u> Request for transcript regarding a hearing held on 12/6/2019. The requested turn-around time is hourly. (Edmond, Michael)
12/06/2019	<u>196</u> Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # <u>97</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # <u>100</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # <u>105</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # <u>109</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # <u>160</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # <u>161</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # <u>167</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # <u>157</u>) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>204</u> INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT</i>

	<i>AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	<u>206</u> Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u>) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>220</u> Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>41</u> Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	<u>207</u> Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800-665-6251. (RE: related document(s) <u>193</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.,) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , <u>194</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)
12/08/2019	<u>208</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document <u>100</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>209</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document <u>105</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>210</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document <u>109</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>211</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee

	of the Highland Crusader Fund (related document <u>160</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>212</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document <u>161</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>213</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document <u>167</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>214</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document <u>157</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/09/2019	<u>215</u> Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19–12239. (Okafor, M.)
12/09/2019	<u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # <u>190</u>) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # <u>191</u>) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # <u>1</u> Declaration # <u>2</u> Proposed Order) (Crooks, David)
12/09/2019	<u>219</u> Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)
12/09/2019	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] (181.00). Receipt number 27240994, amount \$ 181.00 (re: Doc# <u>218</u>). (U.S. Treasury)
12/09/2019	<u>221</u> Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)
12/09/2019	<u>222</u> Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/09/2019	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] (100.00). Receipt number 27241671, amount \$ 100.00 (re: Doc# <u>222</u>). (U.S. Treasury)
12/09/2019	<u>223</u> Certificate of service re: <i>1) Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving</i>

	<p><i>the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u>) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/10/2019	<p><u>224</u> Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). (Crooks, David)</p>
12/10/2019	<p><u>225</u> Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181., <u>224</u> Certificate (generic)). (Attachments: # <u>1</u> Service List) (Crooks, David)</p>
12/10/2019	<p><u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (<i>Co-Counsel</i>) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
12/10/2019	<p><u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).</p>
12/10/2019	<p><u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)</p>
12/10/2019	<p><u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)</p>
12/10/2019	<p><u>230</u> Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
12/10/2019	<p><u>231</u> Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

12/11/2019	<u>232</u> Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued) <i>Joint Motion to Continue Status Conference</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order # <u>2</u> Service List) (Hayward, Melissa)
12/11/2019	<u>233</u> Motion to appear pro hac vice for Michael I. Baird. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # <u>1</u> Certificate of Service) (Baird, Michael)
12/11/2019	<u>234</u> Order granting joint motion to continue hearing on (related document # <u>232</u>) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	<u>236</u> Motion to appear pro hac vice for Lauren Macksoud. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27250084, amount \$ 100.00 (re: Doc# <u>236</u>). (U.S. Treasury)
12/11/2019	<u>237</u> Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27250165, amount \$ 100.00 (re: Doc# <u>237</u>). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt Number KF - No Fee Due, amount \$ 0.00 (re: Doc <u>233</u>). (Floyd)
12/11/2019	<u>238</u> BNC certificate of mailing - PDF document. (RE: related document(s) <u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document <u>190</u>) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	<u>239</u> BNC certificate of mailing - PDF document. (RE: related document(s) <u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document <u>191</u>) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	<u>240</u> Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	<u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/12/2019	<u>242</u> Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # <u>233</u>) Entered on 12/12/2019. (Okafor, M.)

12/12/2019	<u>243</u> BNC certificate of mailing. (RE: related document(s) <u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non–individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/12/2019	<u>244</u> BNC certificate of mailing. (RE: related document(s) <u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non–individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/13/2019	<u>245</u> Certificate of service re: <i>1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt & Taylor, LLP as Co–Counsel, Nunc Pro Tunc to November 8, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (Co–Counsel) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/13/2019	<u>246</u> Certificate of service re: <i>1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/13/2019	<u>247</u> Schedules: Schedules A/B and D–H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non–Individual Debtors.). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding schedules) (Hayward, Melissa)
12/13/2019	<u>248</u> Statement of financial affairs for a non–individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding SOFA) (Hayward, Melissa)
12/13/2019	<u>249</u> BNC certificate of mailing – meeting of creditors. (RE: related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)/certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)
12/13/2019	<u>250</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>234</u> Order granting joint motion to continue hearing on (related document <u>232</u>) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)
12/16/2019	<u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # <u>236</u>) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # <u>237</u>) Entered on 12/16/2019. (Dugan, S.)

12/16/2019	<u>253</u> Order rescheduling status conference (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)
12/17/2019	<u>254</u> Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)
12/18/2019	<u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i>). (Hoffman, Juliana)
12/18/2019	Hearing held on 12/18/2019. (RE: related document(s) <u>1</u> Status/Scheduling Conference; Order transferring case number 19–12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20–1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)
12/18/2019	<u>256</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document <u>236</u>) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/18/2019	<u>257</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document <u>237</u>) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/19/2019	<u>258</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Dechert LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Demo, Gregory)
12/19/2019	<u>259</u> Support/supplemental document <i>to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). (Hayward, Melissa)
12/19/2019	<u>260</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (ASW Law Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/19/2019	<u>261</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/20/2019	

	<u>262</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
12/20/2019	<u>263</u> Certificate of service re: <i>Supplemental Declaration of Bojan Guzina in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T).</i> filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/20/2019	<u>264</u> Certificate of service re: <i>Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2019	<u>265</u> Objection to (related document(s): <u>176</u> Document) <i>Limited Objection of The Official Committee of Unsecured Creditors to the Retention of Harder LLP as Ordinary Course Professional</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/23/2019	<u>266</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>267</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>268</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)
12/23/2019	<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
12/23/2019	<u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee (Lambert, Lisa)

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12/23/2019	<u>272</u> Trustee's Objection to Motion to Seal Official Committee's Omnibus Objection and Supporting Exhibits (RE: related document(s) <u>127</u> Document) (Lambert, Lisa)
12/23/2019	<u>273</u> Motion for leave to Extend Deadline to Object to Motion for Relief of Stay of PensionDanmark (related document(s) <u>218</u> Motion for relief from stay) Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/6/2020. (Hoffman, Juliana)
12/24/2019	<u>274</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>275</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>276</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/25/2019	<u>277</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)) No. of Notices: 1. Notice Date 12/25/2019. (Admin.)
12/26/2019	<u>278</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Kim & Chang) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/26/2019	<u>279</u> Certificate of service re: 1) Disclosure Declaration of Ordinary Course Professional; 2) Disclosure Declaration of Ordinary Course Professional; 3) Declaration of Marc D. Katz Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>266</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>267</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>268</u> Declaration re: Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/27/2019	<u>280</u> Motion for protective order.Joint Motion for Entry of an Order Approving the Agreed Protective Order Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/27/2019	<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Hayward, Melissa)
12/27/2019	<u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
12/27/2019	

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	<u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
12/28/2019	<u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/28/2019	<u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/30/2019	<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. (Pomerantz, Jeffrey)
12/30/2019	<u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , (Hayward, Melissa)
12/31/2019	<u>288</u> Certificate No Objection to Retention of Sidley Austin LLP filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i>). (Hoffman, Juliana)
12/31/2019	<u>289</u> Debtor-in-possession monthly operating report for filing period November 1, 2019 to November 30, 2019 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/31/2019	<u>290</u> Certificate No Objection to Retention of FTI Consulting, Inc. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i>). (Hoffman, Juliana)
12/31/2019	<u>291</u> Order granting motion for expedited hearing (Related Doc# <u>283</u>)(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30

	AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019. (Whitaker, Sheniqua)
01/02/2020	<u>292</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration Alexander G. McGeoch in Support of Hunton Andrews Kurth LLP as Ordinary Course Professional</i> ; 3) <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>293</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim & Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>294</u> Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (<i>Co-Counsel</i>) <i>Nunc Pro Tunc</i>). (Hoffman, Juliana)
01/02/2020	<u>295</u> Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	<u>296</u> Certificate of service re: <i>Documents Served on December 27, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>282</u> Support/supplemental document <i>to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>297</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u>)(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	<u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	

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	<u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	<u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # <u>222</u>) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	<u>301</u> Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # <u>273</u>). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks Stay Relief Motion Entered on 1/3/2020. (Okafor, M.)
01/05/2020	<u>302</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)) No. of Notices: 45. Notice Date 01/05/2020. (Admin.)
01/05/2020	<u>303</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document <u>222</u>) Entered on 1/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/05/2020. (Admin.)
01/06/2020	<u>304</u> Order granting <u>299</u> joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (Re: related document(s) <u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave)) Entered on 1/6/2020. (Okafor, M.)
01/06/2020	<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Annable, Zachery)
01/06/2020	<u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Annable, Zachery)
01/06/2020	<u>307</u> Trustee's Objection to <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> (RE: related document(s) <u>280</u> Motion for protective order) (Lambert, Lisa)
01/06/2020	<u>308</u> Motion to appear pro hac vice for Asif Attarwala. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>309</u> Motion to appear pro hac vice for Kimberly A. Posin. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)

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01/06/2020	<u>310</u> Motion to appear pro hac vice for Andrew Clubok. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>311</u> Motion to appear pro hac vice for Kuan Huang. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>308</u>). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>309</u>). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>310</u>). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>311</u>). (U.S. Treasury)
01/06/2020	<u>312</u> Response opposed to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Jefferies LLC. (Attachments: # <u>1</u> Exhibit A) (Doherty, Casey)
01/06/2020	<u>313</u> Trustee's Objection to <i>Motion to Approve Joint Agreement</i> (RE: related document(s) <u>281</u> Motion to compromise controversy) (Lambert, Lisa)
01/06/2020	<u>314</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/06/2020	<u>315</u> Certificate of service re: <i>1) Notice of Hearing on Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to held on January 9, 2020 at 9:30 a.m. (CT); and 2) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be held on January 9, 2020 at 9:30 a.m. (CT)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P., <u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00

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	AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2020	<u>316</u> Certificate of service re: 1) <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from November 1, 2019 Through November 30, 2019</i> ; 2) <i>Notice of Hearing re: Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; to be Held on January 9, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. filed by Debtor Highland Capital Management, L.P., <u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/07/2020	<u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document # <u>308</u>) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>318</u> Order granting motion to appear pro hac vice adding Kimberly A. Posin for UBS AG London Branch and UBS Securities LLC (related document # <u>309</u>) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u>) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).
01/07/2020	<u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document # <u>311</u>) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>321</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Annable, Zachery)
01/07/2020	<u>322</u> Certificate of service re: Certificate of Service filed by Interested Party Jefferies LLC (RE: related document(s) <u>312</u> Response). (Doherty, Casey)
01/07/2020	<u>323</u> Notice of Appearance and Request for Notice (<i>Amended</i>) by Joseph E. Bain filed by Creditor Issuer Group. (Bain, Joseph)
01/07/2020	<u>324</u> ***WITHDRAWN per docket # <u>467</u> ** Objection to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) <i>Limited Objection to Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group. (Bain, Joseph) Modified on 2/24/2020 (Ecker, C.).

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01/08/2020	<u>325</u> Motion to appear pro hac vice for James T. Bentley. Fee Amount \$100 Filed by Creditor Issuer Group (Anderson, Amy)
01/08/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27331269, amount \$ 100.00 (re: Doc# <u>325</u>). (U.S. Treasury)
01/08/2020	<u>326</u> Notice of Compliance with Local Bankruptcy Rule 2090-4 filed by Creditor Issuer Group. (Anderson, Amy)
01/08/2020	<u>327</u> Declaration re: (<i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Annable, Zachery)
01/08/2020	<u>328</u> Agreed Notice of hearingwith PensionDanmark and Highland Capital Management, L.P. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , (Hoffman, Juliana)
01/08/2020	<u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).
01/08/2020	<u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).
01/08/2020	<u>331</u> Certificate of service re: <i>Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u>)(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.). (Kass, Albert)
01/08/2020	<u>332</u> Certificate of service re: <i>1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - Declaration of John Dempsey in Support # 4 Exhibit C - Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM

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	Dallas Judge Jernigan Ctrm for <u>180</u> , filed by Debtor Highland Capital Management, L.P., <u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/09/2020	<u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document # <u>325</u>) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document # <u>206</u>) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>335</u> Court admitted exhibits date of hearing 01/09/2020. DEBTOR EXHIBIT 1 ADMITTED. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) (Jeng, Hawaii)
01/09/2020	<u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document # <u>205</u>) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>337</u> Order granting application to employ Young Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u>) Entered on 1/9/2020. (Okafor, M.) Modified to correct Firm name on 1/13/2020 (Ecker, C.).
01/09/2020	<u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Hayward, Melissa)
01/09/2020	<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # <u>281</u>) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>340</u> Application to employ Hayward & Associates PLLC as Attorney (<i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Melissa S. Hayward # <u>2</u> Proposed Order) (Annable, Zachery)
01/09/2020	<u>341</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document <u>308</u>) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/09/2020. (Admin.)
01/09/2020	Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M.

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	Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.) (Edmond, Michael) (Entered: 01/10/2020)
01/10/2020	<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document # <u>74</u>) Entered on 1/10/2020. (Okafor, M.)
01/10/2020	<u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. (Hoffman, Juliana)
01/10/2020	<u>344</u> Certificate of service re: <i>Documents Served on January 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>327</u> Declaration re: <i>(Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors.). filed by Debtor Highland Capital Management, L.P., <u>328</u> Agreed Notice of hearing <i>with PensionDanmark and Highland Capital Management, L.P.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/10/2020	<u>345</u> Certificate of service re: <i>Documents Served on January 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document <u>206</u>) Entered on 1/9/2020. (Okafor, M.), <u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document <u>205</u>) Entered on 1/9/2020. (Okafor, M.), <u>337</u> Order granting application to employ Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u>) Entered on 1/9/2020. (Okafor, M.), <u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors.). filed by Debtor Highland Capital Management, L.P., <u>340</u> Application to employ Hayward & Associates PLLC as Attorney (<i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Melissa S. Hayward # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass,

	Albert)
01/10/2020	<u>346</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u>) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/10/2020	<u>347</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document <u>311</u>) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/11/2020	<u>348</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document <u>325</u>) Entered on 1/9/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/11/2020. (Admin.)
01/12/2020	<u>349</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/12/2020. (Admin.)
01/13/2020	<u>350</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/13/2020	<u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/13/2020	<u>352</u> DOCKET IN ERROR: Request for transcript regarding a hearing held on 1/9/2020. The requested turn–around time is daily. (Edmond, Michael) Modified on 1/21/2020 REQUEST WAS CANCELLED THE SAME DATE AS REQUESTED OF 1/13/2020. (Edmond, Michael).
01/13/2020	<u>353</u> Objection to (related document(s): <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
01/14/2020	<u>354</u> Notice (<i>Notice of Final Term Sheet</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order)). (Attachments: # <u>1</u> Exhibit A—Final Term Sheet) (Annable, Zachery)
01/14/2020	<u>355</u> Certificate of service re: <i>Summary and First Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from October 29, 2019 to and Including November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>343</u> Application for compensation <i>First</i>

	<i>Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
01/14/2020	<i><u>356</u> Certificate of service re: Debtor's Motion for Entry of an Order Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
01/14/2020	<i><u>357</u> Witness and Exhibit List in Connection with Motion to Appoint a Chapter 11 Trustee filed by U.S. Trustee United States Trustee (RE: related document(s)<u>271</u> Trustee's Motion to appoint trustee). (Lambert, Lisa)</i>
01/14/2020	<i><u>358</u> Witness and Exhibit List in connection with Motion to Seal and Joint Motion for an Agreed Protective Order filed by U.S. Trustee United States Trustee (RE: related document(s)<u>10</u> Motion to file document under seal., <u>280</u> Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order). (Lambert, Lisa)</i>
01/15/2020	<i><u>359</u> Agreed Motion to continue hearing on (related documents <u>218</u> Motion for relief from stay) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</i>
01/15/2020	<i><u>360</u> Withdrawal of Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>76</u> Motion by Highland Capital Management, L.P.). (Hayward, Melissa)</i>
01/15/2020	<i><u>361</u> Order granting motion to continue hearing on (related document # <u>359</u>) (related documents Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT Fee amount \$181.). It is hereby ORDERED that a hearing on the Stay Relief Motion shall be continued to a later date provided by the Court and mutually acceptable to the Parties. Entered on 1/15/2020. (Okafor, M.)</i>
01/15/2020	<i><u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</i>
01/15/2020	<i><u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank</i>

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	<p>Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, (Annable, Zachery)</p>
01/15/2020	<p><u>364</u> Objection to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
01/16/2020	<p><u>365</u> Certificate of service re: Objection to First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From October 16, 2019 Through November 30, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>366</u> Amended Witness and Exhibit List in Connection with Motion to Appoint a Chapter 11 Trustee filed by U.S. Trustee United States Trustee (RE: related document(s)<u>357</u> List (witness/exhibit/generic)). (Lambert, Lisa)</p>
01/16/2020	<p><u>367</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, <u>69</u> Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable,</p>

	Zachery)
01/17/2020	<u>369</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)
01/17/2020	<u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)(<i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/17/2020	<u>371</u> Order granting joint motion to continue hearing on (related document # <u>370</u>) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.)
01/17/2020	<u>372</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>362</u> Response). (Annable, Zachery)
01/19/2020	<u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
01/20/2020	<u>374</u> Amended Notice (<i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery)
01/21/2020	<u>375</u> Certificate of service re: (<i>Supplemental</i>) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and

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

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to be Held on January 21, 2020 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)362 Response opposed to (related document(s): 271 Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 363 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 68 Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 259 Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.), 271 Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, 280 Motion for protective order *Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 7 and for 68 and for 177 and for 259 and for 280 and for 271 and for 180 and for 69, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

01/21/2020

Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order *Joint Motion for Entry of an Order Approving the Agreed Protective Order* filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson

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	and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. (Hoffman, Juliana)
01/21/2020	<u>383</u> Court admitted exhibits date of hearing January 21, 2020 (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by Lisa Lambert representing the U.S. Trustee) (Court Admitted U.S. Trustee's Exhibits #4, #5, #7, #8, #9, #10 and Took Judicial Notice of Exhibit #11) (Edmond, Michael) (Entered: 01/22/2020)
01/22/2020	<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document # <u>7</u>) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document # <u>177</u>) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document # <u>180</u>) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>382</u> Agreed Order Granting Motion for Protective Order (related document # <u>280</u>) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>384</u> Declaration re: <i>Notice / Declaration of Conor P. Tully in Support of the Retention of FTI Consulting, Inc.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i>). (Hoffman, Juliana)
01/22/2020	<u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as</i>

	<i>Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019 for Highland C). (Annable, Zachery)</i>
01/22/2020	<u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). (Annable, Zachery)
01/22/2020	<u>387</u> Request for transcript regarding a hearing held on 1/21/2020. The requested turn-around time is hourly. (Edmond, Michael) (Entered: 01/23/2020)
01/23/2020	<u>388</u> Certificate of service re: First Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019 filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>384</u> Declaration). (Hoffman, Juliana)
01/23/2020	<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. (Hoffman, Juliana)
01/23/2020	<u>390</u> Supplemental Notice of the <i>Young Conaway Stargatt & Taylor, LLP Final Fee Application</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). (Hoffman, Juliana)
01/23/2020	<u>391</u> Certificate of service re: Final Fee Application <i>on behalf of Young Conaway Stargatt & Taylor, LLP</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Perio). (Hoffman, Juliana)
01/24/2020	<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. (Pomerantz, Jeffrey)
01/24/2020	<u>393</u> Transcript regarding Hearing Held 01/21/2020 (140 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/23/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.), Hearing

held on 1/21/2020. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L.

	Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.)). Transcript to be made available to the public on 04/23/2020. (Rehling, Kathy)
01/24/2020	<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)
01/24/2020	<u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/24/2020	<u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) (<i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/24/2020	<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Email Correspondence) (Annable, Zachery)
01/24/2020	<u>398</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u>) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/24/2020. (Admin.)
01/24/2020	<u>399</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u>) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 44. Notice Date 01/24/2020. (Admin.)
01/27/2020	<u>400</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/27/2020	<u>401</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>402</u> Certificate of service re: <i>Documents Served on January 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>369</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16,</i>

	<p>2019, Through November 30, 2019) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P., <u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)(<i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>371</u> Order granting joint motion to continue hearing on (related document <u>370</u>) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.), <u>372</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>362</u> Response). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><u>403</u> Certificate of service re: <i>Documents Served on or before January 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P., <u>374</u> Amended Notice (<i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
01/27/2020	<p><u>404</u> Certificate of service re: <i>Documents Served on January 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u>) Entered on 1/22/2020. (Okafor, M.), <u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document <u>177</u>) Entered on 1/22/2020. (Okafor, M.), <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u>) Entered on 1/22/2020. (Okafor, M.), <u>382</u> Agreed Order Granting Motion for Protective Order (related document <u>280</u>) Entered on 1/22/2020. (Okafor, M.), <u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the</i></p>

	<i>Debtor for the Period From October 16, 2019 Through October 31, 2019 for Highland C).</i> filed by Debtor Highland Capital Management, L.P., <u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019 for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1).</i> filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>405</u> Debtor-in-possession monthly operating report for filing period 10/16/2019 to 10/31/2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2020	<u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Updated OCP List # <u>2</u> Exhibit 2—Blackline OCP List) (Annable, Zachery)
01/27/2020	<u>407</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
01/27/2020	<u>408</u> Notice of hearing(<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>)) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/28/2020	<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document and <u>127</u> Motion). Entered on 1/28/2020 (Okafor, M.). Modified linkage on 2/11/2020 (Okafor, M.).
01/28/2020	<u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc# <u>396</u>)(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.)
01/28/2020	<u>411</u> Notice of Appearance and Request for Notice by Shawn M. Christianson Filed by Creditor Oracle America, Inc.. (Christianson, Shawn)
01/28/2020	<u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , (Annable, Zachery)
01/29/2020	<u>413</u> Certificate of service re: 1) <i>First and Final Application of Young Conaway Stargatt & Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> ; 2) <i>Notice of First and Final Application of Young Conaway Stargatt & Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> Filed by Claims Agent Kurtzman Carson

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	<p>Consultants LLC (related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>390</u> Supplemental Notice of the Young Conaway Stargatt & Taylor, LLP Final Fee Application filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
01/29/2020	<p><u>414</u> Certificate of service re: <i>Documents Served on January 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) (<i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>415</u> Certificate of service re: <i>Documents Served on January 27, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Updated OCP List # 2 Exhibit 2—Blackline OCP List) filed by Debtor Highland Capital Management, L.P., <u>407</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>408</u> Notice of hearing(<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.).</p>

	(Kass, Albert)
01/30/2020	<u>416</u> Certificate of service re: <i>Documents Served on January 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), <u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc <u>396</u>)(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.), <u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2020	<u>417</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
01/31/2020	<u>418</u> Debtor—in—possession monthly operating report for filing period December 1, 2019 to December 31, 2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/31/2020	<u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/31/2020	<u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # <u>1</u> Exhibit A Fee Statement # <u>2</u> Exhibit B Expense Detail) (Hoffman, Juliana)
01/31/2020	<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Form of Bar Date Notice # <u>2</u> Exhibit B—Form of Publication Notice # <u>3</u> Exhibit C—Proposed Order) (Annable, Zachery)
01/31/2020	<u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) (<i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/02/2020	<u>423</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period:

	10/29/2019 to 11/30/2019, Fee: \$7). (Hoffman, Juliana)
02/03/2020	<u>424</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/04/2020	<u>425</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>340</u> Application to employ Hayward & Associates PLLC as Attorney (<i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associate</i>). (Hayward, Melissa)
02/04/2020	<u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , (Annable, Zachery)
02/05/2020	<u>427</u> Order granting motion for expedited hearing (Related Doc# <u>422</u>)(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , Entered on 2/5/2020. (Okafor, M.)
02/05/2020	<u>428</u> Order denying motion to appoint trustee. (related document # <u>271</u>) Entered on 2/5/2020. (Okafor, M.)
02/06/2020	<u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)
02/06/2020	<u>430</u> Certificate of service re: <i>Documents Served on January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>417</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty. Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08.</i> Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>422</u> Motion for expedited hearing(related

	documents <u>421</u> Motion for leave) (<i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>431</u> Certificate of service re: <i>Notice of Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>432</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/07/2020	<u>433</u> Clerk's correspondence requesting an order or a notice of hearing from attorney for debtor. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)) Responses due by 2/14/2020. (Ecker, C.)
02/10/2020	<u>434</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure)). (Hayward, Melissa)
02/10/2020	<u>435</u> Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document # <u>340</u>) Entered on 2/10/2020. (Okafor, M.)
02/10/2020	<u>436</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/10/2020	<u>437</u> Notice (<i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN

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

	<i>Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$32). (Hoffman, Juliana)</i>
02/13/2020	<i>445 Certificate of service re: 1) Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel; 2) Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date; and 3) Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)435 Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document 340) Entered on 2/10/2020. (Okafor, M.), 437 Notice (Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)69 Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). filed by Debtor Highland Capital Management, L.P., 438 **WITHDRAWN by document 443** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation – First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019 for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
02/13/2020	<i>446 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)68 Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Chiarello, Annmarie)</i>
02/13/2020	<i>447 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)395 Motion to extend or limit the exclusivity period). (Annable, Zachery)</i>
02/13/2020	<i>448 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)421 Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof)). (Annable, Zachery)</i>
02/13/2020	<i>449 Certificate of service re: 1) Second Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2019 to and Including December 31, 2019; 2) Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)442 Application for compensation</i>

	<p><i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, Financial Advisor FTI Consulting, Inc., <u>443</u> Notice (<i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u>), filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/14/2020	<p><u>450</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt & Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)</p>
02/14/2020	<p><u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # <u>1</u> Exhibit 1 (Arb Award) # <u>2</u> Exhibit 2 (Rule 11) # <u>3</u> Exhibit 3 (Terry Declaration)) (Shaw, Brian)</p>
02/14/2020	<p>Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] (181.00). Receipt number 27457656, amount \$ 181.00 (re: Doc# <u>451</u>). (U.S. Treasury)</p>
02/14/2020	<p><u>452</u> Notice of hearing filed by Jennifer G. Terry, Joshua Terry (RE: related document(s)<u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration))). Preliminary hearing to be held on 3/11/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Shaw, Brian)</p>
02/14/2020	<p><u>453</u> Objection to (related document(s): <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i>) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)</p>
02/14/2020	<p><u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Annable, Zachery)</p>
02/17/2020	<p><u>455</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
02/18/2020	<p><u>456</u> Notice of Withdrawal of Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>124</u> Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED</p>

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	AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hoffman, Juliana)
02/18/2020	<u>457</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/). (Annable, Zachery)
02/19/2020	<u>458</u> Order granting first and final application for compensation (related document # <u>389</u>) granting for Young Conaway Stargatt & Taylor, LLP as co-counsel for Official Committee of Unsecured Creditors, fees awarded: \$272300.00, expenses awarded: \$8855.56 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document # <u>67</u>) Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>462</u> Court admitted exhibits date of hearing February 19, 2020 (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P., (Court Admitted Debtors/Plaintiffs Exhibits #1, #2, #3, #4, #5, #6, #7 #8, & #9; Also Admitted Defendant/Respondent Exhibits #16 & #27 only). (Edmond, Michael)
02/19/2020	<u>463</u> Request for transcript regarding a hearing held on 2/19/2020. The requested turn-around time is hourly (Jeng, Hawaii)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted.(Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors

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	Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.) (Edmond, Michael) (Entered: 02/25/2020)
02/20/2020	<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. (Pomerantz, Jeffrey)
02/20/2020	<u>465</u> Application for compensation (<i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A December 2019 Fee Statement) (Annable, Zachery)
02/21/2020	<u>466</u> Notice (<i>Notice of Debtor's Amended Operating Protocols</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document <u>281</u>) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Amended Operating Protocols # <u>2</u>

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	Exhibit B—Redline of Amended Operating Protocols) (Annable, Zachery)
02/21/2020	<u>467</u> Withdrawal of Limited Objection to Motion of the Debtor for Approval of Settlement with The Official Committee Of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course filed by Creditor Issuer Group (RE: related document(s) <u>324</u> Objection). (Bain, Joseph)
02/21/2020	<u>468</u> Certificate of service re: Objection to Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From December 1, 2019 through December 31, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i>). (Chiarello, Annmarie)
02/21/2020	<u>469</u> Certificate of service re: <i>Debtor's Witness and Exhibit List in Connection with its Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>470</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>455</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>471</u> Certificate of service re: <i>1) Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Order Granting Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(D) and Local Rule 3016–1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 3) Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.), <u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.), <u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document <u>67</u>) Entered on 2/19/2020. (Okafor, M.)). (Kass, Albert)
02/23/2020	<u>472</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee). (Hoffman, Juliana)
02/24/2020	<u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document # <u>218</u>) Entered on 2/24/2020. (Okafor, M.)
02/24/2020	<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain</i>

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	<i>"Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
02/24/2020	<u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
02/24/2020	<u>476</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/25/2020	<u>477</u> Order granting motion for expedited hearing (Related Doc# <u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u> , Entered on 2/25/2020. (Okafor, M.)
02/25/2020	<u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u> , (Annable, Zachery)
02/26/2020	<u>479</u> Transcript regarding Hearing Held 02/19/2020 (188 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted., Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer

	<p>Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.), Hearing held on 2/19/2020. (RE: related document(s)<u>397</u> Motion to enforce (<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.), Hearing held on 2/19/2020. (RE: related document(s)<u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.,) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.), Hearing held on 2/19/2020. (RE: related document(s)<u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.)). Transcript to be made available to the public on 05/26/2020. (Rehling, Kathy)</p>
02/26/2020	<p><u>480</u> Certificate of service re: 1) Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020; 2) First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 1, 2019 Through December 31, 2019 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>464</u> Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020 for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. filed by Debtor Highland Capital Management, L.P., <u>465</u> Application for compensation (First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A December 2019 Fee Statement)). (Kass, Albert)</p>
02/26/2020	<p><u>481</u> Certificate of service re: Notice of Debtor's Amended Operating Protocols Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>466</u> Notice (Notice of Debtor's Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document <u>281</u>) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Amended Operating Protocols # 2 Exhibit B—Redline of Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

02/26/2020	<u>482</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensjonsforsikringsaktieselskab (related document <u>218</u>) Entered on 2/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 02/26/2020. (Admin.)
02/27/2020	<u>483</u> Application to employ Deloitte Tax LLP as Other Professional (<i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Crawford Declaration # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
02/28/2020	<u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). (Annable, Zachery)
02/28/2020	<u>485</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—OCP Tracking Report) (Annable, Zachery)
03/02/2020	<u>486</u> Response opposed to (related document(s): <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # <u>1</u> Exhibit A – Purchase and Sale Agreement # <u>2</u> Exhibit B – Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	<u>487</u> Objection to (related document(s): <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	<u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document # <u>421</u>) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	<u>489</u> Joinder by <i>Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same</i> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>487</u> Objection). (Enright, Jason)
03/02/2020	<u>490</u> Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount \$100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] (100.00). Receipt number 27511024, amount \$ 100.00 (re: Doc# <u>490</u>). (U.S. Treasury)

03/02/2020	<p><u>491</u> Certificate of service re: 1) <i>Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>474</u> <i>Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>475</u> <i>Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds)</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>492</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>477</u> <i>Order granting motion for expedited hearing (Related Doc<u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.), <u>478</u> <i>Notice of hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> <i>Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
03/02/2020	<p><u>493</u> Certificate of service re: 1) <i>Witness and Exhibit List for March 4, 2020 Hearing</i>; 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>484</u> <i>Witness and Exhibit List</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> <i>Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")</i>)). filed by Debtor Highland Capital Management, L.P., <u>485</u> <i>Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> <i>ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]</i> (Okafor, M.)). (Attachments: # 1 Exhibit A—OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>494</u> <i>Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)(Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights)</i> filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/02/2020	<p><u>495</u> <i>Witness and Exhibit List</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>487</u> <i>Objection</i>). (Hoffman, Juliana)</p>

03/02/2020	<u>496</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). (Enright, Jason)
03/03/2020	<u>497</u> Debtor-in-possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2020	<u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	<u>499</u> Reply to (related document(s): <u>487</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	<u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document # <u>490</u>) Entered on 3/4/2020. (Okafor, M.)
03/04/2020	<u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. (Hoffman, Juliana)
03/04/2020	Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.) (Edmond, Michael) (Entered: 03/05/2020)
03/04/2020	<u>504</u> Court admitted exhibits date of hearing March 4, 2020 (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, & #12) (Edmond, Michael) (Entered: 03/05/2020)
03/05/2020	<u>502</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12). (Hoffman, Juliana)
03/05/2020	<u>503</u> Request for transcript regarding a hearing held on 3/4/2020. The requested turn-around time is daily (Jeng, Hawaii)
03/06/2020	<u>505</u> Notice of Appearance and Request for Notice by John Y. Bonds III filed by Interested Party James Dondero. (Bonds, John)

03/06/2020	<u>506</u> Notice of Appearance and Request for Notice by Bryan C. Assink filed by Interested Party James Dondero. (Assink, Bryan)
03/06/2020	<u>507</u> Motion to appear pro hac vice for Jeffrey Bjork. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana) Modified to correct attorney name on 3/6/2020 (Ecker, C.).
03/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27531772, amount \$ 100.00 (re: Doc# <u>507</u>). (U.S. Treasury)
03/06/2020	<u>508</u> Witness and Exhibit List filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
03/06/2020	<u>509</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document <u>490</u>) Entered on 3/4/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/06/2020. (Admin.)
03/10/2020	<u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document # <u>507</u>) Entered on 3/10/2020. (Okafor, M.)
03/11/2020	<u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	<u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc # <u>474</u>) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document # <u>68</u>) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	Hearing held on 3/11/2020. (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (Appearances: M. Hayward for Debtor; B Shaw for Movants; J. Hoffman for UCC; M. Platt (and M. Hankin telephonically) for Redeemer Committee; J. Bonds for J. Dondero; A. Anderson for certain Issuers. Evidentiary hearing. Motion granted. Counsel to upload order.)(Edmond, Michael)
03/11/2020	<u>515</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI January 2020 Staffing Report) (Annable, Zachery)

03/11/2020	<u>516</u> Court admitted exhibits date of hearing March 11, 2020 (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (COURT ADMITTED PLAINTIFF EXHIBIT'S #M1, #M2 & #M3). (Edmond, Michael)
03/12/2020	<u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. (Hoffman, Juliana)
03/12/2020	<u>518</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document <u>507</u>) Entered on 3/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/12/2020. (Admin.)
03/13/2020	<u>519</u> Order granting motion for relief from stay by Jennifer G. Terry , Joshua Terry (related document # <u>451</u>) Entered on 3/13/2020. (Okafor, M.)
03/13/2020	<u>520</u> BNC certificate of mailing. (RE: related document(s) <u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>521</u> BNC certificate of mailing. (RE: related document(s) <u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>522</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u>) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>523</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u>) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/14/2020	<u>524</u> Certificate of service re: <i>Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document <u>421</u>) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)). (Kass, Albert)
03/14/2020	<u>525</u> Certificate of service re: <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)(<i>Debtor's Limited</i>

	<i>Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/14/2020	<u>526</u> Certificate of service re: <i>Third Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30.</i> Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/16/2020	<u>527</u> Notice of Appearance and Request for Notice by David G. Adams filed by Creditor United States (IRS). (Adams, David)
03/16/2020	<u>528</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland C). (Annable, Zachery)
03/17/2020	<u>529</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>465</u> Application for compensation (<i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i>) for Hayward). (Annable, Zachery)
03/17/2020	<u>530</u> Certificate of service re: <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>531</u> Certificate of service re: 1) <i>Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain Related Entities</i> ; 2) <i>Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date</i> ; 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 Through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u>) Entered on 3/11/2020. (Bradden, T.), <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u>) Entered on 3/11/2020. (Bradden, T.), <u>515</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI January 2020 Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>532</u> Certificate of service re: <i>Third Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28,

	Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/18/2020	<u>533</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2020	<u>534</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2020	<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. (Pomerantz, Jeffrey)
03/19/2020	<u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—January 2020 Invoice) (Annable, Zachery)
03/19/2020	<u>537</u> Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
03/20/2020	<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	

	<u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020</i> , Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. (Hoffman, Juliana)
03/22/2020	<u>543</u> Stipulation by Highland Capital Management, L.P., UBS AG London Branch, UBS Securities LLC and. filed by Debtor Highland Capital Management, L.P., Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>488</u> Order on motion for leave). (Manns, Ryan)
03/23/2020	<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. (Hoffman, Juliana)
03/23/2020	<u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
03/23/2020	<u>546</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/25/2020	<u>547</u> Joint Stipulation and Order Extending Bar Date for UBS Securities LLC and UBS AG London Branch (RE: related document(s) <u>543</u> Stipulation filed by Debtor Highland Capital Management, L.P., Interested Party UBS Securities LLC, Interested Party UBS AG London Branch). Entered on 3/25/2020 (Okafor, M.)
03/25/2020	<u>548</u> Agreed Order Extending the Deadline to Object to the Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief (Related documents # <u>545</u> Motion to extend and <u>483</u> Application to employ Deloitte Tax LLP) Entered on 3/25/2020. (Okafor, M.)
03/26/2020	<u>549</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020</i> , Fee: \$569). (Hoffman, Juliana)
03/26/2020	<u>550</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>483</u> Application to employ Deloitte Tax LLP as Other Professional (<i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date;</i>). (Annable, Zachery)
03/27/2020	<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document # <u>483</u>) Entered on 3/27/2020. (Okafor, M.)

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03/27/2020	<p><u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Annable, Zachery)</p>
03/27/2020	<p><u>553</u> Certificate of service re: 1) <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 Through February 29, 2020</i>; 2) <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i>; and 3) <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. filed by Debtor Highland Capital Management, L.P., <u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # 1 Exhibit A—January 2020 Invoice), <u>537</u> Notice of Filing of <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/27/2020	<p><u>554</u> Certificate of service re: <i>Documents Served on or Before March 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official</i></p>

	Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/27/2020	<u>555</u> Certificate of service re: <i>1) Fourth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2020 to and Including February 29, 2020; 2) Agreed Motion to Extend Objection Deadline for the Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. filed by Financial Advisor FTI Consulting, Inc., <u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/31/2020	<u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.)
03/31/2020	<u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/02/2020	<u>558</u> Debtor-in-possession monthly operating report for filing period 02/01/2020 to 02/29/2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/02/2020	<u>559</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.)
04/03/2020	<u>561</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.). (Hoffman, Juliana)
04/03/2020	<u>562</u> Notice of hearing(<i>Notice of May 26, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>563</u> Notice of hearing(<i>Notice of June 15, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>564</u> Certificate of service re: <i>1) Agreed Order: (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief; 2) Stipulation by and Between the Debtor and</i>

	<p><i>Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.), 552 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/03/2020	<p>565 Certificate of service re: 1) <i>Order Approving Stipulation Permitting Brown Rudnick LLP to File a Proof of Claim After the General Bar Date</i>; 2) <i>Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)556 Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s)552 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.), 557 Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s)488 Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/06/2020	<p>566 Declaration re: (<i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)</p>
04/06/2020	<p>567 Notice (<i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) (Annable, Zachery)</p>
04/07/2020	<p>568 Notice of hearing(<i>Notice of July 8, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)</p>
04/07/2020	<p>569 Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. (Hoffman, Juliana)</p>
04/07/2020	<p>570 Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. (Hoffman, Juliana)</p>
04/08/2020	<p>571 Transcript regarding Hearing Held 03/04/20 RE: Motion hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber J&J Court Transcribers, Inc., Telephone number 609-586-2311. (RE: related document(s) Hearing held on 3/4/2020. (RE: related document(s)474 Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J.</p>

	<p>Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.)). Transcript to be made available to the public on 07/7/2020. (Bowen, James)</p>
04/08/2020	<p><u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)<u>488</u> Order on motion for leave). (Bain, Joseph)</p>
04/09/2020	<p><u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—February 2020 Fee Statement) (Annable, Zachery)</p>
04/09/2020	<p><u>574</u> Certificate No Objection Regarding Fifth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From February 1, 2020 Through February 29, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nat). (Pomerantz, Jeffrey)</p>
04/10/2020	<p><u>575</u> Certificate of service re: 1) <i>Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims</i>; 2) <i>Notice of May 26, 2020 Omnibus Hearing Date; to be Held on May 26, 2020 at 9:30 a.m. (Central Time)</i>; and 3) <i>Notice of June 15, 2020 Omnibus Hearing Date; to be Held on June 15, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.), <u>562</u> Notice of hearing(<i>Notice of May 26, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>563</u> Notice of hearing(<i>Notice of June 15, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>576</u> Certificate of service re: 1) <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>; and 2) <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>566</u> Declaration re: (<i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>567</u> Notice (<i>Notice</i></p>

	<p><i>of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>577</u> Certificate of service re: <i>1) Summary Sheet and First Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020; and 2) Summary Sheet and First Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47.</i> Filed by Objections due by 4/28/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09.</i> Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
04/10/2020	<p><u>578</u> Certificate of service re: <i>Notice of July 8, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>568</u> Notice of hearing(<i>Notice of July 8, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>579</u> Certificate of service re: <i>Joint Stipulation and [Proposed] Order Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)<u>488</u> Order on motion for leave). filed by Creditor Issuer Group). (Kass, Albert)</p>
04/10/2020	<p><u>580</u> Objection to (related document(s): <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)</p>
04/11/2020	<p><u>581</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin</i></p>

	<i>LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: &#0). (Hoffman, Juliana)</i>
04/13/2020	<u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # <u>1</u> Proposed Order) (Skolnekovich, Nicole)
04/14/2020	<u>583</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62.). (Hoffman, Juliana)
04/14/2020	<u>584</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward & Associates PLLC). (Annable, Zachery)
04/14/2020	<u>585</u> Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	<u>587</u> Certificate of service re: <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	<u>588</u> Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>). (Chiarello, Annmarie)
04/15/2020	

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	<p><u>589</u> Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s)<u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>582</u>, (Skolnekovich, Nicole)</p>
04/15/2020	<p><u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>] Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List) (Kane, John)</p>
04/17/2020	<p><u>591</u> Certificate of service re: <i>1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/17/2020	<p><u>592</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for March 2020) (Annable, Zachery)</p>
04/17/2020	<p><u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # <u>1</u> Exhibit 1 (Draft Motion Show Cause Motion) # <u>2</u> Exhibit 2 (DAF Complaint 1st case) # <u>3</u> Exhibit 3 (DAF Dismissal first case) # <u>4</u> Exhibit 4 (DAF Complaint 2nd case) # <u>5</u> Exhibit 5 (DAF Dismissal 2nd Case) # <u>6</u> Proposed Order) (Shaw, Brian)</p>
04/17/2020	<p>Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] (181.00). Receipt number 27675692, amount \$ 181.00 (re: Doc# <u>593</u>). (U.S. Treasury)</p>
04/20/2020	<p><u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)</p>
04/21/2020	<p><u>595</u> Certificate of service re: <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/21/2020	<p><u>596</u> Certificate of service re: <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>

04/21/2020	<u>597</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>592</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	Receipt Number 00338531, Fee Amount \$3,601,018.59 (RE: Related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd,K) (Entered: 08/10/2020)
04/23/2020	Receipt Number 00338532, Fee Amount \$898,075.53 (RE: related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
04/24/2020	<u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) (Annable, Zachery)
04/24/2020	<u>599</u> Notice (<i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) (Annable, Zachery)
04/28/2020	<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
04/28/2020	<u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
04/28/2020	<u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)
04/28/2020	<u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020</i>

	<p><i>through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice (<i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/28/2020	<p><u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Alexander McGeoch # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)</p>
04/28/2020	<p><u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Timothy Silva # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)</p>
04/28/2020	<p><u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
04/28/2020	<p><u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>609</u> Application for compensation (<i>Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Fee Statements) (Annable, Zachery)</p>
04/28/2020	<p><u>610</u> Notice of hearing <i>Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020.,</p>

	<p><u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., <u>609</u> Application for compensation (<i>Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, (Annable, Zachery)</p>
04/28/2020	<p><u>612</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/29/2020	<p><u>613</u> Clerk's correspondence requesting a notice of hearing from attorney for debtor. (RE: related document(s)<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)) Responses due by 5/13/2020. (Ecker, C.)</p>
04/29/2020	<p><u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor</p>

	Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.)
04/29/2020	<u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s) <u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/30/2020	<u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)
05/01/2020	<u>617</u> Response unopposed to (related document(s): <u>593</u> Motion for relief from stay Fee amount \$181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/05/2020	<u>618</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/05/2020	<u>619</u> Certificate of service re: <i>Documents Served on April 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice (<i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's</i>

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

	<p>Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, filed by Debtor Highland Capital Management, L.P., <u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/05/2020	<p><u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit A—Employee Letter) (Annable, Zachery)</p>
05/05/2020	<p><u>621</u> Certificate of No Objection Regarding Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 filed by Other Professional Hayward & Associates PLLC (RE: related document(s)<u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward &). (Annable, Zachery)</p>
05/05/2020	<p><u>622</u> Certificate No Objection Regarding Sixth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Po). (Pomerantz, Jeffrey)</p>
05/06/2020	<p><u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document # <u>582</u>) Entered on 5/6/2020. (Okafor, M.)</p>
05/06/2020	<p><u>624</u> Objection to (related document(s): <u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>] filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
05/06/2020	<p><u>625</u> Certificate of service re: Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>624</u> Objection). (Hoffman, Juliana)</p>
05/06/2020	<p><u>626</u> Certificate of service re: 1) <i>Order Approving Second Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim after the General Bar Date</i>; and 2) <i>Agreed Motion to Extend by Sixty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.), <u>615</u></p>

	Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s) <u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/06/2020	<u>627</u> Certificate of service re: <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Property Lease by Sixty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)). (Kass, Albert)
05/08/2020	<u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	<u>629</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476.). (Hoffman, Juliana)
05/13/2020	<u>630</u> Reply to (related document(s): <u>624</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Service List) (Kane, John)
05/13/2020	<u>631</u> Certificate of service re: <i>1) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020; and 2) Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>618</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Attachments: # 1 Exhibit A—Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	<u>632</u> Certificate of service re: <i>Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retaine</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document <u>582</u>) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	<u>633</u> Certificate of service re: <i>Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)

05/14/2020	<u>634</u> Debtor-in-possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	<u>635</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry[<i>Motion for Remittance of Funds Held in Registry of Court</i>] Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>590</u> , (Attachments: # <u>1</u> Service List) (Kane, John)
05/19/2020	<u>636</u> Notice of Appearance and Request for Notice by Martin A. Sosland filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/19/2020	<u>637</u> Notice of Appearance and Request for Notice by Candice Marie Carson filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Carson, Candice)
05/19/2020	<u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
05/19/2020	<u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>641</u> Objection to (related document(s): <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
05/20/2020	<u>642</u> Trustee's Objection to <i>Foley & Lardner, LLP's First Interim Application for Fees and Expenses</i> (RE: related document(s) <u>602</u> Application for compensation) (Lambert, Lisa)
05/20/2020	<u>643</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i>) for Hayward & Asso). (Annable, Zachery)
05/20/2020	<u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K) (Sosland, Martin)
05/20/2020	<u>645</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief</i>

	<i>From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>644</u> , (Sosland, Martin)
05/20/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] (181.00). Receipt number 27774088, amount \$ 181.00 (re: Doc# <u>644</u>). (U.S. Treasury)
05/20/2020	<u>646</u> Order approving third stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/20/2020 (Okafor, M.)
05/20/2020	<u>647</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25) (Chiarello, Annmarie)
05/21/2020	<u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. (Pomerantz, Jeffrey)
05/22/2020	<u>649</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>). (Annable, Zachery)
05/22/2020	<u>650</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (). (Annable, Zachery)
05/22/2020	<u>651</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,</i>). (Hoffman, Juliana)
05/22/2020	<u>652</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09</i>). (Hoffman, Juliana)
05/22/2020	<u>653</u> Declaration re: (<i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain</i>

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	<i>Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
05/22/2020	<u>654</u> Witness and Exhibit List for May 26, 2020 Hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> , <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20, 608 Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)</i>
05/22/2020	<u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.)
05/22/2020	<u>656</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>609</u> Application for compensation (<i>Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	<u>657</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)). (Annable, Zachery)
05/22/2020	<u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/23/2020	<u>659</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>). (Annable, Zachery)
05/25/2020	<u>660</u> Amended Notice (<i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for</i>

	<i>Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..) (Annable, Zachery)
05/26/2020	<u>661</u> Order granting application for compensation (related document # <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>662</u> Order granting application for compensation (related document # <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>663</u> Order granting application for compensation (related document # <u>607</u>) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>664</u> Order granting application for compensation (related document # <u>608</u>) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>665</u> Amended Order granting application for compensation (related document # <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>666</u> Amended Order granting application for compensation (related document # <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>667</u> Order granting application for compensation (related document # <u>609</u>) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document # <u>605</u>) Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>670</u> Order granting application for compensation (related document # <u>602</u>) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition

	Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	674 Hearing held on 5/26/2020. (RE: related document(s)606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order. (Edmond, Michael) (Entered: 05/27/2020)
05/27/2020	671 Request for transcript (ruling only) regarding a hearing held on 5/26/2020. The requested turn-around time is daily (Jeng, Hawaii)
05/28/2020	675 Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. (Hoffman, Juliana)
05/28/2020	676 Transcript regarding Hearing Held 05/26/2020 (7 pgs.) RE: Fee Applications, Applications to Employ Nunc Pro Tunc, Motion to Extend Exclusivity Period (Excerpt: 10:00–10:06 a.m. Only). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) 672 Hearing held on 5/26/2020. (RE: related document(s)602 First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.), 673 Hearing held on 5/26/2020. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 674 Hearing held on 5/26/2020. (RE: related document(s)606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order.). Transcript to be made available to the public on 08/26/2020. (Rehling, Kathy)

05/28/2020	<u>677</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>663</u> Order granting application for compensation (related document <u>607</u>) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 05/28/2020. (Admin.)
06/01/2020	<u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
06/01/2020	<u>679</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for April 2020) (Annable, Zachery)
06/01/2020	<u>680</u> Certificate of service re: <i>1) Third Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date; 2) Summary Sheet and Sixth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020; and 3) Summary Sheet and Fifth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2020 to and Including March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/01/2020	<u>681</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing [Attached hereto as Exhibit B]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>660</u> Amended Notice (<i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>682</u> Certificate of service re: <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's

	<p>Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/01/2020	<p><u>683</u> Certificate of service re: <i>Documents Served on May 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>653</u> Declaration re: <i>(Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>654</u> Witness and Exhibit List for May 26, 2020 Hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>, <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward & Associates PLLC, Debtor's At). filed by Debtor Highland Capital Management, L.P., <u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.), <u>658</u> Notice (Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/02/2020	<p><u>684</u> Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)) Responses due by 6/9/2020. (Ecker, C.)</p>
06/02/2020	<p><u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)<u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)</p>
06/02/2020	<p><u>686</u> Debtor-in-possession monthly operating report for filing period April 1, 2020 to April 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

06/03/2020	<u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/03/2020	<u>688</u> Support/supplemental document(<i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>687</u> Response). (Attachments: # <u>1</u> Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # <u>2</u> Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # <u>3</u> Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # <u>4</u> Exhibit 4—NY D.I. 411: March 13, 2017 Decision # <u>5</u> Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # <u>6</u> Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # <u>7</u> Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # <u>8</u> Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # <u>9</u> Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # <u>10</u> Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # <u>11</u> Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # <u>12</u> Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only)) (Annable, Zachery)
06/03/2020	<u>689</u> Motion to file document under seal.(<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Protective Order Filed in State Court Litigation) (Annable, Zachery)
06/03/2020	<u>690</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
06/03/2020	<u>691</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
06/03/2020	<u>692</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) <i>Redacted Version (Pending Ruling on Motion to Seal at D.I. 691) of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A (slip sheet, pending ruling on motion to seal) # <u>2</u> Exhibit Exhibit B slip sheet (pending ruling on motion to seal) # <u>3</u> Exhibit Exhibit C slip sheet (pending ruling on motion to seal) # <u>4</u> Exhibit Exhibit D slip sheet (pending ruling on motion to seal) # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet (pending ruling on motion to seal) # <u>9</u> Exhibit Exhibit I slip sheet (pending ruling on motion to seal) # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit L # <u>12</u> Exhibit Exhibit M # <u>13</u> Exhibit Exhibit N) (Platt, Mark)
06/03/2020	<u>693</u> Support/supplemental document <i>Exhibit K</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>692</u> Objection). (Platt, Mark)
06/03/2020	<u>694</u> Joinder by filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>692</u> Objection). (Shaw, Brian)

06/04/2020	<u>695</u> Motion to appear pro hac vice for Robert J. Feinstein. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27814231, amount \$ 100.00 (re: Doc# <u>695</u>). (U.S. Treasury)
06/04/2020	<u>696</u> Amended Motion to file document under seal.AMENDED MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
06/04/2020	<u>697</u> Certificate of service re: <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>660</u> Amended Notice (<i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2020	<u>698</u> Certificate of service re: <i>Documents Served on May 26, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>661</u> Order granting application for compensation (related document <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>662</u> Order granting application for compensation (related document <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>663</u> Order granting application for compensation (related document <u>607</u>) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.), <u>664</u> Order granting application for compensation (related document <u>608</u>) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.), <u>665</u> Amended Order granting application for compensation (related document <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>666</u> Amended Order granting application for compensation (related document <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>667</u> Order granting application for compensation (related document <u>609</u>) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.), <u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.), <u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document <u>605</u>) Entered on 5/26/2020. (Ecker, C.), <u>670</u> Order granting application for compensation (related document <u>602</u>) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)). (Kass, Albert)
06/04/2020	<u>699</u> Certificate of service re: <i>Summary Sheet and Sixth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. filed by Financial Advisor FTI Consulting, Inc.</i>). (Kass, Albert)

06/04/2020	<u>700</u> Motion to redact/restrict Restrict From Public View (related document(s): <u>692</u>) (Fee Amount \$25) Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark)
06/04/2020	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] (25.00). Receipt number 27815698, amount \$ 25.00 (re: Doc# <u>700</u>). (U.S. Treasury)
06/04/2020	<u>701</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) <i>Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Exhibit Exhibit D # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet # <u>9</u> Exhibit Exhibit I slip sheet # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit K # <u>12</u> Exhibit Exhibit L # <u>13</u> Exhibit Exhibit M # <u>14</u> Exhibit Exhibit N) (Platt, Mark)
06/04/2020	<u>702</u> Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	<u>703</u> Motion to appear pro hac vice for David Neier. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27816362, amount \$ 100.00 (re: Doc# <u>703</u>). (U.S. Treasury)
06/05/2020	<u>704</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	<u>705</u> Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>703</u>) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # <u>695</u>) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>707</u> Certificate of service re: 1) <i>Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>679</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ

	Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.). (Attachments: # 1 Exhibit A—DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	<u>708</u> Certificate of service re: <i>Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.). (Kass, Albert)
06/05/2020	<u>709</u> Certificate of service re: 1) <i>Debtor's Objection to UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> ; 2) <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ; and 3) <i>Debtor's Motion for Entry of an Order Authorizing Filing Under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>688</u> Support/supplemental document(<i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>687</u> Response). (Attachments: # 1 Exhibit 1— <i>UBS v. Highland Capital Mgmt., L.P.</i> , 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2— <i>UBS v. Highland Capital Mgmt., L.P.</i> , 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3— <i>UBS v. Highland Capital Mgmt., L.P.</i> , 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4—NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # 7 Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), <i>Why Not Arbitrate? Breaking the Backlog in State and Federal Courts</i> , 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # 9 Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only)) filed by Debtor Highland Capital Management, L.P., <u>689</u> Motion to file document under seal.(<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Protective Order Filed in State Court Litigation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2020	<u>710</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document <u>695</u>) Entered on 6/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/07/2020. (Admin.)
06/08/2020	<u>711</u> Order granting motion to seal documents (related document # <u>696</u>) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<u>712</u> Certificate of No Objection filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>593</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
06/08/2020	<u>713</u> Order granting Motion to Redact (Related Doc # <u>700</u>) Entered on 6/8/2020. (Okafor, M.)

06/08/2020	714 SEALED document regarding: Redeemer Committee's Objection to UBS's Motion for Relief From The Automatic Stay (unredacted version) per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	715 SEALED document regarding: Exhibit A, Original Synthetic Warehouse Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	716 SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	717 SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	718 SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	719 SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	720 SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	721 SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<u>722</u> Order granting motion to seal documents (related document # <u>689</u>) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	723 SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>722</u> Order on motion to seal). (Annable, Zachery)
06/08/2020	<u>724</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>704</u> <i>Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	

	<u>725</u> Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27830926, amount \$ 100.00 (re: Doc# <u>725</u>). (U.S. Treasury)
06/10/2020	<u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
06/10/2020	<u>727</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.). (Hoffman, Juliana)
06/10/2020	<u>728</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66.). (Hoffman, Juliana)
06/10/2020	<u>729</u> Notice of Subpoena of Highland Capital Management, L.P. filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/11/2020	<u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27834758, amount \$ 100.00 (re: Doc# <u>730</u>). (U.S. Treasury)
06/11/2020	<u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document # <u>725</u>) Entered on 6/11/2020. (Okafor, M.)
06/11/2020	<u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).
06/11/2020	<u>733</u> Motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Reply # <u>3</u> Exhibit 1 # <u>4</u> Exhibit 2 # <u>5</u> Exhibit 3 # <u>6</u> Exhibit 4 # <u>7</u> Exhibit 5 # <u>8</u> Exhibit 6 # <u>9</u> Exhibit 7 # <u>10</u> Exhibit 8 # <u>11</u> Exhibit 9 # <u>12</u> Exhibit 10 # <u>13</u> Exhibit 11 # <u>14</u> Exhibit 12 # <u>15</u> Exhibit 13 # <u>16</u> Exhibit 14) (Sosland, Martin)
06/11/2020	<u>734</u> INCORRECT EVENT USED: See # <u>746</u> for correction. Motion for leave to File Documents Under Seal with UBS's Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document(s) <u>733</u> Motion for leave) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – State Court Protective Stipulation) (Sosland, Martin) Modified on 6/15/2020 (Ecker, C.).

06/11/2020	<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.) (Entered: 06/15/2020)
06/12/2020	<u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)
06/12/2020	<u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document # <u>730</u>) Entered on 6/12/2020. (Okafor, M.)
06/12/2020	<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/12/2020	<u>738</u> Certificate of No Objection Regarding Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan). (Annable, Zachery)
06/12/2020	<u>739</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>740</u> Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , (Annable, Zachery)
06/12/2020	<u>742</u> Witness and Exhibit List <i>for June 15, 2020 Hearing</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181,). (Sosland, Martin)
06/12/2020	<u>743</u> Amended Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND FIRST AMENDED WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>740</u> List (witness/exhibit/generic)). (Platt, Mark)
06/13/2020	

	<p><u>744</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document <u>725</u>) Entered on 6/11/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/13/2020. (Admin.)</p>
06/14/2020	<p><u>745</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u>) Entered on 6/12/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/14/2020. (Admin.)</p>
06/15/2020	<p><u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
06/15/2020	<p><u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u>, (Annable, Zachery)</p>
06/15/2020	<p><u>754</u> Hearing held on 6/15/2020. (RE: related document(s)<u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 06/17/2020)</p>
06/15/2020	<p><u>770</u> Court admitted exhibits date of hearing June 15, 2020 (RE: related document(s)<u>644</u> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC., (COURT ADMITTED ALL EXHIBIT'S TO ALL THE ATTACHED OBJECTOR'S OBJECTION ALL EXCEPT FOR EXHIBIT #D (EXPERT REPORT OF LOUIS G. DUDLEY; THAT IS FILED UNDER SEAL); ON THE REDEEMER COMMITTEE OBJECTION; THE FOLLOWING EXHIBIT'S ATTACHED TO THE MOTION OF UBS'S MOTION TO LIFT STAY ALL ADMITTED; # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K; ALSO PLEASE SEE WITNESS AND EXHIBIT LIST OF DEBTOR; CREDITOR UBS AND REDEEMER COMMITTEE) (Edmond, Michael) (Entered: 06/23/2020)</p>
06/16/2020	<p><u>749</u> ENTER AN ERROR; NO PDF ATTACHED: Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily (Edmond, Michael) Modified on 6/16/2020 (Edmond, Michael).</p>
06/16/2020	<p><u>750</u> Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily. (Edmond, Michael)</p>
06/16/2020	<p><u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020.</p>

	(Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
06/16/2020	<u>752</u> Notice of hearing(<i>Notice of August 6, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/16/2020	<u>753</u> Notice of hearing (<i>Notice of July 14, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/17/2020	<u>755</u> Transcript regarding Hearing Held 06/15/2020 (127 pages) RE: Motion for Relief from the Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>754</u> Hearing held on 6/15/2020. (RE: related document(s) <u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.)). Transcript to be made available to the public on 09/15/2020. (Rehling, Kathy)
06/17/2020	<u>756</u> Certificate of service re: <i>1) WebEx Meeting Invitation to participate electronically in the hearing on Monday, June 15, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)). (Kass, Albert)
06/17/2020	<u>757</u> Certificate of service re: <i>Fifth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>758</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of Alan J. Kornfeld to Represent Highland Capital Management, L.P.; and 2) Order Approving Fifth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.)). (Kass, Albert)
06/17/2020	<u>759</u> Certificate of service re: <i>Documents Served on June 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u>) Entered on 6/12/2020. (Okafor, M.), <u>737</u> Motion to extend or limit

	<p>the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>739</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>760</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i>; and 2) <i>Notice of Hearing Regarding Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; to be Held on July 8, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>761</u> Certificate of service re: 1) <i>Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i>; 2) <i>Notice of August 6, 2020 Omnibus Hearing Date</i>; and 3) <i>Notice of July 14, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>752</u> Notice of hearing(<i>Notice of August 6, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>753</u> Notice of hearing (<i>Notice of July 14, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/18/2020	<p><u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>

06/18/2020	<u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document # <u>604</u>) Entered on 6/18/2020. (Bradden, T.)
06/18/2020	<u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document # <u>593</u>) Entered on 6/18/2020. (Bradden, T.)
06/19/2020	<u>765</u> Order denying motion for relief from stay by Interested Parties UBS AG London Branch , UBS Securities LLC (related document # <u>644</u>) Entered on 6/19/2020. (Okafor, M.)
06/20/2020	<u>766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document <u>593</u>) Entered on 6/18/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 06/20/2020. (Admin.) (Entered: 06/21/2020)
06/22/2020	<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. (Hoffman, Juliana)
06/22/2020	<u>768</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.). (Hoffman, Juliana)
06/22/2020	<u>769</u> Certificate of service re: 1) <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Foley Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020</i> ; and 2) <i>Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document <u>604</u>) Entered on 6/18/2020. (Bradden, T.)). (Kass, Albert)
06/23/2020	<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. (Annable, Zachery)
06/23/2020	<u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
06/23/2020	<u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. (Pomerantz, Jeffrey)

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

	<p><i>Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, filed by Debtor Highland Capital Management, L.P., <u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2020	<u>780</u> Notice of Subpoena of David Klos filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/26/2020	<u>781</u> Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
06/26/2020	<u>782</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court]). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 1–A # <u>3</u> Exhibit 1–B # <u>4</u> Exhibit 1–C # <u>5</u> Exhibit 1–D # <u>6</u> Exhibit 1–E # <u>7</u> Exhibit 1–F # <u>8</u> Exhibit 1–G # <u>9</u> Exhibit 1–H # <u>10</u> Exhibit 1–I # <u>11</u> Exhibit 2 # <u>12</u> Exhibit 3 # <u>13</u> Exhibit 4 # <u>14</u> Exhibit 5 # <u>15</u> Exhibit 6 # <u>16</u> Exhibit 7 # <u>17</u> Exhibit 8 # <u>18</u> Exhibit 9 # <u>19</u> Exhibit 10 # <u>20</u> Exhibit 11 # <u>21</u> Exhibit 12 # <u>22</u> Exhibit 13 # <u>23</u> Exhibit 14 # <u>24</u> Exhibit 15 # <u>25</u> Exhibit 16) (Kane, John)
06/26/2020	<u>783</u> SEALED document regarding: Exhibit 11 – AROF MUFG Bank Statement June 2018. Highland_PEO–032620 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>784</u> SEALED document regarding: Exhibit 12 – GG and HCM Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>785</u> SEALED document regarding: Exhibit 13 – GG and HCM Amendment to Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>786</u> SEALED document regarding: Exhibit 14 – Exercise of Discretion by Trustee The Get Good Nonexempt Trust (Fully Executed) dated December 28, 2016 Highly Confidential per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>787</u> SEALED document regarding: Exhibit 15 – Dynamic Income CLO Holdco Side Letter (\$2M Subscription) dated January 10, 2017 Highly Confidential per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)

06/26/2020	<u>788</u> SEALED document regarding: Exhibit 16 – Highland Capital Management, L.P. December 31, 2016 Final Opinion per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/27/2020	<u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court]). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
06/29/2020	<u>790</u> COURTS NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON June 30, 2020 at 09:30 AM; (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). (Edmond, Michael)
06/30/2020	<u>791</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). (Edmond, Michael)
06/30/2020	<u>794</u> Court admitted exhibits date of hearing June 30, 2020 (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (COURT ADMITTED MOVANT'S CLO HOLDCO, LTD., EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16; ALSO ADMITTED DEFENDANT'S UNSECURED CREDITOR'S COMMITTEE EXHIBIT'S #1, #2 & #3) (Edmond, Michael)
06/30/2020	<u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the</i>

	<i>Debtor for the Period from April 1, 2020 through April 30, 2020) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A April 2020 Invoice) (Annable, Zachery)</i>
07/01/2020	<u>796</u> Request for transcript regarding a hearing held on 6/30/2020. The requested turn-around time is daily. (Edmond, Michael)
07/01/2020	<u>797</u> Certificate of service re: <i>re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 Through May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>781</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2020	<u>798</u> Certificate of service re: <i>re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>]). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/01/2020	<u>799</u> Certificate of service re: <i>Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A April 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
07/02/2020	<u>800</u> Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/02/2020	<u>801</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2020	<u>802</u> Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance

	<p>of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion).). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)</p>
07/02/2020	<p><u>803</u> BNC certificate of mailing. (RE: related document(s)<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)</p>
07/03/2020	<p><u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
07/06/2020	<p><u>805</u> Notice of hearing (<i>Notice of September 10, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)</p>
07/07/2020	<p><u>806</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i>; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i>; and 3) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>801</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/07/2020	<p><u>807</u> Certificate of service re: <i>Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital</p>

	Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	<u>809</u> Certificate of service re: <i>Notice of September 10, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>805</u> Notice of hearing (<i>Notice of September 10, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2020	<u>812</u> Hearing held on 7/8/2020. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/08/2020	<u>813</u> Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/09/2020	<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
07/09/2020	<u>811</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i>). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
07/09/2020	<u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
07/09/2020	<u>815</u> Request for transcript regarding a hearing held on 7/8/2020. The requested turn-around time is hourly. (Edmond, Michael)
07/09/2020	<u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>459</u> O) Entered on 7/9/2020. (Okafor, M.)

07/10/2020	<p><u>817</u> Transcript regarding Hearing Held 07/08/2020 (58 pages) RE: Motions to Extend Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/8/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 812 Hearing held on 7/8/2020. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.), 813 Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.)). Transcript to be made available to the public on 10/8/2020. (Rehling, Kathy)</p>
07/10/2020	<p><u>818</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere,). (O'Neil, Holland)</p>
07/10/2020	<p><u>819</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere). (O'Neil, Holland)</p>
07/10/2020	<p><u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.)</p>
07/10/2020	<p><u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc # <u>474</u>) Entered on 7/10/2020. (Okafor, M.)</p>
07/10/2020	<p><u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). (Annable, Zachery)</p>
07/13/2020	<p><u>823</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/13/2020	

	<p><u>824</u> Certificate of service re: <i>Documents Served on July 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>811</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>) (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.). (Kass, Albert)</p>
07/13/2020	<p><u>825</u> Order denying motion to reclaim funds from the registry (Related Doc # <u>590</u>) Entered on 7/13/2020. (Okafor, M.)</p>
07/13/2020	<p><u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel)). (Annable, Zachery)</i></p>
07/13/2020	<p><u>827</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management, L.P. and Acis Capital Management GP, LLC.. Filed by Interested Party James Dondero. (Assink, Bryan)</p>
07/13/2020	<p><u>828</u> Certificate of service re: 1) <i>Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016–1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan;</i> 2) <i>Agreed Order Regarding Deposit of Funds into the Registry of the Court;</i> and 3) <i>Debtors Witness and Exhibit List with Respect to (A) the Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services Nunc Pro Tunc to March 15</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.), <u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc <u>474</u>) Entered on 7/10/2020. (Okafor, M.), <u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct.</i> filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

07/14/2020	<u>829</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$34). (Hoffman, Juliana)
07/14/2020	<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. (Hoffman, Juliana)
07/14/2020	<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F) (Hoffman, Juliana)
07/14/2020	<u>832</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
07/14/2020	<u>833</u> Request for transcript regarding a hearing held on 7/14/2020. The requested turn-around time is daily. (Edmond, Michael)
07/14/2020	<u>836</u> Court admitted exhibits date of hearing July 14, 2020 (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P., And <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020 filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6 & #7) (Edmond, Michael) (Entered: 07/15/2020)
07/14/2020	<u>862</u> Hearing held on 7/14/2020. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/14/2020	<u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)

07/15/2020	<u>834</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan P). (Annable, Zachery)
07/15/2020	<u>835</u> Motion to appear pro hac vice for James A. Wright III. Fee Amount \$100 Filed by Interested Parties NexPoint Real Estate Strategies Fund, Highland Global Allocation Fund, Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., Highland Total Return Fund, Highland Fixed Income Fund, Highland Socially Responsible Equity Fund, Highland Small-Cap Equity Fund, Highland Funds II and its series, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland/iBoxx Senior Loan ETF, Highland Healthcare Opportunities Fund, Highland Funds I and its series, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P. (Varshosaz, Artoush)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27927823, amount \$ 100.00 (re: Doc# <u>835</u>). (U.S. Treasury)
07/15/2020	<u>837</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i>) filed by John Honis, Rand PE Fund Management, LLC, Rand PE Fund I, LP, Rand Advisors, LLC, Hunter Mountain Investment Trust, Beacon Mountain, LLC, Atlas IDF, LP, Atlas IDF, GP, LLC. (Keiffer, Edwin)
07/15/2020	<u>838</u> INCORRECT ENTRY: Attorney to amend and refile. Motion to appear pro hac vice for Stephen G. Topetzes. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush) MODIFIED on 7/16/2020 (Ecker, C.).
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27928069, amount \$ 100.00 (re: Doc# <u>838</u>). (U.S. Treasury)
07/15/2020	<u>839</u> Response opposed to (related document(s): <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i>) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/15/2020	<u>840</u> INCORRECT ENTRY: FILED WITHOUT EXHIBITS. Notice of Appearance and Request for Notice by Paul Richard Bessette filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul) Modified on 7/15/2020 (Rielly, Bill).
07/15/2020	<u>841</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i>) filed by Interested Parties Highland Capital Management Fund

	<i>Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)</i>
07/15/2020	<u>842</u> Notice of Appearance and Request for Notice by Amanda Melanie Rush filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>843</u> Motion to appear pro hac vice for Tracy K. Stratford. Fee Amount \$100 Filed by Interested Party CCS Medical, Inc. (Rush, Amanda)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27928305, amount \$ 100.00 (re: Doc# <u>843</u>). (U.S. Treasury)
07/15/2020	<u>844</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2020	<u>846</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Exhibit A) (Kane, John)
07/15/2020	<u>847</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors, L.P., VineBrook Homes, Trust, Inc., NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Partners, LLC, NexPoint Hospitality Trust, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, NexPoint Real Estate Finance Inc.. (Drawhorn, Lauren)
07/15/2020	<u>848</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2020	<u>849</u> Amended Motion to appear pro hac vice for Stephen G. Topetzes. (related document: <u>838</u>) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
07/16/2020	

	<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , (Annable, Zachery)
07/16/2020	<u>851</u> Notice of hearing (<i>Notice of September 17, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/16/2020	<u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.)
07/16/2020	<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document # <u>775</u>) Entered on 7/16/2020. (Ecker, C.)
07/16/2020	<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
07/16/2020	<u>855</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party MGM Holdings, Inc.. (Drawhorn, Lauren)
07/16/2020	<u>856</u> Notice of Appearance and Request for Notice by Artoush Varshosaz filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/16/2020	<u>857</u> Motion to appear pro hac vice for Mark M. Maloney. Fee Amount \$100 Filed by Interested Party Highland CLO Funding, Ltd. (Bessette, Paul)
07/16/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27932614, amount \$ 100.00 (re: Doc# <u>857</u>). (U.S. Treasury)
07/16/2020	<u>858</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul)
07/16/2020	<u>859</u> Declaration re: <u>858</u> <i>Objection</i> filed by Interested Party Highland CLO Funding, Ltd. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor.). (Attachments: # <u>1</u> Exhibit A) (Bessette, Paul)
07/16/2020	<u>860</u> Certificate of service re: 1) <i>Order Denying Motion for Remittance of Funds Held in Registry of Court</i> ; and 2) <i>Stipulation by and Between the Debtor and the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>825</u> Order denying motion to reclaim funds from the registry (Related Doc <u>590</u>) Entered on 7/13/2020. (Okafor, M.), <u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/16/2020	<p><u>861</u> Certificate of service re: 1) Summary Sheet and Seventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020; and 2) Summary Sheet and Second Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>830</u> Application for compensation Seventh Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. filed by Financial Advisor FTI Consulting, Inc., <u>831</u> Application for compensation Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/17/2020	<p><u>864</u> Transcript regarding Hearing Held 07/14/2020 (134 pages) RE: Applications to Employ. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>863</u> Hearing held on 7/14/2020. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.)). Transcript to be made available to the public on 10/15/2020. (Rehling, Kathy)</p>
07/17/2020	<p><u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document # <u>843</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>835</u>) Entered on 7/17/2020. (Ecker, C.)</p>

07/17/2020	<u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>849</u>) Entered on 7/17/2020. (Ecker, C.)
07/17/2020	<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. (Annable, Zachery)
07/17/2020	<u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) (<i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/17/2020	<u>870</u> Declaration re: (<i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i>)). (Annable, Zachery)
07/17/2020	<u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). (Hesse, Gregory)
07/17/2020	<u>872</u> Response opposed to (related document(s): <u>841</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>844</u> Objection filed by Interested Party CCS Medical, Inc., <u>845</u> Objection filed by Debtor Highland Capital Management, L.P., <u>846</u> Objection filed by Creditor CLO Holdco, Ltd., <u>847</u> Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>855</u> Objection filed by Interested Party MGM Holdings, Inc., <u>858</u> Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official

	Committee of Unsecured Creditors. (Montgomery, Paige)
07/17/2020	<u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
07/19/2020	<u>874</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document <u>843</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	<u>875</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>835</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	<u>876</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>849</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/20/2020	<u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)
07/20/2020	<u>878</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	<u>880</u> Certificate of service re: 1) <i>Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>845</u> Objection to (related

	document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>848</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/20/2020	<u>881</u> Certificate of service re: <i>Documents Served on July 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , filed by Debtor Highland Capital Management, L.P., <u>851</u> Notice of hearing (<i>Notice of September 17, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.), <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Kass, Albert)
07/21/2020	<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document # <u>857</u>) Entered on 7/21/2020. (Okafor, M.)
07/21/2020	<u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. (Hoffman, Juliana)
07/21/2020	<u>894</u> Hearing held on 7/21/2020. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion granted in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM communications, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	<u>895</u> Hearing held on 7/21/2020. (RE: related document(s) <u>810</u> Motion for protective order (Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P.

	Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion denied in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	<u>896</u> Hearing held on 7/21/2020. (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.) (Edmond, Michael) (Entered: 07/24/2020)
07/22/2020	<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
07/22/2020	<u>885</u> INCORRECT ENTRY: EVENT CODE. Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) Modified on 7/22/2020 (Rielly, Bill).
07/22/2020	<u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
07/22/2020	<u>887</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
07/22/2020	<u>888</u> Request for transcript regarding a hearing held on 7/21/2020. The requested turn-around time is daily. (Edmond, Michael)
07/22/2020	<u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
07/22/2020	<u>890</u> Certificate of service re: <i>Documents Served on July 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. filed by Debtor Highland Capital Management, L.P., <u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor

	<p>Committee Official Committee of Unsecured Creditors) (<i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i>) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., <u>870</u> Declaration re: (<i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>), filed by Debtor Highland Capital Management, L.P., <u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>891</u> Objection to claim(s) 3 of Creditor(s) ACIS Capital Management L.P. and ACIS Capital Management GP, LLC.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
07/23/2020	<p><u>892</u> Certificate of service re: <i>Amended Ninth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>893</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document <u>857</u>) Entered on 7/21/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 07/23/2020. (Admin.)</p>
07/24/2020	<p><u>897</u> Transcript regarding Hearing Held 07/21/20 RE: DOCS 808 and 810. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/22/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Transcripts Plus, Inc., Telephone number 215-862-1115 CourtTranscripts@aol.com. (RE: related document(s) 896 Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R.</p>

	<p>Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes discussions.)). Transcript to be made available to the public on 10/22/2020. (Hartmann, Karen)</p>
07/24/2020	<p><u>898</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eighth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2020 to and Including June 30, 2020</i>; and 2) <i>Summary Cover Sheet and Second Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</i></p>
07/27/2020	<p><u>899</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)<u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i>) for Hayward & Assoc). (Annable, Zachery)</p>
07/27/2020	<p><u>900</u> Certificate of service re: <i>Documents Served on July 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>887</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/28/2020	<p>901 INCORRECT ENTRY: See # <u>902</u> for correction. Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13</p>

	Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.) Modified on 7/28/2020 (Ecker, C.).
07/28/2020	<u>902</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	<u>903</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	Receipt Number 00338615, Fee Amount \$30,715.92 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338617, Fee Amount \$20,830.29 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338616, Fee Amount \$84,062.32 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/30/2020	<u>904</u> Notice of Appearance and Request for Notice <i>Chad Timmons, Emily M. Hahn, Larry R. Boyd</i> by Chad D. Timmons filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Timmons, Chad)
07/30/2020	<u>905</u> Amended Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>800</u> Operating report). (Annable, Zachery)
07/30/2020	<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland

	<p>Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1–7) (Annable, Zachery)</p>
07/30/2020	<p><u>907</u> Notice of hearing (<i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>. (Annable, Zachery)</p>
07/31/2020	<p><u>908</u> Response opposed to (related document(s): <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Patel, Rakhee)</p>
08/03/2020	<p><u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>910</u> Order granting motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related</p>

	document # <u>733</u>) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	<u>911</u> Order granting motion to seal documents (related document # <u>746</u>) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	<u>912</u> Order directing mediation (RE: related document(s) <u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)
08/03/2020	<u>913</u> Debtor-in-possession monthly operating report for filing period June 1, 2020 to June 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/03/2020	<u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Kane, John)
08/04/2020	<u>915</u> Joinder by <i>NexPoint RE Entities' Joinder to CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s) <u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Drawhorn, Lauren)
08/04/2020	<u>916</u> Certificate of service re: 1) <i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims; and 2) Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant

	<p>Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P., <u>907</u> Notice of hearing (<i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/05/2020	<p><u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A May 2020 Invoice) (Annable, Zachery)</p>
08/05/2020	<p><u>918</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5). (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)</p>
08/05/2020	<p><u>919</u> Certificate of service re: 1) <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days</i>; and 2) <i>Order Directing</i></p>

	<p><i>Mediation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), <u>912</u> Order directing mediation (RE: related document(s)<u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)</p>
08/05/2020	<p><u>920</u> Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>918</u> Certificate (generic)). (Hoffman, Juliana)</p>
08/05/2020	<p><u>921</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
08/06/2020	<p><u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>
08/06/2020	<p><u>923</u> Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)</p>
08/06/2020	<p><u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A – Invoices # <u>2</u> Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland)</p>
08/06/2020	<p><u>925</u> Certificate of service re: <i>re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>921</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

08/06/2020	<u>926</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	<u>927</u> Joinder by filed by Interested Party NexBank (RE: related document(s) <u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19) (Annable, Zachery)
08/07/2020	<u>929</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/07/2020	<u>930</u> Response opposed to (related document(s): <u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A) (Montgomery, Paige)
08/07/2020	<u>931</u> Application for compensation (<i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A June 2020 Invoice) (Annable, Zachery)
08/07/2020	<u>932</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order Proposed Order Granting Motion to Seal) (Platt, Mark)
08/07/2020	<u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # <u>2</u> Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # <u>3</u> Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Exhibit Exhibit 5 # <u>6</u> Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # <u>7</u> Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # <u>8</u> Exhibit Exhibit 8 # <u>9</u> Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # <u>10</u> Exhibit Exhibit 10 # <u>11</u> Exhibit Exhibit 11 # <u>12</u> Exhibit Exhibit 12 # <u>13</u> Exhibit Exhibit 13 # <u>14</u> Exhibit Exhibit 14 # <u>15</u> Exhibit Exhibit 15 # <u>16</u> Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit Exhibit 17 # <u>18</u> Exhibit Exhibit 18 # <u>19</u> Exhibit Exhibit 19 # <u>20</u> Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # <u>21</u> Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # <u>22</u> Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) (Platt, Mark)
08/10/2020	<u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. (Hoffman, Juliana)

08/11/2020	<p><u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s)<u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020 (Rielly, Bill)</p>
08/11/2020	<p><u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. (Pomerantz, Jeffrey)</p>
08/11/2020	<p><u>937</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended t)</i>. (Pomerantz, Jeffrey)</p>
08/11/2020	<p><u>938</u> Certificate of service re: 1) <i>Cover Sheet and Ninth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 Through July 31, 2020</i>; and 2) <i>Cover Sheet and Second Interim Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)</p>
08/11/2020	<p><u>939</u> Certificate of service re: 1) <i>Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>; and 2) <i>Notice of Status Conference; to be Held on September 29, 2020 at 1:30 p.m. (Central Time)</i>; and 3) <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>929</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge</p>

	Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>931</u> Application for compensation (<i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A June 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/11/2020	<u>940</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Friday, August 14, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Summary Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period From June 1, 2020 to and Including June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/12/2020	<u>941</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,78). (Hoffman, Juliana)
08/12/2020	<u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> and <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management,) Entered on 8/12/2020. (Okafor, M.). Modified linkage on 10/1/2020 (Okafor, M.).</i>
08/12/2020	<u>943</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
08/12/2020	<u>944</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/12/2020	<u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Plan)(Annable, Zachery)
08/13/2020	<u>946</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Garder). (O'Neil, Holland)
08/13/2020	<u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) (<i>Joint Motion to Continue Status Conference</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/13/2020	

	<u>948</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>950</u> Order granting motion to seal documents (related document # <u>932</u>) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>951</u> Order granting joint motion to continue hearing on (related document # <u>947</u>) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u> , (Annable, Zachery)
08/13/2020	<u>953</u> SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S OBJECTION per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>950</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit Exhibit 1 – Original Synthetic Warehouse Agreement # <u>2</u> Exhibit Exhibit 2 Original Engagement Ltr. # <u>3</u> Exhibit Exhibit 3 Original Cash Warehouse Agreement # <u>4</u> Exhibit Exhibit 6 Expert Report of Louis G. Dudney # <u>5</u> Exhibit Exhibit 7 March 20, 2009 Termination Settlement and Release Agreement # <u>6</u> Exhibit Exhibit 9 UBS and Crusader Fund Settlement Agreement # <u>7</u> Exhibit Exhibit 16 Unredacted version of UBS's Second Amended Complaint # <u>8</u> Exhibit Exhibit 20 UBS's Pre-Trial Brief ISO Bifurcation # <u>9</u> Exhibit Exhibit 21 UBS and Credit Strategies Settlement Agreement # <u>10</u> Exhibit Exhibit 22 Crusader Fund scheme of Arrangement and Joint Plan of Distribution) (Platt, Mark)
08/13/2020	<u>954</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/13/2020	<u>955</u> Order granting motion to seal documents (related document # <u>948</u>) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>956</u> SEALED document regarding: Plan of Reorganization of Highland Capital Management, L.P. per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Annable, Zachery)
08/13/2020	<u>957</u> SEALED document regarding: Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P. per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A—Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
08/13/2020	<u>958</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u>

	<p>Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020) No. of Notices: 2. Notice Date 08/13/2020. (Admin.)</p>
08/14/2020	<p><u>959</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65.). (Hoffman, Juliana)</p>
08/14/2020	<p><u>960</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26.). (Hoffman, Juliana)</p>
08/14/2020	<p><u>961</u> Certificate of service re: <i>Cover Sheet and Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/14/2020	<p><u>962</u> Certificate of service re: 1) <i>Order Resolving Discovery Motions and Objections Thereto</i>; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u>) Entered on 8/12/2020. (Okafor, M.), <u>943</u> <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/17/2020	<p><u>963</u> Motion to file document under seal. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Chiarello, Annmarie)</p>
08/18/2020	<p><u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—Invoices) (Annable, Zachery)</p>
08/18/2020	<p><u>965</u> Order granting motion to seal documents (related document # <u>963</u>) Entered on 8/18/2020. (Okafor, M.)</p>

08/18/2020	<p>966 SEALED document regarding: email correspondence produced by Highland Capital Management, L.P. in connection with Acis's bankruptcy cases and bates labeled CONFIDENTIAL Highland0035395– Highland0035405 per court order filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>965</u> Order on motion to seal). (Chiarello, Annmarie)</p>
08/18/2020	<p><u>967</u> Certificate of service re: <i>Documents Served on August 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) (<i>Joint Motion to Continue Status Conference</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>948</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>951</u> Order granting joint motion to continue hearing on (related document <u>947</u>) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.), <u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u>, filed by Debtor Highland Capital Management, L.P., <u>954</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>955</u> Order granting motion to seal documents (related document <u>948</u>) Entered on 8/13/2020. (Okafor, M.)). (Kass, Albert)</p>
08/19/2020	<p><u>968</u> Hearing held on 8/19/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.) (Edmond, Michael)</p>
08/19/2020	<p><u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. (Hoffman, Juliana)</p>
08/19/2020	<p><u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). (Annable, Zachery)</p>
08/19/2020	<p><u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz</p>

	Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	<u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	<u>973</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/19/2020	<u>974</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/19/2020	<u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit B) (Annable, Zachery)
08/19/2020	<u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by</i> Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation <i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and</i>

	<p><i>Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, (Annable, Zachery)</p>
08/20/2020	<p><u>977</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)</p>
08/20/2020	<p><u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)</p>
08/20/2020	<p><u>979</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on Wednesday, August 19, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Notice of and Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)</p>
08/20/2020	<p><u>980</u> Certificate of service re: <i>Documents Served on August 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. filed by Debtor Highland Capital Management, L.P., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. filed by Consultant Mercer (US) Inc., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B), <u>976</u> Notice of hearing</p>

	<p>(<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/21/2020	<u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/21/2020	<u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
08/21/2020	<u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).
08/21/2020	<u>984</u> Motion to appear pro hac vice for Tracy M. O'Steen. Fee Amount \$100 Filed by Interested Party Integrated Financial Associates, Inc. (Bryant, M.)
08/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28037405, amount \$ 100.00 (re: Doc# <u>984</u>).

	(U.S. Treasury)
08/23/2020	<u>985</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/23/2020. (Admin.)
08/24/2020	<u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.)
08/24/2020	<u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
08/24/2020	<u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
08/25/2020	<u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document # <u>984</u>) Entered on 8/25/2020. (Okafor, M.)
08/25/2020	<u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)
08/25/2020	<u>991</u> Certificate of service re: <i>1) Amended Notice of Status Conference; to be Held on October 6, 2020 at 1:30 p.m. (Central Time); and 2) Order Approving Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>977</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)). (Kass, Albert)
08/25/2020	<u>992</u> Certificate of service re: <i>1) Affidavit of Service of Karina Yee re: Action by Written Consent of Stockholders in Lieu of Special Meeting (Cornerstone Healthcare Group Holding, Inc.); 2) Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; and 3) Agreed Scheduling Order Regarding Objections to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>983</u> Agreed Scheduling Order and

	Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.). (Kass, Albert)
08/26/2020	<u>993</u> Request for transcript regarding a hearing held on 8/19/2020. The requested turn-around time is daily. (Edmond, Michael)
08/26/2020	<u>994</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Dugan, S.) Filed by Creditor Paul N. Adkins (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P.). (COURT NOTE: Signature of filer not included. Amended response with signature requested) (Dugan, S.)
08/26/2020	<u>995</u> Adversary case 20–03105. Complaint by Highland Capital Management, L.P. against Hunter Mountain Investment Trust. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). 91 (Declaratory judgment). (Annable, Zachery)
08/26/2020	<u>996</u> Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund – Proof of Claim No. 72.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
08/26/2020	<u>997</u> Motion to file document under seal.(With the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order Ex A) (Sosland, Martin)

08/26/2020	<p><u>998</u> Transcript regarding Hearing Held 08/19/2020 (20 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 968 Hearing held on 8/19/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.)). Transcript to be made available to the public on 11/24/2020. (Rehling, Kathy)</p>
08/27/2020	<p><u>999</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
08/27/2020	<p><u>1000</u> Certificate of service re: <i>1) Order Approving Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; 2) Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; and 3) Supplement to the Second Interim Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.), <u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)</p>
08/27/2020	<p><u>1001</u> Certificate of service re: <i>Order Approving Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)). (Kass, Albert)</p>
08/27/2020	<p><u>1002</u> Response unopposed to (related document(s): <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)</p>

08/27/2020	<u>1003</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document <u>984</u>) Entered on 8/25/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/27/2020	<u>1004</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/28/2020	<u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document # <u>999</u>) Entered on 8/28/2020. (Okafor, M.)
08/31/2020	<u>1006</u> Amended Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Rielly, Bill)
08/31/2020	<u>1007</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> . (Annable, Zachery)
08/31/2020	<u>1008</u> Adversary case 20–03107. Complaint by Highland Capital Management, L.P. against Patrick Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). (Annable, Zachery)
08/31/2020	<u>1009</u> SEALED document regarding: Exhibit 20 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1010</u> SEALED document regarding: Exhibit 21 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1011</u> SEALED document regarding: Exhibit 22 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1012</u> SEALED document regarding: Exhibit 23 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1013</u> SEALED document regarding: Exhibit 24 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
09/01/2020	<u>1014</u> Debtor–in–possession monthly operating report for filing period July 1, 2020 to July 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/01/2020	

	<u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
09/01/2020	<u>1016</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward & Associate). (Annable, Zachery)
09/01/2020	<u>1017</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>931</u> Application for compensation (<i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i>) for Hayward & Assoc). (Annable, Zachery)
09/01/2020	<u>1018</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33.). (Hoffman, Juliana)
09/01/2020	<u>1019</u> Objection to (related document(s): <u>906</u> Objection to claim Filed by Debtor Highland Capital Management, L.P. filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Lopez, Paul). MODIFIED to correct linkage on 9/2/2020 (Ecker, C.).
09/01/2020	<u>1020</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>999</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2020	<u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)
09/02/2020	<u>1022</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, F). (Pomerantz, Jeffrey)
09/02/2020	<u>1023</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document <u>999</u>) Entered on 8/28/2020. (Okafor, M.)). (Kass, Albert)
09/03/2020	<u>1024</u> Certificate of service re: <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; to be Held on October 14, 2020 at 1:30 PM (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1007</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Objection to</i>

	<i>Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/04/2020	<u>1025</u> Motion to compromise controversy with Carey International, Inc.. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
09/04/2020	<u>1026</u> Objection to (related document(s): <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
09/04/2020	<u>1027</u> Certificate of service re: <i>Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	<u>1028</u> Witness and Exhibit List for <i>Hearing on September 10, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> , <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>). (Hayward, Melissa)
09/08/2020	<u>1029</u> Certificate of service re: <i>Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	<u>1030</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i>) filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	<u>1031</u> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28083098, amount \$ 100.00 (re: Doc# <u>1031</u>). (U.S. Treasury)
09/09/2020	<u>1032</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>). (Annable, Zachery)

09/09/2020	<u>1033</u> Order granting motion to seal documents (related document # <u>997</u>) Entered on 9/9/2020. (Okafor, M.)
09/09/2020	<u>1034</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>). (Annable, Zachery)
09/09/2020	<u>1035</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i>). (Annable, Zachery)
09/09/2020	<u>1036</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i>). (Annable, Zachery)
09/09/2020	<u>1037</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorn). (Annable, Zachery)
09/09/2020	<u>1038</u> Certificate of service re: <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/10/2020	<u>1039</u> SEALED document regarding: Exhibits B and C to the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1033</u> Order on motion to seal). (Attachments: # <u>1</u> Part 2 # <u>2</u> Part 3 # <u>3</u> Part 4 # <u>4</u> Part 5 # <u>5</u> Part 6) (Sosland, Martin)
09/10/2020	<u>1040</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: \$531</i>). (Hoffman, Juliana)
09/10/2020	<u>1041</u> Amended Notice (<i>Amended Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21</i> . Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u>

	<p>Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) (Annable, Zachery)</p>
09/10/2020	<p>1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)</p>
09/10/2020	<p>1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint</p>

	<p>Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event–Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce–Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.) (Edmond, Michael) (Entered: 09/14/2020)</p>
09/11/2020	<p><u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.)</p>
09/11/2020	<p><u>1043</u> Order granting application for compensation (related document # <u>971</u>) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3470794.50, expenses awarded: \$12205.15 Entered on 9/11/2020. (Dugan, S.)</p>
09/11/2020	<p><u>1044</u> Order granting application for compensation (related document # <u>975</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)</p>
09/11/2020	<p><u>1045</u> Order granting application for compensation (related document # <u>924</u>) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$63144.80, expenses awarded: \$833.49 Entered on 9/11/2020. (Ecker, C.)</p>
09/11/2020	<p><u>1046</u> Order granting application for compensation (related document # <u>972</u>) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)</p>
09/11/2020	<p><u>1047</u> Order granting application for compensation (related document # <u>964</u>) granting for Hayward & Associates PLLC, fees awarded: \$60210.00, expenses awarded: \$525.80 Entered on 9/11/2020. (Ecker, C.)</p>
09/11/2020	<p><u>1048</u> Order granting application for compensation (related document # <u>831</u>) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.)</p>
09/11/2020	<p><u>1049</u> Request for transcript regarding a hearing held on 9/11/2020. The requested turn–around time is daily. (Edmond, Michael)</p>
09/11/2020	<p><u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document # <u>1031</u>) Entered on 9/11/2020. (Ecker, C.)</p>
09/11/2020	<p><u>1051</u> Order granting application for compensation (related document # <u>883</u>) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on</p>

	9/11/2020. (Ecker, C.)
09/11/2020	<u>1052</u> Motion to appear pro hac vice for Erica S. Weisgerber. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1053</u> Motion to appear pro hac vice for Daniel E. Stroik. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1054</u> Motion to appear pro hac vice for M. Natasha Labovitz. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1052</u>). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1053</u>). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1054</u>). (U.S. Treasury)
09/11/2020	<u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. (Hoffman, Juliana)
09/11/2020	<u>1056</u> Certificate of service re: <i>1) Witness and Exhibit List for Hearing on September 10, 2020; 2) WebEx Meeting Invitation to participate electronically in the hearing on Thursday, September 10, 2020 at 2:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 3) Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1028</u> Witness and Exhibit List for Hearing on September 10, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> , <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/11/2020	

	<u>1057</u> Response to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Attachments: # <u>1</u> Appendix Part 1 # <u>2</u> Appendix Part 2 # <u>3</u> Appendix Part 3 # <u>4</u> Appendix Part 4) (Driver, Vickie). Modified linkage on 9/14/2020 (Rielly, Bill).
09/13/2020	<u>1058</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1044</u> Order granting application for compensation (related document <u>975</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1059</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1046</u> Order granting application for compensation (related document <u>972</u>) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1060</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document <u>1031</u>) Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/14/2020	<u>1063</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of James E. O'Neill to Represent Highland Capital Management, L.P.; and 2) Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1031</u> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1032</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020.,

	<p><u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/16/2020	<p><u>1064</u> Transcript regarding Hearing Held 09/10/2020 (49 pages) RE: Fee Applications; Motion to Extend; Omnibus Objection to Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1061</u> Hearing held on 9/10/2020., Hearing continued (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.), <u>1062</u> Hearing held on 9/10/2020. (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based</p>

	on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.)). Transcript to be made available to the public on 12/15/2020. (Rehling, Kathy)
09/16/2020	<u>1065</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
09/16/2020	<u>1066</u> Certificate of service re: <i>Documents Served on September 11, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.), <u>1048</u> Order granting application for compensation (related document <u>831</u>) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.), <u>1051</u> Order granting application for compensation (related document <u>883</u>) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.)). (Kass, Albert)
09/16/2020	<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Rielly, Bill). (Entered: 10/19/2020)
09/17/2020	<u>1067</u> Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).) (Edmond, Michael)
09/17/2020	<u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document # <u>1052</u>) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document # <u>1053</u>) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document # <u>1054</u>) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1071</u> Certificate of service re: <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from July 1, 2020 to and Including July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1055</u> Application for compensation

	<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
09/18/2020	<u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
09/18/2020	<u>1073</u> Order setting Disclosure Statement hearing and deadline to object (RE: related document(s) <u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>945</u> . The deadline for any party wishing to object to the Disclosure Statement shall be October 19, 2020 at 5:00 p.m. Entered on 9/18/2020 (Okafor, M.)
09/19/2020	<u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. (Hoffman, Juliana)
09/19/2020	<u>1075</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document <u>1052</u>) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1076</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document <u>1053</u>) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1077</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document <u>1054</u>) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/21/2020	<u>1078</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P.) Responses due by 10/5/2020. (Ecker, C.)
09/21/2020	<u>1079</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Annable, Zachery)
09/21/2020	<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)(Annable, Zachery)
09/21/2020	<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at

	09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , (Annable, Zachery)
09/22/2020	<u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E–F) (Annable, Zachery)
09/22/2020	Receipt of filing fee for Schedules(19–34054–sgj11) [misc,schedall] (31.00). Receipt number 28122241, amount \$ 31.00 (re: Doc# <u>1082</u>). (U.S. Treasury)
09/22/2020	<u>1083</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1030</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1084</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1065</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1085</u> Certificate of service re: Orders of the Court filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1043</u> Order on application for compensation, <u>1044</u> Order on application for compensation, <u>1045</u> Order on application for compensation, <u>1046</u> Order on application for compensation, <u>1047</u> Order on application for compensation, <u>1050</u> Order on motion to appear pro hac vice). (Annable, Zachery)
09/22/2020	<u>1086</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1073</u> Order to set hearing, <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement, <u>1081</u> Notice of hearing). (Annable, Zachery)
09/23/2020	<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1088</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement # <u>2</u> Exhibit 2—Release) (Annable, Zachery)
09/23/2020	<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1090</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland

	Crusader Funds (Claim No. 81).). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/23/2020	<u>1091</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/24/2020	<u>1092</u> Order further extending the debtor's exclusive period for solicitation of acceptances of a chapter 11 plan <u>949</u> Motion to extend or limit the exclusivity period. Entered on 9/24/2020. (Ecker, C.)
09/24/2020	<u>1093</u> Request for transcript regarding a hearing held on 9/17/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael)
09/24/2020	<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/2020, Fee: \$672,815.00, Expenses: \$3,428.14. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/15/2020. (Pomerantz, Jeffrey)
09/24/2020	<u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
09/24/2020	<u>1096</u> Certificate of service re: 1) <i>Cover Sheet and Tenth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 Through August 31, 2020</i> ; and 2) <i>Summary Cover Sheet and Tenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
09/24/2020	<u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland

	Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1098</u> Certificate of service re: <i>Notice of Filing of Debtor's Amended Schedules</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E–F) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion # <u>2</u> Service List) (Kathman, Jason)
09/24/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] (181.00). Receipt number 28129975, amount \$ 181.00 (re: Doc# <u>1099</u>). (U.S. Treasury)
09/25/2020	<u>1100</u> Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)
09/25/2020	<u>1101</u> Transcript regarding Hearing Held 09/17/2020 (13 pages) RE: Status Conference, Objection to Proof of Claim, Motion to Extend Exclusivity. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s.)). Transcript to be made available to the public on 12/24/2020. (Rehling, Kathy)
09/25/2020	<u>1102</u> Amended Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)

09/25/2020	<u>1103</u> Certificate of service re: Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptances of a Chapter 11 Plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1092</u> Order on motion to extend/shorten time). (Annable, Zachery)
09/25/2020	<u>1104</u> Certificate of service re: Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Annable, Zachery)
09/25/2020	<u>1105</u> Omnibus Response opposed to (related document(s): <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund) (<i>UBS's Omnibus Response to Objections to the UBS Proofs of Claim</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Sosland, Martin)
09/25/2020	<u>1106</u> Exhibit List to <i>UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1105</u> Response to objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44) (Sosland, Martin)
09/25/2020	<u>1107</u> Motion to file document under seal.(<i>UBS's Motion for Leave to file Documents Under Seal with UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
09/28/2020	<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms of Ballots # <u>3</u> Exhibit 1—B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1—C—Notice of Non-Voting Status # <u>5</u> Exhibit 1—D—Notice of Assumption) (Annable, Zachery)
09/28/2020	<u>1109</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
09/28/2020	<u>1110</u> Certificate of service re: 1) <i>Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1088</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1—Settlement Agreement # 2 Exhibit 2—Release) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/29/2020	<u>1111</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i>)). (Annable, Zachery)
09/29/2020	<u>1112</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Conf, <u>1109</u> Notice of hearing</i>). (Annable, Zachery)
09/29/2020	<u>1113</u> Certificate of service re: <i>Documents Served on or Before September 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1090</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland</i>

	<p><i>Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>1091</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/30/2020	<u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28143856, amount \$ 100.00 (re: Doc# <u>1114</u>). (U.S. Treasury)
09/30/2020	<u>1115</u> Debtor-in-possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	<u>1116</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	<u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
10/02/2020	<u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
10/02/2020	<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	<u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors

	(Montgomery, Paige)
10/05/2020	<u>1121</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	<u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # <u>1025</u>) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # <u>1114</u>) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1125</u> Order granting motion to seal exhibits (related document # <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)
10/05/2020	<u>1127</u> SEALED document regarding: Exhibit B—Cornerstone Monetization Schedule per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1128</u> SEALED document regarding: Exhibit 2 – Partial Final Award dated March 6, 2019 per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery) Modified docket entry text on 10/5/2020 in include exhibit number. (Ellison, T.).
10/05/2020	<u>1129</u> SEALED document regarding: Exhibit 3—Disposition of Application of Modification of Award dated March 14, 2019 per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1130</u> SEALED document regarding: Exhibit 4—Final Award dated April 29, 2019 per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/06/2020	<u>1131</u> Order granting motion to seal documents <u>1131</u> (related document # <u>1107</u>) Entered on 10/6/2020. (Okafor, M.)
10/06/2020	<u>1132</u> INCORRECT ENTRY – REQUESTER CANCELLED REQUEST. Request for transcript regarding a hearing held on 9/23/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael) Modified on 10/14/2020 (Edmond, Michael).

10/06/2020	<u>1133</u> SEALED document regarding: UBS's Omnibus Response to Objections to the UBS Proofs of Claim per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1131</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3 # <u>3</u> Exhibit 4 # <u>4</u> Exhibit 5 # <u>5</u> Exhibit 6 # <u>6</u> Exhibit 8 # <u>7</u> Exhibit 9 # <u>8</u> Exhibit 10 # <u>9</u> Exhibit 11 # <u>10</u> Exhibit 12 # <u>11</u> Exhibit 14 # <u>12</u> Exhibit 18 # <u>13</u> Exhibit 22 # <u>14</u> Exhibit 23 # <u>15</u> Exhibit 24 # <u>16</u> Exhibit 25 # <u>17</u> Exhibit 26 # <u>18</u> Exhibit 28 # <u>19</u> Exhibit 29 # <u>20</u> Exhibit 32 # <u>21</u> Exhibit 34 # <u>22</u> Exhibit 35 # <u>23</u> Exhibit 36 # <u>24</u> Exhibit 37 # <u>25</u> Exhibit 38 # <u>26</u> Exhibit 39 # <u>27</u> Exhibit 40 # <u>28</u> Exhibit 41 # <u>29</u> Exhibit 42 # <u>30</u> Exhibit 43) (Sosland, Martin)
10/06/2020	<u>1134</u> Motion to appear pro hac vice for Joseph L. Christensen. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	<u>1135</u> Motion to appear pro hac vice for Thomas A. Uebler. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1134</u>). (U.S. Treasury)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1135</u>). (U.S. Treasury)
10/06/2020	<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , (Hoffman, Juliana)
10/06/2020	<u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	<u>1138</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1116</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1139</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G.</i>

	<i>Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1140</u> Request for transcript regarding a hearing held on 10/6/2020. The requested turn-around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	<u>1141</u> Objection to (related document(s): <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	<u>1142</u> Application for compensation (<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A July 2020 Invoice) (Annable, Zachery)
10/07/2020	<u>1143</u> Certificate of service re: <i>Agreed Motion to Extend the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/07/2020	<u>1144</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u>) Entered on 10/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/07/2020. (Admin.)
10/08/2020	<u>1145</u> Transcript regarding Hearing Held 10/06/2020 (58 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)). Transcript to be made available to the public on 01/6/2021. (Rehling, Kathy)
10/08/2020	<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document # <u>1134</u>) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document # <u>1135</u>) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay Fee</i>

	amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/08/2020	<u>1149</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)
10/08/2020	<u>1150</u> Adversary case 20-03128. Complaint by Highland Capital Management, L.P. against Patrick Hagaman Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 71 (Injunctive relief – reinstatement of stay). (Annable, Zachery)
10/08/2020	<u>1151</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77.). (Hoffman, Juliana)
10/08/2020	<u>1152</u> Certificate of service re: <i>Documents Served on October 5, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.), <u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document <u>1025</u>) Entered on 10/5/2020. (Okafor, M.), <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u>) Entered on 10/5/2020. (Okafor, M.), <u>1125</u> Order granting motion to seal exhibits (related document <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/5/2020. (Okafor, M.), <u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)). (Kass, Albert)
10/08/2020	<u>1153</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Ex. A – Loan Agreement # <u>2</u> Ex.B – Account Summary) (Assink, Bryan)
10/08/2020	<u>1164</u> Hearing held on 10/8/2020. (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: P. Montgomery for Official Committee of Unsecured Creditors; J. Kane for CLO Holdco. Nonevidentiary hearing. Announcement of an agreed 60-day extension. Counsel to upload order.) (Edmond, Michael) (Entered: 10/13/2020)
10/09/2020	

	<u>1154</u> Motion for leave to <i>Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
10/09/2020	<u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)
10/09/2020	<u>1156</u> Certificate of service re: <i>Notice of Hearing on Pension Danmarks Motion for Relief from the Automatic Stay and Extending the Objection Deadline</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/09/2020	<u>1157</u> Certificate of service re: <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1142</u> Application for compensation (<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A July 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
10/09/2020	<u>1158</u> Certificate of service re: 1) <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay; and 2) Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1149</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/09/2020	<u>1159</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent

	<p>Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/09/2020	<p><u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. (Hoffman, Juliana)</p>
10/10/2020	<p><u>1161</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document <u>1134</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>
10/10/2020	<p><u>1162</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document <u>1135</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>
10/12/2020	<p><u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s)<u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u>, Entered on 10/12/2020 (Okafor, M.)</p>
10/13/2020	<p><u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)</p>
10/13/2020	<p><u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. (Gold, Matthew)</p>
10/13/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1165</u>). (U.S. Treasury)</p>
10/13/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1166</u>). (U.S. Treasury)</p>
10/13/2020	<p><u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
10/14/2020	<p><u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors. Modified to correct linkage on 11/3/2020 (Ecker, C.).</p>
10/14/2020	<p><u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s)<u>763</u> Order on application to employ). Entered on 10/14/2020 (Okafor, M.)</p>

10/14/2020	<u>1170</u> Certificate of service re: <i>Agreed Supplemental Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1169</u> Order (generic)). (Annable, Zachery)
10/14/2020	<u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1172</u> Certificate of service re: <i>Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)). (Kass, Albert)
10/15/2020	<u>1173</u> Notice (<i>Notice of Filing of (I) Liquidation Analysis and (II) Financial Projections as Exhibits to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). (Attachments: # <u>1</u> Exhibit C/D to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
10/15/2020	<u>1174</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467.). (Hoffman, Juliana)
10/15/2020	<u>1175</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Chiarello, Annmarie)
10/16/2020	<u>1176</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1173</u> Notice (generic)). (Annable, Zachery)
10/16/2020	<u>1177</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/16/2020	<u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)

10/16/2020	<u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims (<i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1182</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
10/16/2020	<u>1183</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1215 AND 1216. Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1184</u> Support/supplemental document (<i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1185</u> Declaration re: (<i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1186</u> Brief in support filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds'). (Platt, Mark). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1187</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)

10/16/2020	<u>1188</u> Motion to file document under seal.(UBS's Motion for Leave to File Documents Under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
10/16/2020	<u>1189</u> INCORRECT ENTRY: Attorney to refile. Support/supplemental document APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND, <u>1186</u> Brief). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1190</u> Objection to (related document(s): <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Attachments: # <u>1</u> A–C) (Sosland, Martin)
10/16/2020	<u>1191</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Highland CLO Funding, Ltd.. (Maloney, Mark)
10/16/2020	<u>1192</u> Declaration re: W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1190</u> Objection). (Attachments: # <u>1</u> Exhibit 1–6 # <u>2</u> Attachments A–C) (Sosland, Martin)
10/16/2020	<u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u> , (Annable, Zachery)
10/16/2020	<u>1194</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex.

	H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
10/16/2020	<u>1195</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/16/2020	<u>1196</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Driver, Vickie)
10/16/2020	<u>1197</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1198</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne,

	<p>Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).</p>
10/16/2020	<p><u>1199</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Sosland, Martin)</p>
10/16/2020	<p><u>1200</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Pomerantz, Jeffrey)</p>
10/16/2020	<p><u>1201</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor Patrick Daugherty. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Service List) (Kathman, Jason)</p>
10/16/2020	<p><u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)</p>
10/16/2020	<p><u>1203</u> Certificate of service re: 1) <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i>; 2) <i>Scheduling Order with</i></p>

	<i>Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch; and 3) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 1160 Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. filed by Financial Advisor FTI Consulting, Inc., 1163 Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 928 , Entered on 10/12/2020 (Okafor, M.), 1167 Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/16/2020	1215 Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Rielly, Bill). (Entered: 10/19/2020)
10/16/2020	1216 Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) 1214 Motion for summary judgment). (Attachments: # 1 Proposed Order) (Rielly, Bill) (Entered: 10/19/2020)
10/17/2020	1204 Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit PHD - 1 # 2 Exhibit PHD - 2) (Kathman, Jason)
10/18/2020	1205 Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	1206 Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	1207 Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order) (Driver, Vickie)
10/18/2020	1208 Declaration re: <i>/of Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) 1207 Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>). (Driver, Vickie)
10/19/2020	1209 Objection to disclosure statement (RE: related document(s) 1080 Disclosure statement) filed by Interested Party Jefferies LLC. (Doherty, Casey)
10/19/2020	1210 Objection to disclosure statement (RE: related document(s) 1080 Disclosure statement) filed by Creditor Pension Benefit Guaranty Corporation. (Attachments: # 1 Exhibit # 2 Certificate of Service) (Baird, Michael)
10/19/2020	1211 List <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG,</i>

	<p><i>LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND</i>). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark)</p>
10/19/2020	<p><u>1212</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)</p>
10/19/2020	<p><u>1213</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC. (Drawhorn, Lauren)</p>
10/19/2020	<p><u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, (Annable, Zachery)</p>
10/19/2020	<p><u>1218</u> Objection to disclosure statement (RE: related document(s)<u>1080</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)</p>
10/19/2020	<p><u>1219</u> Objection to disclosure statement (RE: related document(s)<u>1080</u> Disclosure statement) filed by Creditor HarbourVest et al. (Driver, Vickie)</p>
10/19/2020	<p><u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
10/19/2020	<p><u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
10/19/2020	<p><u>1222</u> Notice of hearing filed by Creditor HarbourVest et al (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order), <u>1208</u> Declaration re: /of <i>Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to</i></p>

	<i>Accept or Reject the Plan</i>)). Hearing to be held on 11/10/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> and for <u>1208</u> , (Driver, Vickie)
10/19/2020	<u>1223</u> Certificate of service re: Motion of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>). (Driver, Vickie)
10/19/2020	<u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u> , (Annable, Zachery)
10/19/2020	<u>1225</u> Amended Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1204</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 # <u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-22) (Kathman, Jason)
10/19/2020	<u>1226</u> Witness and Exhibit List filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81)). (Platt, Mark)
10/19/2020	<u>1227</u> Notice of hearing filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund)..., <u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1215</u> and for <u>1216</u> , (Platt, Mark)
10/19/2020	<u>1228</u> Certificate of service re: 1) <i>Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdo, Ltd.</i> ; and 2) <i>Notice of Deposition of Professor Nancy B. Rapaport</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry filed by Creditor CLO Holdco, Ltd.). Entered on 10/14/2020 (Okafor, M.), <u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2020	<u>1229</u> Amended Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1199</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> 4 # <u>5</u> Exhibit 5 # <u>6</u> 6) (Sosland, Martin)
10/20/2020	<u>1230</u> Order granting motion to seal documents (related document # <u>1188</u> Motion for leave to file documents under seal with (I) the Objection and (II) the Declaration of W. Kevin

	Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1231</u> SEALED document regarding: Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Sosland, Martin)
10/20/2020	<u>1232</u> SEALED document regarding: Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 4 # <u>2</u> Exhibit 4 # <u>3</u> Exhibit 6 # <u>4</u> Attachment A # <u>5</u> Attachment B # <u>6</u> Attachment C) (Sosland, Martin)
10/20/2020	<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims ((RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.)
10/20/2020	<u>1234</u> Order granting motion to seal documents (related document # <u>1182</u> Motion to seal regarding the Redeemer Committee of the Crusader Funds Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1235</u> Order granting motion to seal documents (related document # <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1236</u> SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Platt, Mark)
10/20/2020	<u>1237</u> SEALED document regarding: APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 16 (sealed) # <u>2</u> Exhibit 17 (sealed) # <u>3</u> Exhibit 18 (sealed) # <u>4</u> Exhibit 19 (sealed) # <u>5</u> Exhibit 20 (sealed) # <u>6</u> Exhibit 21 (sealed) # <u>7</u> Exhibit 22 (sealed) # <u>8</u> Exhibit 23 (sealed) # <u>9</u> Exhibit 24 (sealed) # <u>10</u> Exhibit 25 (sealed) # <u>11</u> Exhibit 26 (sealed) # <u>12</u> Exhibit 27 (sealed) # <u>13</u> Exhibit 28 (sealed) # <u>14</u> Exhibit 29 (sealed)) (Platt, Mark)

10/20/2020	<u>1238</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/20/2020	<u>1239</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
10/20/2020	<u>1240</u> Joinder by <i>META–E DISCOVERY, LLC TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Meta–e Discovery, LLC (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Umari, Basil)
10/20/2020	<u>1241</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
10/20/2020	<u>1242</u> Joinder by <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS JOINDER TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Platt, Mark)
10/20/2020	1243 Hearing held and Continued (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (Continued Hearing to be held on 10/21/2020 at 10:00 AM Dallas Judge Jernigan Ctrm for <u>1087</u> .) (Edmond, Michael)
10/20/2020	<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. (Hoffman, Juliana)
10/20/2020	1256 Hearing held on 10/20/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	

	<p>1257 Hearing held on 10/20/2020. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.) (Edmond, Michael) (Entered: 10/21/2020)</p>
10/20/2020	<p><u>1303</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #3 & #4; COURT TOOK JUDICIAL NOTICE OF THE DECLARATION OF JOHN A. MORRIS; ADMITTED AS AN EXHIBIT #3; EXHIBITS #2 #3 AND #4 TO DECLARATION AND EXHIBIT #B TO EXHIBIT #1 FILED UNDER SEAL) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/20/2020	<p>1304 DOCKET AN ERROR: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W & #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)</p>
10/20/2020	<p><u>1305</u> MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHTERY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)</p>
10/20/2020	<p><u>1314</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)</p>
10/21/2020	<p><u>1245</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>

10/21/2020	<u>1246</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/21/2020	<u>1247</u> Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	<u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt number KF: No Fee Due – Exempt U.S. Government Agency, amount \$ 0.00 (re: Doc <u>1247</u>). (Floyd)
10/21/2020	<u>1249</u> SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1250</u> SEALED document regarding: Exhibit 2 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1251</u> SEALED document regarding: Exhibit 11 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1252</u> SEALED document regarding: Exhibit 12 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1253</u> SEALED document regarding: Exhibit 14 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1254</u> SEALED document regarding: Exhibit 15 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1255</u> SEALED document regarding: Exhibit 16 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)

10/21/2020	1258 Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.) (Edmond, Michael)
10/21/2020	<u>1259</u> Notice of Appearance and Request for Notice by Thomas G. Haskins Jr. filed by Creditor NWCC, LLC. (Haskins, Thomas)
10/21/2020	<u>1260</u> Motion to appear pro hac vice for Jonathan Sundheimer. Fee Amount \$100 Filed by Creditor NWCC, LLC (Haskins, Thomas)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28201179, amount \$ 100.00 (re: Doc# <u>1260</u>). (U.S. Treasury)
10/21/2020	<u>1261</u> Certificate of service re: Joinder to Objection to Disclosure Statement filed by Interested Party Meta-e Discovery, LLC (RE: related document(s) <u>1240</u> Joinder). (Umari, Basil)
10/21/2020	<u>1262</u> Motion to appear pro hac vice for Joseph T. Moldovan. Fee Amount \$100 Filed by Interested Party Meta-e Discovery, LLC (Umari, Basil)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28201283, amount \$ 100.00 (re: Doc# <u>1262</u>). (U.S. Treasury)
10/21/2020	<u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/21/2020	<u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.).
10/21/2020	<u>1265</u> Certificate of service re: <i>Documents Served on or Before October 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims (<i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1184</u> Support/supplemental document (<i>Appendix of</i>

	<p><i>Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1185</u> Declaration re: (<i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1187</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u>, filed by Debtor Highland Capital Management, L.P., <u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1266</u> Order granting motion to continue hearing on (related document # <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.)</p>
10/22/2020	<p><u>1267</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
10/22/2020	<p><u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, (Annable, Zachery)</p>
10/22/2020	<p><u>1269</u> Certificate of service re: <i>Documents Served on or Before October 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland</p>

	<p>Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P., <u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1270</u> Certificate of service re: <i>Documents Served on October 20, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims ((RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.), <u>1235</u> Order granting motion to seal documents (related document <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)). (Kass, Albert)</p>
10/23/2020	<p><u>1271</u> Transcript regarding Hearing Held 10/20/2020 (256 pages) RE: Motions to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/21/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1256 Hearing held on 10/20/2020. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.), <u>1257</u> Hearing held on 10/20/2020. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.)). Transcript to be made available to the public on 01/21/2021. (Rehling, Kathy)</p>

10/23/2020	<u>1272</u> Request for transcript regarding a hearing held on 10/21/2020. The requested turn-around time is hourly. (Edmond, Michael)
10/23/2020	<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document # <u>1089</u>) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , (Annable, Zachery)
10/23/2020	<u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/23/2020	<u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document # <u>1247</u>) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1277</u> Order granting motion to appear pro hac vice adding Jonathan D. Sundheimer for NWCC, LLC (related document <u>1260</u>) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document # <u>1262</u>) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1279</u> Motion to file document under seal. – <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Delaware Protective Order) (Kathman, Jason)
10/23/2020	<u>1280</u> Motion for leave to Amend Proof of Claim No. 77 Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Second Amended Proof of Claim) (Kathman, Jason)
10/23/2020	<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Kathman, Jason)
10/23/2020	<u>1282</u> Brief in support filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Kathman, Jason)
10/23/2020	<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed

	by Attorney Juliana Hoffman Objections due by 11/13/2020. (Hoffman, Juliana)
10/23/2020	<u>1284</u> Support/supplemental document– <i>Appendix to Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1282</u> Brief). (Attachments: # <u>1</u> Appendix – Part 1 of 3 # <u>2</u> Appendix – Part 2 # <u>3</u> Appendix – Part 3) (Kathman, Jason)
10/24/2020	<u>1285</u> Transcript regarding Hearing Held 10/21/2020 (48 pages) RE: Motion to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/22/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1258 Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	<u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	<u>1287</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1288</u> Support/supplemental document (<i>Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1287</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1290</u> Support/supplemental document (<i>Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1291</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document <u>1247</u>) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)

10/25/2020	<u>1292</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document <u>1262</u>) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	<u>1293</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	<u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	<u>1295</u> Support/supplemental document (<i>Notice of Supplemental Disclosures</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/27/2020	<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	<u>1297</u> Request for transcript regarding a hearing held on 10/27/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/27/2020	

	<p><u>1298</u> Certificate of service re: <i>Documents Served on or Before October 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1266</u> Order granting motion to continue hearing on (related document <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.), <u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/27/2020	<p>1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement.) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/27/2020	<p>1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/28/2020	<p><u>1299</u> Request for transcript regarding a hearing held on 10/28/2020. The requested turn-around time is hourly (Jeng, Hawaii)</p>

10/28/2020	<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , (Annable, Zachery)
10/28/2020	<u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	<u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # <u>1087</u>) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	1306 Hearing held on 10/28/2020. (RE: related document(s) <u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)
10/28/2020	<u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/28/2020	<u>1310</u> Certificate of service re: 1) <i>Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ; 2) <i>Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital

	<p>Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/28/2020	<p><u>1311</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020</i>; and 2) <i>Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/29/2020	<p><u>1312</u> Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.)). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)</p>
10/29/2020	

	<p><u>1313</u> Certificate of service re: <i>Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
10/30/2020	<p><u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)</p>
10/30/2020	<p><u>1316</u> Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0.). (Hoffman, Juliana)</p>
10/30/2020	<p><u>1317</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/31/2020	<p><u>1318</u> Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1306 Hearing held on 10/28/2020. (RE: related document(s)<u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)</p>
11/01/2020	<p><u>1319</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)</p>

11/02/2020	<u>1320</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	<u>1321</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	<u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/03/2020	<u>1323</u> Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s) <u>1218</u> Objection to disclosure statement). (Kathman, Jason)
11/03/2020	<u>1324</u> Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s) <u>1279</u> Motion to file document under seal. – <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i>). (Kathman, Jason)
11/03/2020	<u>1325</u> Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s) <u>1280</u> Motion for leave to Amend Proof of Claim No. 77). (Kathman, Jason)
11/03/2020	<u>1326</u> Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018, 1282</i> Brief, <u>1284</u> Support/supplemental document). (Kathman, Jason)

11/03/2020	<u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # <u>1099</u>) Entered on 11/3/2020. (Okafor, M.)
11/03/2020	<u>1328</u> Notice of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>593</u> Motion for relief from stay Fee amount \$181. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)
11/03/2020	<u>1329</u> Debtor-in-possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/03/2020	<u>1330</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1142</u> Application for compensation (<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward & Associ). (Annable, Zachery)
11/03/2020	<u>1331</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
11/04/2020	<u>1332</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1331</u> Notice (generic)). (Annable, Zachery)
11/05/2020	<u>1333</u> Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Annable, Zachery)
11/05/2020	<u>1334</u> Certificate of service re: (<i>Amended</i>) Documents Served on October 21, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10.</i> Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020 for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11.</i> Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1294</u> Certificate of service re: <i>Documents Served on October 21,</i>

	<p>2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/05/2020	<p>1335 Certificate of service re: (<i>Amended</i>) 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1310 Certificate of service re: 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be</p>

	held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	<u>1336</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document <u>1099</u>) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)
11/06/2020	<u>1337</u> Response opposed to (related document(s): <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P., <u>1215</u> Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	<u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
11/06/2020	<u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # <u>1</u> Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28246686, amount \$ 298.00 (re: Doc# <u>1339</u>). (U.S. Treasury)
11/06/2020	<u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	<u>1341</u> Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment). (Sosland, Martin)
11/06/2020	<u>1342</u> Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Sosland, Martin)
11/06/2020	<u>1343</u> Motion to file document under seal.(<i>With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1344</u> Motion to file document under seal.(<i>With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to</i>

	<i>Federal Rule of Bankruptcy Procedure 3018</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1345</u> Exhibit List (<i>Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1337</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9–21 # <u>10</u> Exhibit 22) (Sosland, Martin)
11/06/2020	<u>1346</u> Exhibit List (<i>Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9–29) (Sosland, Martin)
11/09/2020	<u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # <u>1</u> Order)(Assink, Bryan)
11/09/2020	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal.ntcapl] (298.00). Receipt number 28249949, amount \$ 298.00 (re: Doc# <u>1347</u>). (U.S. Treasury)
11/09/2020	<u>1348</u> Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
11/09/2020	<u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	<u>1350</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/10/2020	<u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , (Annable, Zachery)
11/10/2020	<u>1352</u> Order granting motion to continue hearing on (related document # <u>1348</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1353</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # <u>1343</u>) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	

	<u>1354</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1344</u>) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1355</u> SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1353</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21) (Sosland, Martin)
11/10/2020	<u>1356</u> SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1354</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25 # <u>18</u> Exhibit 26 # <u>19</u> Exhibit 27 # <u>20</u> Exhibit 28 # <u>21</u> Exhibit 29) (Sosland, Martin)
11/10/2020	<u>1357</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1338</u> . (Sosland, Martin)
11/10/2020	<u>1358</u> Certificate of service re: <i>Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	<u>1359</u> Certificate of service re: 1) <i>Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1350</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28256837, amount \$ 100.00 (re: Doc# <u>1360</u>). (U.S. Treasury)

11/11/2020	<u>1361</u> Certificate of service re: <i>1) Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox & Hurst, LLP (Claim No. 148); and 2) Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount \$10,000.00)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	<u>1363</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/12/2020	<u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	<u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	<u>1366</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # <u>1</u> Exhibit A—DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	<u>1367</u> Certificate of service re: <i>Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	<u>1368</u> Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s) <u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	<u>1369</u> Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1339</u> Notice of appeal). (Sosland, Martin)
11/12/2020	<u>1370</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03390-X. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant

	Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # <u>1360</u>) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1372</u> Order granting motion to seal documents (related document # <u>1279</u>) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1374</u> INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	<u>1375</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/13/2020	<u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1380</u> WITHDRAWN per # <u>1421</u> . Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1377</u>). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1378</u>). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1379</u>). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1380</u>). (U.S. Treasury)

	(U.S. Treasury)
11/13/2020	<u>1381</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03408-G. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Annable, Zachery)
11/13/2020	<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1385</u> Support/supplemental document (<i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1384</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1387</u> Certificate of service re: (<i>Supplemental</i>) Documents Served on October 28, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	<p>LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/13/2020	<p>1388 Witness and Exhibit List for Hearing on Motion for Allowance of Claim filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Attachments: # 1 Exhibit PHD-1 # 2 Exhibit PHD-2 # 3 Exhibit PHD-3 # 4 Exhibit PHD-4 # 5 Exhibit PHD-5 # 6 Exhibit PHD-6 # 7 Exhibit PHD-7 # 8 Exhibit PHD-8 # 9 Exhibit PHD-9 # 10 Exhibit PHD-10 # 11 Exhibit PHD-11 # 12 Exhibit PHD-12 # 13 Exhibit PHD-13 # 14 Exhibit PHD-14 # 15 Exhibit PHD-15 # 16 Exhibit PHD-16 # 17 Exhibit PHD-17 # 18 Exhibit PHD-18 # 19 Exhibit PHD-19 # 20 Exhibit PHD-20 # 21 Exhibit PHD-21 # 22 Exhibit PHD-22 # 23 Exhibit PHD-23 # 24 Exhibit PHD-24 # 25 Exhibit PHD-25 # 26 Exhibit PHD-26 # 27 Exhibit PHD-27 # 28 Exhibit PHD-28 # 29 Exhibit PHD-29 # 30 Exhibit PHD-30 # 31 Exhibit PHD-31 # 32 Exhibit PHD-32 # 33 Exhibit PHD-33 # 34 Exhibit PHD-34 # 35 Exhibit PHD-35 # 36 Exhibit PHD-36 # 37 Exhibit PHD-37 # 38 Exhibit PHD-38 # 39 Exhibit PHD-39 # 40 Exhibit PHD-40 # 41 Exhibit PHD-41 # 42 Exhibit PHD-42) (Kathman, Jason)</p>
11/13/2020	<p>1389 Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan).). (Attachments: # 1 Exhibit A—Form of Claimant Trust Agreement # 2 Exhibit B—Form of New GP LLC Documents # 3 Exhibit C—Form of Reorganized Limited Partnership Agreement # 4 Exhibit D—Form of Litigation Sub-Trust Agreement # 5 Exhibit E—Schedule of Retained Causes of Action # 6 Exhibit F—Form of New Frontier Note # 7 Exhibit G—Schedule of Employees # 8 Exhibit H—Form of Senior Employee Stipulation) (Annable, Zachery)</p>
11/14/2020	<p>1390 BNC certificate of mailing. (RE: related document(s)1364 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)</p>
11/15/2020	<p>1391 BNC certificate of mailing. (RE: related document(s)1376 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)</p>
11/15/2020	<p>1392 BNC certificate of mailing – PDF document. (RE: related document(s)1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document 1360) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)</p>

11/16/2020	<u>1393</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	<u>1394</u> SEALED document regarding: Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1395</u> SEALED document regarding: Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1396</u> SEALED document regarding: Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1397</u> SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1398</u> SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1399</u> Notice (<i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/16/2020	<u>1400</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)

11/16/2020	<u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	<u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (25.00). Receipt number 28270620, amount \$ 25.00 (re: Doc# <u>1401</u>). (U.S. Treasury)
11/16/2020	<u>1403</u> Exhibit List (<i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). (Annable, Zachery)
11/16/2020	<u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	<u>1405</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1406</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLCS MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1407</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10.). (Hoffman, Juliana)
11/16/2020	<u>1408</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1409</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A (slip sheet only) # <u>2</u> Exhibit B (slip sheet only) # <u>3</u> Exhibit C (slip sheet only) # <u>4</u> Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	

	<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic)). (Hoffman, Juliana)
11/16/2020	<u>1411</u> Reply to (related document(s): <u>1349</u> Objection filed by Debtor Highland Capital Management, L.P.) – <i>Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	<u>1412</u> Declaration re: <i>Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1411</u> Reply). (Kathman, Jason)
11/17/2020	<u>1413</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # <u>1</u> Exhibit 30) (Annable, Zachery)
11/17/2020	<u>1414</u> Witness and Exhibit List for <i>November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Platt, Mark)
11/17/2020	<u>1415</u> Request for transcript regarding a hearing held on 11/17/2020. The requested turn-around time is hourly. (Edmond, Michael)
11/17/2020	<u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86). (Hoffman, Juliana)
11/17/2020	<u>1417</u> Certificate of service re: 1) <i>Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.</i> ; 2) <i>Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court</i> ; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.), <u>1366</u> <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A—DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/17/2020	<u>1418</u> Witness and Exhibit List (<i>UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # <u>1</u> Exhibit 26 – 28 # <u>2</u> Exhibit 29 # <u>3</u> Exhibit 30 # <u>4</u> Exhibit AG30 # <u>5</u> Exhibit AG31 # <u>6</u> Exhibit AG32 – AG46) (Sosland, Martin)
11/17/2020	<u>1419</u> Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s) <u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V & EXHIBIT'S #X1 & #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)
11/17/2020	<u>1422</u> Hearing held on 11/17/2020. (RE: related document(s) <u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)
11/18/2020	<u>1420</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	<u>1421</u> Withdrawal [<i>Notice of Withdrawal of Notice of Transfer of Claim From Debevoise & Plimpton LLP to Contrarian Funds, LLC</i>] Filed by Creditor Contrarian Funds LLC (related document(s) <u>1380</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	<u>1423</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1382</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit X–1 # <u>24</u> Exhibit X–2) (Annable, Zachery)
11/18/2020	<u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
11/18/2020	<u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) (<i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreement</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

11/18/2020	<p><u>1426</u> Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1422 Hearing held on 11/17/2020. (RE: related document(s)<u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)</p>
11/18/2020	<p><u>1427</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1420</u> Notice (generic)). (Annable, Zachery)</p>
11/18/2020	<p><u>1428</u> Certificate of service re: <i>Documents Served on or Before November 14, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u>) Entered on 11/13/2020. (Ecker, C.), <u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). filed by Debtor Highland Capital Management, L.P., <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1385</u> Support/supplemental document (<i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1384</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1389</u> Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan)). (Attachments: # 1 Exhibit A—Form of Claimant Trust Agreement # 2 Exhibit B—Form of New GP LLC Documents # 3 Exhibit C—Form of Reorganized Limited Partnership Agreement # 4 Exhibit D—Form of Litigation Sub-Trust Agreement # 5 Exhibit E—Schedule of Retained Causes of Action # 6 Exhibit F—Form of New Frontier Note # 7 Exhibit G—Schedule of Employees # 8 Exhibit H—Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/18/2020	<p><u>1429</u> Expedited Motion to file document under seal. (<i>UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
11/19/2020	<p><u>1430</u> Order granting motion to seal documents regarding the Redeemer Committee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary</p>

	Judgement on Proof of Claim Nos. 190 and 191 of UBS AG, LondonBranch and UBS Securities LLC.(related document # 1405) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1431 Order granting motion to seal documents regarding the RedeemerCommittee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motionfor Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of BankruptcyProcedure 3018 (related document # 1406) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1432 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) 1431 Order on motion to seal). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Platt, Mark)
11/19/2020	1433 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) 1430 Order on motion to seal). (Attachments: # 1 Exhibit B) (Platt, Mark)
11/19/2020	1434 Notice of hearing (<i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1424 Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424 , (Annable, Zachery)
11/19/2020	1435 Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1166 Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	1436 Order granting motion for expedited hearing (Related Doc# 1425)(document set for hearing: 1424 Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424 , Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1437 Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	1438 Notice (<i>Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) 1108 Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms

	of Ballots # 3 Exhibit 1-B—Notice of Confirmation Hearing # 4 Exhibit 1-C—Notice of Non-Voting Status # 5 Exhibit 1-D—Notice of Assumption), <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). (Sosland, Martin)
11/19/2020	<u>1439</u> WITHDRAWN per docket # <u>1622</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	<u>1440</u> Order granting motion to seal documents with UBS's Witness and Exhibit List for November 20, 2020 Hearing (related document # <u>1429</u>) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1441</u> SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1440</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 26 # <u>2</u> Exhibit 27 # <u>3</u> Exhibit 28 # <u>4</u> Exhibit 30 # <u>5</u> Exhibit AG32 # <u>6</u> Exhibit AG33 # <u>7</u> Exhibit AG34 # <u>8</u> Exhibit AG35 # <u>9</u> Exhibit AG36 # <u>10</u> Exhibit AG37 # <u>11</u> Exhibit AG38 # <u>12</u> Exhibit AG39 # <u>13</u> Exhibit AG40 # <u>14</u> Exhibit AG41 # <u>15</u> Exhibit AG42 # <u>16</u> Exhibit AG43 # <u>17</u> Exhibit AG44 # <u>18</u> Exhibit AG45 # <u>19</u> Exhibit AG46) (Sosland, Martin)
11/19/2020	<u>1442</u> Certificate of service re: <i>Documents Served on November 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1399</u> Notice (<i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1400</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1403</u> Exhibit List (<i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). filed by Debtor Highland Capital Management, L.P., <u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/19/2020	<u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) (<i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
11/20/2020	<u>1444</u> Notice (<i>Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1437</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..) (Annable, Zachery)
11/20/2020	<u>1445</u> Objection to disclosure statement (RE: related document(s) <u>1384</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/20/2020	<u>1446</u> Request for transcript regarding a hearing held on 11/20/2020. The requested turn-around time is hourly. (Edmond, Michael)
11/20/2020	<u>1447</u> WITHDRAWN per # <u>1460</u> Response opposed to (related document(s): <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).
11/20/2020	<u>1448</u> Application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1450</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1451</u> Support/supplemental document (<i>Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1452</u> Support/supplemental document (<i>Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1453</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1454</u> Support/supplemental document (<i>Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)

11/20/2020	<p><u>1455</u> Support/supplemental document (<i>Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1453</u> Disclosure statement). (Annable, Zachery)</p>
11/20/2020	<p><u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)</p>
11/20/2020	<p><u>1457</u> Certificate of service re: (<i>Supplemental</i>) Documents Served on October 28, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/20/2020	<p><u>1462</u> Hearing held on 11/20/2020. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG,</p>

	London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1463 Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1464 Hearing held on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)
11/23/2020	<u>1458</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	<u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) (<i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub- Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1460</u> Withdrawal filed by Interested Party James Dondero (RE: related document(s) <u>1447</u> Response). (Assink, Bryan)
11/23/2020	<u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) (<i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1465</u> Reply to (related document(s): <u>1461</u> Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	<u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	<u>1467</u> Notice of hearing filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # 1

	Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Assink, Bryan)
11/23/2020	<u>1468</u> Certificate of service re: <i>re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1413</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1469</u> Certificate of service re: <i>1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreement</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) (<i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1470</u> Certificate of service re: <i>Documents Served on November 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1434</u> Notice of hearing (<i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , filed by Debtor Highland Capital Management, L.P., <u>1435</u> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1166</u> Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., <u>1436</u> Order granting motion for expedited hearing (Related Doc <u>1425</u>)(document set for hearing: <u>1424</u> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , Entered on 11/19/2020. (Okafor, M.), <u>1437</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1478</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)

11/23/2020	1479 Hearing held on 11/23/2020. (RE: related document(s) 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/23/2020	1480 Hearing held on 11/23/2020. (RE: related document(s) 1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/24/2020	1471 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) 1154 Motion for leave <i>to Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed Order)) Responses due by 12/8/2020. (Ecker, C.)
11/24/2020	1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). (Annable, Zachery)
11/24/2020	1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). (Annable, Zachery)
11/24/2020	1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # 1281) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1475 Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document # 1424) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)
11/24/2020	1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) 1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)
11/25/2020	1481 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) 1466 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested

	Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	<u>1482</u> Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1462 Hearing held on 11/20/2020. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1463 Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1464 Hearing held on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B/Proposed Order # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (O'Neil, Holland)
11/25/2020	<u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	<u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	<u>1486</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u>) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	<u>1487</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date

	11/26/2020. (Admin.)
11/27/2020	<u>1488</u> Certificate of service re: <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	<u>1489</u> Order granting motion to continue hearing on (related document # <u>1485</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.)
11/30/2020	<u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	<u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	<u>1492</u> Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s) <u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal.) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	<u>1493</u> Debtor-in-possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	<u>1494</u> Notice of hearing on <i>Daugherty's Motion to Lift the Automatic Stay</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Creditor Matrix) (Kathman, Jason)
12/01/2020	<u>1495</u> Certificate of service re: <i>1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) (<i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) (<i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/01/2020	<u>1496</u> Certificate of service re: 1) <i>Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ; 2) <i>Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreements</i> ; and 3) <i>Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox & Hurst, LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1474</u> <i>Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty</i> (related document <u>1281</u>) Entered on 11/24/2020. (Okafor, M.), <u>1475</u> <i>Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> (related document <u>1424</u>) Entered on 11/24/2020. (Okafor, M.), <u>1477</u> <i>Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP</i> (RE: related document(s) <u>1435</u> <i>Stipulation filed by Debtor Highland Capital Management, L.P.</i>). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	<u>1497</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> <i>Appellant designation, Statement of issues on appeal</i>). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] (181.00). Receipt number 28309234, amount \$ 181.00 (re: Doc# <u>1491</u>). (U.S. Treasury)
12/02/2020	<u>1498</u> Notice of hearing filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> <i>Application for compensation Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u> , (O'Neil, Holland)
12/02/2020	<u>1499</u> Certificate of service re: 1) <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020</i> ; and 2) <i>Joint Motion to Continue Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1483</u> <i>Application for compensation Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1485</u> <i>Joint Motion to continue hearing on</i> (related documents <u>1207</u> <i>Motion to allow claims</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2020	<u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)
12/03/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28312406, amount \$ 26.00 (re: Doc# <u>1500</u>). (U.S. Treasury)
12/03/2020	<u>1501</u> Request for transcript regarding a hearing held on 11/23/2020. The requested turn-around time is hourly. (Edmond, Michael)

12/03/2020	<u>1502</u> Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s) <u>1179</u> Objection to claim). (Assink, Bryan)
12/03/2020	<u>1503</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
12/03/2020	<u>1504</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1503</u> Notice (generic)). (Annable, Zachery)
12/03/2020	<u>1505</u> Certificate of service re: <i>Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/03/2020	<u>1506</u> Certificate of service re: <i>1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1489</u> Order granting motion to continue hearing on (related document <u>1485</u>) (related documents Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.), <u>1490</u> Application for compensation Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/03/2020	<u>1507</u> Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub–Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>1478</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1424</u> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub–Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), <u>1479</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u>

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	<p>Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), 1480 Hearing held on 11/23/2020. (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)</p>
12/03/2020	<p><u>1883</u> INCORRECT ENTRY – Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s)<u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)</p>
12/04/2020	<p><u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)</p>
12/04/2020	<p><u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)</p>
12/04/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1508</u>). (U.S. Treasury)</p>
12/04/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1509</u>). (U.S. Treasury)</p>
12/04/2020	<p><u>1510</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s)<u>1502</u> Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)</p>
12/04/2020	<p><u>1511</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan;</i></p>

	<p>(D) <i>Approving Form of Ballots, Voting Deadline and Solicitation Procedures</i>; and (E) <i>Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/07/2020	<p><u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)</p>
12/07/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] (26.00). Receipt number 28320856, amount \$ 26.00 (re: Doc# <u>1512</u>). (U.S. Treasury)</p>
12/07/2020	<p><u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)</p>
12/07/2020	<p><u>1514</u> Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief - other). (Annable, Zachery)</p>
12/07/2020	<p><u>1515</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> Appellant designation, Statement of issues on appeal, <u>1497</u> Appellant designation, Statement of issues on appeal). (Assink, Bryan)</p>
12/07/2020	<p><u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal,</p>

	Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).
12/07/2020	<u>1517</u> Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal). (Chiarello, Annmarie)
12/08/2020	<u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document # <u>1338</u>) Entered on 12/8/2020. (Ecker, C.)
12/08/2020	<u>1519</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1280</u> Motion for leave to <i>Amend Proof of Claim No. 77</i> Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)
12/08/2020	<u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—August 2020 Invoice) (Annable, Zachery)
12/08/2020	<u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	<u>1522</u> INCORRECT EVENT: See # <u>1528</u> for correction. Motion to compel Temporary Restriction of Sales by Non-Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # <u>1</u> Affidavit # <u>2</u> Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1523</u> Motion for expedited hearing(related documents <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	<u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	<u>1525</u> Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/09/2020	<u>1526</u> Order granting partial summary judgment (related document # <u>1214</u>) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	

	<u>1527</u> Order granting joint motion to continue hearing on (related document # <u>1524</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1529</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Objection to claim). (Annable, Zachery)
12/09/2020	<u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	<u>1531</u> Application for compensation (<i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A September 2020 Invoice) (Annable, Zachery)
12/09/2020	<u>1532</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	<u>1533</u> Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # <u>1280</u>) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
12/10/2020	<u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Annable, Zachery)
12/10/2020	<u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1539</u> Notice of hearing on <i>Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)).

	Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , (Varshosaz, Artoush)
12/10/2020	<u>1540</u> Certificate of service re: <i>Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020; and 2) Appellees Counter–Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal, <u>1369</u> Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	<u>1541</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document <u>1338</u>) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	<u>1542</u> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Proposed Order /Exhibit E) (O'Neil, Holland)
12/11/2020	<u>1543</u> Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	<u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)
12/11/2020	<u>1545</u> Application for compensation (<i>Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Invoices for July, August, and September 2020) (Annable, Zachery)
12/11/2020	<u>1546</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James

	Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)
12/11/2020	<u>1548</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1549</u> Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1550</u> Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1551</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/11/2020	<u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
12/11/2020	<u>1553</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic)), <u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86), <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), <u>1542</u> Support/supplemental document/<i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), <u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to</i>

	<p>10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation (<i>Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, (Annable, Zachery)</p>
12/11/2020	<p>1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/11/2020	<p>1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/11/2020	<p>1556 Certificate of service re: 1) <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>; and 2) <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1520 Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—August 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 1521 Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/11/2020	<p>1557 Certificate of service re: <i>Documents Served on December 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1524 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1526 Order granting partial summary judgment (related document 1214) Entered on 12/9/2020. (Ecker, C.), 1527 Order granting joint motion to continue hearing on (related document 1524) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Entered on 12/9/2020. (Ecker, C.), 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed</p>

	by Creditor Committee Official Committee of Unsecured Creditors, <u>1531</u> Application for compensation (<i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1532</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1639</u> Hearing set (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.) Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1296</u> and for <u>1244</u> , (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	<u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	<u>1559</u> WITHDRAWN per # <u>1622</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1560</u> WITHDRAWN per # <u>1622</u> Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1561</u> WITHDRAWN per # <u>1622</u> Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	<u>1562</u> Order granting motion for expedited hearing (Related Doc# <u>1523</u>)(document set for hearing: <u>1528</u> Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , Entered on 12/14/2020. (Ecker, C.)
12/14/2020	<u>1563</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Assink, Bryan)
12/14/2020	<u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1566</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint

	Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	<u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	<u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	<u>1570</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Annable, Zachery)
12/14/2020	<u>1571</u> Objection to (related document(s): <u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena file filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	<u>1572</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181.). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6) (Kathman, Jason)
12/14/2020	<u>1573</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Varshosaz, Artoush)
12/14/2020	<u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , (Annable, Zachery)
12/15/2020	

	<p><u>1576</u> Order granting motion for expedited hearing (Related Doc# <u>1567</u>)(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u>, Entered on 12/15/2020. (Okafor, M.)</p>
12/15/2020	<p><u>1577</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
12/15/2020	<p><u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit A-3 # <u>4</u> Exhibit B-1 # <u>5</u> Exhibit B-2 # <u>6</u> Exhibit B-3 # <u>7</u> Exhibit C (Part 1) # <u>8</u> Exhibit C (Part 2) # <u>9</u> Exhibit C (Part 3) # <u>10</u> Exhibit D (Part 1) # <u>11</u> Exhibit D (Part 2) # <u>12</u> Exhibit D (Part 3) # <u>13</u> Exhibit E # <u>14</u> Exhibit F # <u>15</u> Exhibit G) (Annable, Zachery)</p>
12/15/2020	<p><u>1579</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1574</u> List (witness/exhibit/generic)). (Annable, Zachery)</p>
12/15/2020	<p><u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
12/15/2020	<p><u>1581</u> INCORRECT ENTRY: See # <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)</p>
12/16/2020	<p><u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)</p>
12/16/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trlmagt] (26.00). Receipt number 28347173, amount \$ 26.00 (re: Doc# <u>1582</u>). (U.S. Treasury)</p>
12/16/2020	<p><u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>816</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)</p>

12/16/2020	<u>1584</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	<u>1585</u> Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	<u>1586</u> Request for transcript regarding a hearing held on 12/16/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/16/2020	<u>1587</u> Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	<u>1588</u> Certificate of service re: <i>Documents Served on December 10, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.), <u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , filed by Debtor Highland Capital Management, L.P., <u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), <u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	<u>1589</u> Certificate of service re: <i>Documents Served on or Before December 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1542</u> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation (<i>Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020

to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, 1546 Objection to (related document(s): 1439 Motion for leave (*James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business*) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., 1551 Objection to (related document(s): 1439 Motion for leave (*James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business*) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 1552 Application for compensation (*Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing (*Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., 1407 Certificate (generic)), 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86), 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation (*First Interim Application*) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation (*Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the*

	<p><i>Period from August 1, 2020 through November 30, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., <u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u> and for <u>1544</u> and for <u>1545</u> and for <u>1547</u> and for <u>1552</u> and for <u>1410</u> and for <u>1416</u> and for <u>1542</u>, filed by Debtor Highland Capital Management, L.P., <u>1554</u> Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1555</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
12/16/2020	<p>1596 Hearing held on 12/16/2020. (RE: related document(s)<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1597 Hearing held on 12/16/2020. (RE: related document(s)<u>1564</u> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1598 Hearing held on 12/16/2020. (RE: related document(s)<u>1565</u> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1599 Hearing held on 12/16/2020. (RE: related document(s)<u>1439</u> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/17/2020	<p><u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)</p>
12/17/2020	

	<u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28350580, amount \$ 26.00 (re: Doc# <u>1591</u>). (U.S. Treasury)
12/17/2020	<u>1592</u> Certificate of service re: <i>Documents Served on or Before December 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), <u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1570</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/17/2020	<u>1593</u> Certificate of service re: <i>Documents Served on December 15, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , filed by Debtor Highland Capital Management, L.P., <u>1576</u> Order granting motion for expedited hearing (Related Doc <u>1567</u>)(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , Entered on 12/15/2020. (Okafor, M.), <u>1577</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF

	<p>DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit A-3 # 4 Exhibit B-1 # 5 Exhibit B-2 # 6 Exhibit B-3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>1579</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1574</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., <u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/17/2020	<p><u>1594</u> Adversary case 20-03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount \$350. Nature(s) of suit: 13 (Recovery of money/property – 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)</p>
12/17/2020	<p>1600 Hearing held on 12/17/2020. (RE: related document(s)<u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/18/2020	<p><u>1595</u> Notice of Appearance and Request for Notice <i>with Certificate of Service</i> by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
12/18/2020	<p><u>1601</u> Request for transcript regarding a hearing held on 12/17/2020. The requested turn-around time is daily. (Edmond, Michael)</p>
12/18/2020	<p><u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u>, (Annable, Zachery)</p>
12/18/2020	<p><u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s)<u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, Entered on 12/18/2020 (Ecker, C.)</p>
12/18/2020	<p><u>1604</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (O'Neil, Holland)</p>

12/18/2020	<u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document # <u>1528</u>) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	<u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> . (Annable, Zachery)
12/18/2020	<u>1608</u> Certificate of service re: (<i>Supplemental Documents Served on October 28, 2020</i>) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms of Ballots # <u>3</u> Exhibit 1—B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1—C—Notice of Non-Voting Status # <u>5</u> Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/19/2020	<u>1609</u> Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber.

	<p>Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1600 Hearing held on 12/17/2020. (RE: related document(s) <u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman, J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1610</u> Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1596 Hearing held on 12/16/2020. (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s) <u>1564</u> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s) <u>1565</u> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s) <u>1439</u> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1611</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60.). (Hoffman, Juliana)</p>
12/21/2020	<p><u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # <u>1491</u>) Entered on 12/21/2020. (Okafor, M.)</p>
12/21/2020	<p><u>1613</u> Certificate of service re: <i>re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1581</u> INCORRECT ENTRY: See <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by</p>

	Creditor Committee Official Committee of Unsecured Creditors, <u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2020	<u>1614</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/22/2020	<u>1615</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$). (Hoffman, Juliana)
12/22/2020	<u>1616</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses:). (Hoffman, Juliana)
12/23/2020	<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s) <u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	<u>1618</u> Notice (<i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
12/23/2020	<u>1619</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1620</u> Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28366971, amount \$ 100.00 (re: Doc# <u>1620</u>). (U.S. Treasury)
12/23/2020	<u>1621</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1622</u> Withdrawal (<i>Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the</i>

	<i>Ordinary Course of Business and Related Notices of Subpoena</i>) filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>)). (Assink, Bryan)
12/23/2020	<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/23/2020	<u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
12/23/2020	<u>1627</u> Certificate of service re: <i>Documents Served on December 18, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u> , filed by Debtor Highland Capital Management, L.P., <u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s) <u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , Entered on 12/18/2020 (Ecker, C.), <u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document <u>1528</u>) Entered on 12/18/2020. (Okafor, M.), <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., <u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	<u>1628</u> Certificate of service re: <i>Order Denying Patrick Daughertys Motion to Lift the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document <u>1491</u>) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)
12/23/2020	<u>1629</u> Certificate of service re: <i>Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1614</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99</i>

	<i>Filed by Hunton Andrews Kurth LLP) filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
12/23/2020	<u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.). (Kass, Albert)
12/24/2020	<u>1631</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7) (Annable, Zachery)
12/24/2020	<u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1634</u> Support/supplemental document (<i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Annable, Zachery)
12/26/2020	<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i>). (Hoffman, Juliana)
12/28/2020	<u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	<u>1637</u> Certificate of service re: <i>(Supplemental) Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/28/2020	<p><u>1638</u> Certificate of service re: <i>Documents Served on December 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s)<u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), <u>1618</u> Notice (<i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1619</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1621</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/29/2020	<p><u>1640</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23.). (Hoffman, Juliana)</p>
12/30/2020	<p><u>1641</u> Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # <u>1620</u>) Entered on 12/30/2020. (Okafor, M.)</p>
12/30/2020	<p><u>1642</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)<u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward & Ass). (Annable, Zachery)</p>
12/30/2020	

	<u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
12/30/2020	<u>1644</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
12/30/2020	<u>1645</u> Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, <u>1644</u> Notice of appearance and request for notice). (Smith, Frances)
12/30/2020	<u>1646</u> Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1631</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1634</u> Support/supplemental document (<i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	<u>1647</u> Certificate of service re: 1) <i>Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors;</i> and 2) <i>Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew</i>

	<p><i>Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i>). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.). (Kass, Albert)</p>
12/30/2020	<p><u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)</p>
12/31/2020	<p><u>1649</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)</p>
12/31/2020	<p><u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (O'Neil, Holland)</p>
12/31/2020	<p><u>1651</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)<u>1531</u> Application for compensation (<i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Hayward). (Annable, Zachery)</p>
12/31/2020	<p><u>1652</u> Order granting motion to continue hearing on (related document # <u>1649</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>. Entered on 12/31/2020. (Okafor, M.)</p>
12/31/2020	<p><u>1653</u> Certificate of service re: (<i>Supplemental</i>) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE:</p>

	related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	<u>1654</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for J). (Pomerantz, Jeffrey)
01/04/2021	<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	<u>1656</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit L—Amended Schedule of Retained Causes of Action # <u>2</u> Exhibit M—Amended Form of Claimant Trust Agreement # <u>3</u> Exhibit N—Redline of Form of Claimant Trust Agreement # <u>4</u> Exhibit O—Amended Form of Litigation Trust Agreement # <u>5</u> Exhibit P—Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	<u>1657</u> Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] (26.00). Receipt number 28389049, amount \$ 26.00 (re: Doc# <u>1658</u>). (U.S. Treasury)
01/05/2021	<u>1659</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1545</u> Application for compensation (<i>Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	<u>1660</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	<u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	<u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	<u>1663</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee:

	\$206933.85, Expenses: \$546.52.). (Annable, Zachery)
01/05/2021	<u>1664</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30,</i>). (Annable, Zachery)
01/05/2021	<u>1665</u> Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s) <u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>)). (Annable, Zachery)
01/05/2021	<u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/05/2021	<u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	<u>1669</u> WITHDRAWN per # <u>1845</u> . Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	<u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A) (Rukavina, Davor)
01/05/2021	<u>1671</u> Trustee's Objection to <i>Fifth Amended Plan</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) (Lambert, Lisa)
01/05/2021	<u>1672</u> Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1669</u> Objection to confirmation of plan). (Smith, Frances)
01/05/2021	<u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	<u>1674</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization</i> filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1675</u> Joinder by <i>[Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental</i>

	<i>Objection to Plan Confirmation</i>] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Kane, John)
01/05/2021	<u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	<u>1677</u> Joinder by <i>NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	<u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	<u>1679</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)</i> filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1680</u> Motion to appear pro hac vice for Debra Dandenau. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Soderlund, Eric)
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28390902, amount \$ 100.00 (re: Doc# <u>1680</u>). (U.S. Treasury)
01/06/2021	<u>1681</u> Motion to appear pro hac vice for Douglas S. Draper. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28393061, amount \$ 100.00 (re: Doc# <u>1681</u>). (U.S. Treasury)
01/06/2021	<u>1682</u> Motion to appear pro hac vice for Leslie A. Collins. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28393082, amount \$ 100.00 (re: Doc# <u>1682</u>). (U.S. Treasury)
01/06/2021	<u>1683</u> Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28393123, amount \$ 100.00 (re: Doc# <u>1683</u>). (U.S. Treasury)
01/06/2021	<u>1684</u> Order granting third interim fee application for compensation (related document # <u>1296</u>) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.)

01/06/2021	<u>1685</u> Order granting third interim application for compensation (related document # <u>1244</u>) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1686</u> Order granting first interim application for compensation (related document # <u>1544</u>) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1687</u> Order granting third interim application for compensation (related document # <u>1547</u>) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	<u>1689</u> Motion to appear pro hac vice for Warren Horn. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28393995, amount \$ 100.00 (re: Doc# <u>1689</u>). (U.S. Treasury)
01/06/2021	<u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>1680</u>) Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1691</u> Order granting third and final application for compensation (related document <u>1483</u>) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	<u>1692</u> Adversary case 21-03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	<u>1693</u> Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1694</u> Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1695</u> Certificate of service re: <i>1) WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Foley & Lardner LLP's Witness and Exhibit List for Final Fee Application</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner

	LLP). (Kass, Albert)
01/06/2021	<u>1696</u> Certificate of service re: 1) <i>Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020</i> ; and 2) <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1656</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit L—Amended Schedule of Retained Causes of Action # 2 Exhibit M—Amended Form of Claimant Trust Agreement # 3 Exhibit N—Redline of Form of Claimant Trust Agreement # 4 Exhibit O—Amended Form of Litigation Trust Agreement # 5 Exhibit P—Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2021	<u>1697</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	<u>1698</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	<u>1699</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1700</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1701</u> Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document <u>1681</u>) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	<u>1702</u> Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1682</u>) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1703</u> Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1683</u>) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1704</u> Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1689</u>) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	

	<u>1705</u> Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	<u>1706</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	<u>1707</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	<u>1708</u> SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco – Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/08/2021	<u>1709</u> Notice (<i>Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1710</u> Debtor-in-possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1711</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	<u>1712</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1660</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	<u>1713</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document <u>1680</u>) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)

01/09/2021	<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
01/11/2021	<u>1715</u> Order granting application for compensation (related document # <u>1552</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	<u>1716</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	<u>1717</u> SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/11/2021	<u>1718</u> Amended Notice of hearing (<i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	<u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	<u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
01/11/2021	<u>1721</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. A – POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H – M) (Assink, Bryan)
01/11/2021	<u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global

	Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
01/11/2021	<u>1723</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Driver, Vickie)
01/11/2021	<u>1724</u> Certificate of service re: <i>Documents Served on January 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1684</u> Order granting third interim fee application for compensation (related document <u>1296</u>) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.), <u>1685</u> Order granting third interim application for compensation (related document <u>1244</u>) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.), <u>1686</u> Order granting first interim application for compensation (related document <u>1544</u>) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.), <u>1687</u> Order granting third interim application for compensation (related document <u>1547</u>) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.), <u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.), <u>1691</u> Order granting first and final application for compensation (related document <u>1483</u>) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.)). (Kass, Albert)
01/12/2021	<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	<u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit DD) (Annable, Zachery)
01/13/2021	<u>1727</u> Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1711</u> Notice (generic)). (Annable, Zachery)
01/13/2021	<u>1728</u> Order granting application for compensation (related document # <u>1545</u>) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	<u>1729</u> Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1476</u> Order approving disclosure statement). (Annable, Zachery)

01/13/2021	<u>1730</u> Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	<u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	<u>1732</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit EE) (Annable, Zachery)
01/13/2021	<u>1733</u> Expedited Motion to file document under seal./ <i>Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Driver, Vickie)
01/13/2021	<u>1734</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) / <i>HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	<u>1735</u> Support/supplemental document / <i>Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1734</u> Reply). (Driver, Vickie)
01/13/2021	<u>1736</u> Emergency Motion to file document under seal./(<i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/14/2021	<u>1737</u> Order granting motion to seal exhibits (related document # <u>1736</u>) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	<u>1738</u> SEALED document regarding: Exhibit A—Members Agreement per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1739</u> SEALED document regarding: Exhibit B—Articles of Incorporation per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1740</u> SEALED document regarding: Exhibit C—Offering Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1741</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

01/14/2021	<u>1742</u> Exhibit List (<i>Supplemental Exhibit List</i>) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N) (Assink, Bryan)
01/14/2021	<u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
01/14/2021	<u>1744</u> Declaration re: (<i>Supplemental Declaration of Marc D. Katz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). (Annable, Zachery)
01/14/2021	<u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/14/2021	<u>1752</u> INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	<u>1753</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1754</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1755</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1782</u> Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND

	EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	<u>1746</u> Order granting motion to pay (related document # <u>1590</u>) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	<u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	<u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/15/2021	<u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	<u>1750</u> Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly (Green, Shanette)
01/15/2021	<u>1751</u> Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> , <u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee)). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	<u>1756</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i>). (Assink, Bryan)
01/15/2021	<u>1757</u> Notice of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021 filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	<u>1758</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: �). (Hoffman, Juliana)
01/15/2021	<u>1759</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64.). (Hoffman, Juliana)
01/15/2021	<u>1760</u> Certificate of service re: (<i>Supplemental</i>) <i>Solicitation Materials Served on January 11, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
01/15/2021	<p><u>1761</u> Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing (<i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1762</u> Certificate of service re: <i>Documents Served on January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), <u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital</p>

	<p>Management, L.P. (RE: related document(s)<u>1722</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1763</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1728</u> Order granting application for compensation (related document <u>1545</u>) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)</p>
01/16/2021	<p><u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/17/2021	<p><u>1765</u> Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1753</u> Hearing held on 1/14/2021. (RE: related document(s)<u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), <u>1754</u> Hearing held on 1/14/2021. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), <u>1755</u> Hearing held on 1/14/2021. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy)</p>
01/17/2021	<p><u>1766</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1747</u> Order (RE: related document(s)<u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)</p>
01/18/2021	<p><u>1767</u> Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)</p>
01/18/2021	<p><u>1768</u> Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross & Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker & McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related</p>

	document(s) <u>1767</u> Verified statement pursuant to Rule 2019). (Smith, Frances)
01/18/2021	<u>1769</u> Declaration re: (<i>Report of Mediators</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). (Annable, Zachery)
01/19/2021	<u>1770</u> Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # <u>1733</u>) Entered on 1/19/2021. (Okafor, M.)
01/19/2021	<u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)
01/19/2021	<u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1774</u> Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	<u>1775</u> Certificate of service re: 1) <i>Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay</i> ; 2) <i>Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ; and 3) <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1746</u> Order granting motion to pay (related document <u>1590</u>) Entered on 1/15/2021. (Ecker, C.), <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	<u>1776</u> Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	<u>1777</u> Motion for leave (<i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C) (Annable, Zachery)

01/19/2021	<u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	<u>1779</u> Certificate of service re: <i>Documents Served on January 13, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1728</u> Order granting application for compensation (related document <u>1545</u>) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.), <u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1732</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., <u>1736</u> Emergency Motion to file document under seal.(<i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1780</u> Notice of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	<u>1781</u> Certificate of service re: Notice of Rule 30(b)(6) <i>Amended Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1776</u> Notice to take deposition). (Draper, Douglas)
01/20/2021	<u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave (<i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , (Annable, Zachery)
01/20/2021	<u>1784</u> WITHDRAWN PER # <u>1876</u> . Objection to (related document(s): <u>1719</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	<u>1785</u> Order granting motion for expedited hearing (Related Doc# <u>1778</u>)(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	<u>1786</u> Certificate of service re: <i>Documents Served on January 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1737</u> Order granting motion to seal exhibits (related document <u>1736</u>) Entered on 1/14/2021. (Ecker, C.), <u>1741</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>1744</u> Declaration re: (<i>Supplemental Declaration of Marc D. Katz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). filed by Debtor Highland

	Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1787</u> Certificate of service re: <i>Documents Served on or Before January 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1769</u> Declaration re: (<i>Report of Mediators</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). filed by Debtor Highland Capital Management, L.P., <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., <u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1777</u> Motion for leave (<i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2021	<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # <u>1625</u>) Entered on 1/21/2021. (Okafor, M.)
01/21/2021	<u>1789</u> Notice (<i>Notice of Service of Discovery on Highland Capital Management, L.P.</i>) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Document Requests) (Assink, Bryan)
01/21/2021	<u>1790</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena) (Assink, Bryan)
01/21/2021	<u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document

	<i>(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/22/2021	<u>1792</u> Witness and Exhibit List <i>United States' (IRS) Witness & Exhibit List</i> filed by Creditor United States (IRS) (RE: related document(s) <u>1668</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Adams, David)
01/22/2021	<u>1793</u> Witness and Exhibit List <i>for Confirmation Hearing</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	<u>1794</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit 5 # <u>2</u> Exhibit 6 # <u>3</u> Exhibit 6-1) (Draper, Douglas)
01/22/2021	<u>1795</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17) (Assink, Bryan)
01/22/2021	<u>1796</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE1 # <u>2</u> Exhibit SE2 # <u>3</u> Exhibit SE # <u>4</u> Exhibit SE4 # <u>5</u> Exhibit SE5 # <u>6</u> Exhibit SE6 # <u>7</u> Exhibit SE7 # <u>8</u> Exhibit SE8 # <u>9</u> Exhibit SE9 # <u>10</u> Exhibit SE10 # <u>11</u> Exhibit SE11 # <u>12</u> Exhibit SE12 # <u>13</u> Exhibit SE13 # <u>14</u> Exhibit SE14 # <u>15</u> Exhibit SE15 # <u>16</u> Exhibit SE16 # <u>17</u> Exhibit SE17 # <u>18</u> Exhibit SE18 # <u>19</u> Exhibit SE19 # <u>20</u> Exhibit SE20 # <u>21</u> Exhibit SE21 # <u>22</u> Exhibit SE22 # <u>23</u> Exhibit SE23 # <u>24</u> Exhibit SE24 # <u>25</u> Exhibit SE25 # <u>26</u> Exhibit SE26 # <u>27</u> Exhibit SE27 # <u>28</u> Exhibit SE28 # <u>29</u> Exhibit SE29 # <u>30</u> Exhibit SE30 # <u>31</u> Exhibit SE31 # <u>32</u> Exhibit SE33 # <u>33</u> Exhibit SE34 # <u>34</u> Exhibit SE35 # <u>35</u> Exhibit SE36 # <u>36</u> Exhibit SE37 # <u>37</u> Exhibit SE38 # <u>38</u> Exhibit SE39 # <u>39</u> Exhibit SE40) (Smith, Frances)
01/22/2021	<u>1797</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Kane, John)
01/22/2021	<u>1798</u> Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1796</u> List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	<u>1799</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE33) (Smith, Frances)
01/22/2021	

	<p><u>1800</u> Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1670</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit U # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1801</u> Adversary case 21-03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 13-Recovery of money/property – \$548 fraudulent transfer; 14-Recovery of money/property – other; 91-Declaratory judgment (Annable, Zachery) Modified text to update Natures of Suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1802</u> Adversary case 21-03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)</p>
01/22/2021	<p><u>1803</u> Adversary case 21-03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 03 13-Recovery of money/property – \$548 fraudulent transfer. 04 14-Recovery of money/property – other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add natures of suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1804</u> Adversary case 21-03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 03 13-Recovery of money/property – \$548 fraudulent transfer . 04 14-Recovery of money/property – other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1805</u> Adversary case 21-03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that</p>

	would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 0313–Recovery of money/property – §548 fraudulent transfer. 04 14–Recovery of money/property – other . 0591–Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1806</u> Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small–Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # <u>1</u> Proposed Order) (Vasek, Julian)
01/22/2021	<u>1807</u> INCORRECT EVENT: Attorney to refile. Notice (<i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small–Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1809</u> Support/supplemental document (<i>Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1810</u> Witness and Exhibit List [Exhibits 1–2 and 12–17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1797</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> CLO Exhibit 2 # <u>2</u> CLO Exhibit 12 # <u>3</u> CLO Exhibit 13 # <u>4</u> CLO Exhibit 14 # <u>5</u> CLO Exhibit 15 # <u>6</u> CLO Exhibit 16 # <u>7</u> CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor

	Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit Q # <u>2</u> Exhibit R # <u>3</u> Exhibit S # <u>4</u> Exhibit T # <u>5</u> Exhibit U # <u>6</u> Exhibit V # <u>7</u> Exhibit W # <u>8</u> Exhibit X # <u>9</u> Exhibit Y # <u>10</u> Exhibit Z # <u>11</u> Exhibit AA # <u>12</u> Exhibit BB # <u>13</u> Exhibit CC # <u>14</u> Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1812</u> SEALED document regarding: CLO Exhibit 3 – Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1813</u> SEALED document regarding: CLO Exhibit 4 – Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1815</u> SEALED document regarding: CLO Exhibit 5 – Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1816</u> SEALED document regarding: CLO Exhibit 6 – Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1817</u> SEALED document regarding: CLO Exhibit 7 – Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1818</u> SEALED document regarding: CLO Exhibit 8 – Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1819</u> SEALED document regarding: CLO Exhibit 9 – Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1820</u> SEALED document regarding: CLO Exhibit 10 – Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1821</u> SEALED document regarding: CLO Exhibit 11 – Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor-Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)

01/22/2021	<p><u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> List of 20 Largest Creditors C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> List of 20 Largest Creditors W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit XXX # <u>77</u> Exhibit YYY # <u>78</u> Exhibit ZZZ # <u>79</u> Exhibit AAAA # <u>80</u> Exhibit BBBB # <u>81</u> Exhibit CCCC # <u>82</u> Exhibit DDDD # <u>83</u> Exhibit EEEE # <u>84</u> Exhibit FFFF # <u>85</u> Exhibit GGGG # <u>86</u> Exhibit MMMM # <u>87</u> Exhibit NNNN # <u>88</u> Exhibit OOOO # <u>89</u> Exhibit PPPP # <u>90</u> Exhibit QQQQ # <u>91</u> Exhibit RRRR # <u>92</u> Exhibit SSSS # <u>93</u> Exhibit TTTT # <u>94</u> Exhibit UUUU # <u>95</u> Exhibit VVVV # <u>96</u> Exhibit WWWW # <u>97</u> Exhibit XXXX # <u>98</u> Exhibit YYYY # <u>99</u> Exhibit ZZZZ # <u>100</u> Exhibit AAAAA # <u>101</u> Exhibit BBBB # <u>102</u> Exhibit CCCC # <u>103</u> Exhibit DDDD # <u>104</u> Exhibit EEEEE # <u>105</u> Exhibit FFFF # <u>106</u> Exhibit GGGG # <u>107</u> Exhibit HHHH # <u>108</u> Exhibit IIII # <u>109</u> Exhibit JJJJ # <u>110</u> Exhibit KKKK # <u>111</u> Exhibit LLLL # <u>112</u> Exhibit MMMM # <u>113</u> Exhibit NNNN # <u>114</u> Exhibit OOOO # <u>115</u> Exhibit PPPP # <u>116</u> Exhibit QQQQ # <u>117</u> Exhibit RRRR # <u>118</u> Exhibit SSSS # <u>119</u> Exhibit TTTT # <u>120</u> Exhibit UUUU # <u>121</u> Exhibit VVVV # <u>122</u> Exhibit WWWW # <u>123</u> Exhibit XXXX # <u>124</u> Exhibit YYYYY # <u>125</u> Exhibit ZZZZ # <u>126</u> Exhibit AAAAAA # <u>127</u> Exhibit BBBB # <u>128</u> Exhibit CCCCC # <u>129</u> Exhibit DDDDD # <u>130</u> Exhibit EEEEE # <u>131</u> Exhibit FFFFF # <u>132</u> Exhibit GGGGG # <u>133</u> Exhibit HHHHH # <u>134</u> Exhibit IIII # <u>135</u> Exhibit JJJJ # <u>136</u> Exhibit KKKKK # <u>137</u> Exhibit LLLL # <u>138</u> Exhibit MMMM # <u>139</u> Exhibit NNNNN # <u>140</u> Exhibit OOOOO # <u>141</u> Exhibit PPPPP # <u>142</u> Exhibit QQQQQ # <u>143</u> Exhibit RRRRR # <u>144</u> Exhibit SSSSS # <u>145</u> Exhibit TTTTT # <u>146</u> Exhibit UUUUU # <u>147</u> Exhibit VVVVV # <u>148</u> Exhibit WWWW # <u>149</u> Exhibit XXXXX # <u>150</u> Exhibit YYYYY # <u>151</u> Exhibit ZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).</p>
01/22/2021	<p><u>1823</u> Response unopposed to (related document(s): <u>1828</u> Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1828</u> Response opposed to (related document(s): <u>1661</u> Objection to confirmation of plan filed by Interested Party James Dondero, <u>1662</u> Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, <u>1666</u> Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, <u>1667</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1668</u> Objection to confirmation of plan filed by Creditor United States (IRS), <u>1669</u> Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, <u>1670</u> Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>1671</u> Objection, <u>1673</u> Objection to</p>

	confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, <u>1676</u> Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., <u>1678</u> Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)
01/23/2021	<u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/23/2021	<u>1825</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u>)(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)
01/24/2021	<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
01/25/2021	<u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	<u>1829</u> Notice (<i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021</i>) filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)
01/25/2021	<u>1830</u> Order granting motion to continue hearing on (related document # <u>1827</u>) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1831</u> Order granting motion to file exhibits under seal (related document # <u>1806</u>) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1832</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1745</u> , (Draper, Douglas)
01/25/2021	<u>1833</u> Notice (<i>Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	<u>1834</u> Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1832</u> Notice of hearing). (Draper, Douglas)
01/25/2021	<u>1835</u> INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s): <u>1822</u>) (Fee Amount \$26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] (26.00). Receipt number 28441834, amount \$ 26.00 (re: Doc# <u>1835</u>). (U.S. Treasury)

01/25/2021	<u>1836</u> Motion to file document under seal. <i>Emergency Motion to File Competing Plan and Disclosure Statement Under Seal</i> Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
01/25/2021	<u>1837</u> Certificate of service re: 1) <i>Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Relief</i> ; and 2) <i>Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave (<i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , filed by Debtor Highland Capital Management, L.P., <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u>)(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	<u>1838</u> Notice (<i>Notice of Settlement</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Settlement Agreement) (Annable, Zachery)
01/26/2021	<u>1839</u> WITHDRAWN at # <u>1858</u> . Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	<u>1840</u> INCORRECT ENTRY: Attorney to refile. Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	<u>1841</u> Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1840</u> Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	<u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	<u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	<u>1844</u> Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1788</u> Order granting motion

	<p>to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document 1625) Entered on 1/21/2021. (Okafor, M.), 1791 Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), 1719 Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), 1749 Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)).). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/26/2021	<p>1850 Hearing held on 1/26/2021. (RE: related document(s)1777 Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)</p>
01/27/2021	<p>1845 Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1669 Objection to confirmation of plan). (Smith, Frances)</p>
01/27/2021	<p>1846 Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/27/2021	<p>1847 Notice (<i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable,</p>

	Zachery)
01/27/2021	<u>1848</u> Amended Motion to redact/restrict (related document(s): <u>1835</u>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit PPPP # <u>3</u> Exhibit QQQQ # <u>4</u> Exhibit RRRR # <u>5</u> Exhibit SSSS # <u>6</u> Exhibit TTTT # <u>7</u> Exhibit UUUU # <u>8</u> Exhibit VVVV # <u>9</u> Exhibit WWWW # <u>10</u> Exhibit XXXX # <u>11</u> Exhibit YYYYY # <u>12</u> Exhibit ZZZZ # <u>13</u> Exhibit DDDDDDD) (Annable, Zachery)
01/27/2021	<u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document # <u>1777</u>) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1851</u> Order granting motion to seal documents (related document # <u>1836</u>) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # <u>1848</u>) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)
01/27/2021	<u>1854</u> Certificate of service re: <i>Documents Served on January 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1807</u> INCORRECT EVENT: Attorney to refile. Notice (<i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1809</u> Support/supplemental document (<i>Redline of Fifth Amended Plan of Reorganization of</i>

	<p><i>Highland Capital Management, L.P. (as Modified)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBB # 102 Exhibit CCCC # 103 Exhibit DDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGG # 107 Exhibit HHHH # 108 Exhibit IIII # 109 Exhibit JJJJ # 110 Exhibit KKKK # 111 Exhibit LLLL # 112 Exhibit MMMM # 113 Exhibit NNNN # 114 Exhibit OOOO # 115 Exhibit PPPP # 116 Exhibit QQQQ # 117 Exhibit RRRR # 118 Exhibit SSSS # 119 Exhibit TTTT # 120 Exhibit UUUU # 121 Exhibit VVVV # 122 Exhibit WWWW # 123 Exhibit XXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBB # 128 Exhibit CCCC # 129 Exhibit DDDDD # 130 Exhibit EEEEE # 131 Exhibit FFFFF # 132 Exhibit GGGG # 133 Exhibit HHHHH # 134 Exhibit IIII # 135 Exhibit JJJJ # 136 Exhibit KKKK # 137 Exhibit LLLL # 138 Exhibit MMMM # 139 Exhibit NNNN # 140 Exhibit OOOO # 141 Exhibit PPPP # 142 Exhibit QQQQ # 143 Exhibit RRRR # 144 Exhibit SSSS # 145 Exhibit TTTT # 146 Exhibit UUUU # 147 Exhibit VVVV # 148 Exhibit WWWW # 149 Exhibit XXXX # 150 Exhibit YYYYY # 151 Exhibit ZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/28/2021	<u>1855</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)
01/28/2021	<u>1856</u> Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)
01/28/2021	<u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)).

	Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , (Annable, Zachery)
01/28/2021	<u>1858</u> <i>Withdrawal of Notice of Deposition</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1839</u> Notice to take deposition). (Hogewood, A.)
01/28/2021	<u>1859</u> SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1851</u> Order on motion to seal). (Rukavina, Davor)
01/28/2021	<u>1860</u> SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1851</u> Order on motion to seal). (Rukavina, Davor)
01/28/2021	<u>1861</u> Certificate of service re: <i>Documents Served on or Before January 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1829</u> Notice (<i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021</i>) filed by Other Professional Hayward & Associates PLLC. filed by Other Professional Hayward & Associates PLLC, <u>1830</u> Order granting motion to continue hearing on (related document <u>1827</u>) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.). (Kass, Albert)
01/29/2021	<u>1862</u> Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion <u>1777</u> . THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s) <u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)
01/29/2021	<u>1863</u> Amended Witness and Exhibit List of <i>Funds and Advisors</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1793</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 #

	<p><u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73 # <u>74</u> Exhibit 74 # <u>75</u> Exhibit 75 # <u>76</u> Exhibit 76 # <u>77</u> Exhibit 77 # <u>78</u> Exhibit 78 # <u>79</u> Exhibit 79 # <u>80</u> Exhibit 80 # <u>81</u> Exhibit 81 # <u>82</u> Exhibit 82) (Hogewood, A.)</p>
01/29/2021	<p><u>1864</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1865</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit AAAAAAA # <u>3</u> Exhibit BBBB BBB # <u>4</u> Exhibit CCCCCC # <u>5</u> Exhibit DDDDDDD # <u>6</u> Exhibit EEEEEEE) (Annable, Zachery)</p>
01/29/2021	<p><u>1867</u> Certificate of service re: 1) <i>Notice of Settlement</i>; 2) <i>Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020</i>; and 3) <i>Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1838</u> Notice (<i>Notice of Settlement</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/01/2021	<p>Adversary case 3:20–ap–3128 closed (Ecker, C.)</p>
02/01/2021	<p><u>1868</u> Supplemental Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s)<u>1472</u> Chapter 11 plan, <u>1808</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
02/01/2021	<p><u>1869</u> Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1864</u> Notice</p>

	(generic), <u>1865</u> Notice (generic)). (Annable, Zachery)
02/01/2021	<u>1870</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28458158, amount \$ 298.00 (re: Doc# <u>1870</u>). (U.S. Treasury)
02/01/2021	<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) (<i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	<u>1872</u> SEALED document regarding: Exhibit 76 per court order filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1831</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 77 # <u>2</u> Exhibit 78 # <u>3</u> Exhibit 79 # <u>4</u> Exhibit 80 # <u>5</u> Exhibit 81 # <u>6</u> Exhibit 82) (Vasek, Julian)
02/01/2021	<u>1873</u> Notice (<i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
02/01/2021	<u>1874</u> Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1795</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17 # <u>18</u> Dondero Ex. 18 # <u>19</u> Dondero Ex. 19 # <u>20</u> Dondero Ex. 20) (Assink, Bryan)
02/01/2021	<u>1875</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit DD # <u>4</u> Exhibit EE # <u>5</u> Exhibit FF) (Annable, Zachery)
02/01/2021	<u>1876</u> Withdrawal (<i>Notice of Withdrawal of Document</i>) filed by Interested Party James Dondero (RE: related document(s) <u>1784</u> Objection). (Assink, Bryan)
02/01/2021	<u>1877</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit DDDDDD # <u>3</u> Exhibit FFFFFFFF # <u>4</u> Exhibit GGGGGGGG # <u>5</u> Exhibit

	HHHHHHH # <u>6</u> Exhibit IIIIII # <u>7</u> Exhibit JJJJJJ # <u>8</u> Exhibit KKKKKKK # <u>9</u> Exhibit LLLLLLL # <u>10</u> Exhibit MMMMMMM # <u>11</u> Exhibit NNNNNNN # <u>12</u> Exhibit OOOOOOO # <u>13</u> Exhibit PPPPPPP # <u>14</u> Exhibit QQQQQQQ (Annable, Zachery)
02/01/2021	<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B) (Montgomery, Paige)
02/01/2021	<u>1879</u> Certificate of service re: <i>Documents Served on January 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1847</u> Notice (<i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document <u>1777</u>) Entered on 1/27/2021. (Okafor, M.), <u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc <u>1848</u>) Entered on 1/27/2021. (Okafor, M.). (Kass, Albert)
02/01/2021	<u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
02/01/2021	<u>1881</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47.). (Hoffman, Juliana)
02/02/2021	<u>1882</u> Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s) <u>1870</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)
02/02/2021	<u>1884</u> Request for transcript regarding a hearing held on 2/2/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/02/2021	<u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)
02/02/2021	<u>1886</u> Certificate of service re: <i>Documents Served on or Before January 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor

	Committee Official Committee of Unsecured Creditors, <u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	<u>1921</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all-day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)
02/02/2021	<u>1922</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)
02/03/2021	<u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/03/2021	<u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren)
02/03/2021	<u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal). (Draper, Douglas)
02/03/2021	<u>1890</u> Request for transcript regarding a hearing held on 2/3/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/03/2021	<u>1891</u> Certificate of service re: <i>Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	<u>1892</u> Certificate of service re: 1) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020</i> ; and 3) <i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1864</u> Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1865</u> Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020) filed by Other Professional

	<p>Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBB BBB # 4 Exhibit CCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1893</u> Certificate of service re: <i>Documents Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) (<i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1873</u> Notice (<i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1875</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., <u>1877</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIII # 7 Exhibit JJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPP # 14 Exhibit QQQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1902</u> Bench Ruling set (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan.) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u>, (Ellison, T.) (Entered: 02/05/2021)</p>
02/03/2021	<p><u>1915</u> Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBITS THAT APPEAR AT DOC. #1822, #1866 & #1877 & DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 & #17; & HIGHLAND CAPTIAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)</p>
02/03/2021	<p><u>1923</u> Hearing held on 2/3/2021. (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy</p>

	and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)
02/04/2021	<u>1894</u> Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)
02/04/2021	<u>1895</u> Amended Witness and Exhibit List (<i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit P P P P P P P # <u>2</u> Exhibit R R R R R R R # <u>3</u> Exhibit S S S S S S S # <u>4</u> Exhibit T T T T T T T # <u>5</u> Exhibit U U U U U U U) (Annable, Zachery)
02/04/2021	<u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
02/05/2021	<u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/05/2021	<u>1899</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-CV-00261-L (Lindsay). (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.), <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.)
02/05/2021	<u>1900</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	<u>1901</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).) (Blanco, J.)
02/05/2021	<u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1905</u> Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE

	<p>MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)</p>
02/05/2021	<p><u>1906</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
02/05/2021	<p><u>1907</u> Certificate of service re: <i>Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> Filed by the Dugaboy Investment Trust and Get Good Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
02/05/2021	<p><u>1908</u> Certificate of service re: <i>Documents Served on February 4, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1895</u> Amended Witness and Exhibit List (<i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit P P P P P P P # 2 Exhibit R R R R R R R # 3 Exhibit S S S S S S S # 4 Exhibit T T T T T T T # 5 Exhibit U U U U U U U) filed by Debtor Highland Capital Management, L.P., <u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/05/2021	<p><u>1909</u> Certificate of service re: (<i>Supplemental</i>) <i>Solicitation Materials Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
02/06/2021	

	<u>1910</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)
02/06/2021	<u>1911</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1901</u> Notice regarding the record for a bankruptcy appeal, <u>1910</u> Appellant designation). (Draper, Douglas)
02/08/2021	<u>1912</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>1910</u> Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)
02/08/2021	<u>1913</u> Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/08/2021	<u>1914</u> Motion for leave (<i>Motion for Status Conference</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
02/08/2021	<u>1924</u> Hearing held on 2/8/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)
02/09/2021	<u>1916</u> Notice of hearing (<i>Status Conference</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
02/09/2021	<u>1917</u> Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1902</u> Bench Ruling set (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u> , (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)
02/09/2021	<u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	<u>1919</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u>

	Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/09/2021	<u>1920</u> Certificate of service re: <i>1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), <u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)
02/09/2021	<u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)
02/10/2021	<u>1926</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)
02/10/2021	<u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	<u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation). (Draper, Douglas)
02/11/2021	<u>1929</u> Order denying motion for status conference (related document # <u>1914</u>) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	<u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)
02/12/2021	<u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # <u>1624</u>) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	<u>1932</u> Certificate of service re: <i>1) Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1919</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i>) filed by Debtor

	Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28493529, amount \$ 26.00 (re: Doc# <u>1930</u>). (U.S. Treasury)
02/16/2021	<u>1933</u> Agreed Motion to continue hearing on (related documents <u>1826</u> Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	<u>1934</u> Certificate of service re: <i>Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	<u>1935</u> Adversary case 21-03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Adversary Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief – other). (Annable, Zachery)
02/17/2021	<u>1936</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	<u>1937</u> Order granting motion to continue hearing on (related document <u>1933</u>) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	<u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i>). (Annable, Zachery)
02/18/2021	<u>1939</u> Certificate of service re: <i>Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document <u>1624</u>) Entered on 2/12/2021. (Okafor, M.). (Kass, Albert)
02/19/2021	

	<u>1940</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	<u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	<u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	<u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	<u>1945</u> Certificate of service re: <i>Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i>). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/24/2021	<u>1946</u> Clerk's correspondence requesting from attorney for appellant. (RE: related document(s) <u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , (Montgomery, Paige)
02/24/2021	<u>1948</u> Notice (<i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	<u>1949</u> Debtor-in-possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	<u>1950</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE:

	related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	<u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds – \$43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds – \$3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	<u>1952</u> Certificate of service re: <i>Documents Served on February 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). filed by Debtor Highland Capital Management, L.P., <u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland Capital Management, L.P., <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), <u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	<u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # <u>1643</u>) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	<u>1954</u> Certificate of service re: <i>1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> Notice (<i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)

02/28/2021	<u>1956</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document <u>1643</u>) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	<u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # <u>1</u> Exhibit A)(Rukavina, Davor)
03/01/2021	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal,ntcapl] (298.00). Receipt number 28523950, amount \$ 298.00 (re: Doc# <u>1957</u>). (U.S. Treasury)
03/01/2021	<u>1958</u> Motion for expedited hearing(related documents <u>1955</u> Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
03/01/2021	<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] (26.00). Receipt number 28524853, amount \$ 26.00 (re: Doc# <u>1959</u>). (U.S. Treasury)
03/01/2021	<u>1960</u> Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # <u>1745</u>) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	<u>1961</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,). (Hoffman, Juliana)
03/02/2021	<u>1962</u> Certificate of service re: <i>Appellees Amended Supplemental Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	<u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	<u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan).

	Appellant Designation due by 03/17/2021. (Hogewood, A.)
03/03/2021	<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28532838, amount \$ 298.00 (re: Doc# <u>1966</u>). (U.S. Treasury)
03/03/2021	<u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	<u>1969</u> Objection to (related document(s): <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
03/04/2021	<u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # <u>1</u> Exhibit)(Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28537086, amount \$ 298.00 (re: Doc# <u>1970</u>). (U.S. Treasury)
03/04/2021	<u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit Opinion) (Draper, Douglas)
03/04/2021	<u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas)
03/04/2021	<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28537308, amount \$ 298.00 (re: Doc# <u>1972</u>). (U.S. Treasury)
03/04/2021	<u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	<u>1976</u> Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35.). (Hesse, Gregory)

03/05/2021	<u>1977</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20–CV–03390–X (RE: related document(s) <u>1347</u> Notice of appeal) (Blanco, J.)
03/05/2021	<u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20–CV–03390–X (RE: related document(s) <u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	<u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)
03/05/2021	<u>1980</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297). (Hoffman, Juliana)
03/07/2021	<u>1981</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)
03/08/2021	<u>1986</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1987</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1988</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	<u>1990</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)

03/08/2021	<u>1991</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	<u>1992</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , (Annable, Zachery)
03/08/2021	<u>1995</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	<u>1996</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	<u>1997</u> Certificate of service re: <i>Documents Served on or Before March 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/08/2021	<u>1998</u> Certificate of service re: 1) [<i>Customized for Rule 3001(e)(1) or 3001(e)(3)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3)</i> ; and 2) [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement

	<p>3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)</p>
03/08/2021	<p><u>1999</u> Certificate of service re: 1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, <u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, <u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)</p>
03/09/2021	<p><u>2000</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00538-N. (RE: related document(s)<u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2001</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00539-N. (RE: related document(s)<u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2002</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00546-L. (RE: related document(s)<u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)</p>
03/09/2021	

	<u>2003</u> Application for compensation (<i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2006</u> Certificate of service re: <i>Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	<u>2007</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	<u>2008</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00550-L. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	<u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga . (Annable, Zachery)
03/10/2021	<u>2011</u> Certificate of service re: <i>Order Approving Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	<u>2012</u> BNC certificate of mailing. (RE: related document(s) <u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u>

	Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	2013 BNC certificate of mailing. (RE: related document(s) 1993 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) 1972 Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) 1943 Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	2014 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) 1972 Notice of appeal). (Draper, Douglas)
03/11/2021	2015 Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 1957 Notice of appeal). (Rukavina, Davor)
03/11/2021	2016 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 1957 Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	2017 Certificate of service re: <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 1994 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s) 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 1967 and for 1973 and for 1955 and for 1971 , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	2018 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20-CV-03408-G (RE: related document(s) 1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) 1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2019 Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) 1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) 1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2021 Notice of transmittal 20-CV-03408-G 13 SEALED DOCUMENTS (RE: related document(s) 2019 Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) 1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) 1273 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	

	<p><u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).</p>
03/12/2021	<p><u>2023</u> Joinder by <i>the Official Committee of Unsecured Creditors</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2022</u> Response). (Hoffman, Juliana)</p>
03/12/2021	<p><u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)</p>
03/12/2021	<p><u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)</p>
03/12/2021	<p><u>2026</u> Certificate of service re: <i>1) First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020; 2) Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 3) Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2003</u> Application for compensation (<i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)</p>
03/12/2021	<p><u>2027</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1948</u> <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1954</u> Certificate of service re: <i>1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures</i></p>

	<p><i>Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 1948 Notice (<i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
03/12/2021	<p>2028 Certificate of service re: <i>1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 Through January 31, 2021; and 2) Notice of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2007 Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2009 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/15/2021	<p>2030 Debtor-in-possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
03/15/2021	<p>2032 Notice of transmittal 3:20-CV-03390-X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s)1978 Notice of docketing COMPLETE record on appeal. 3:20-CV-03390-X (RE: related document(s)1347 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)</p>
03/16/2021	<p>2033 Motion for Certification to Court of Appeals (<i>Joint Motion</i>) Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Rukavina, Davor)</p>
03/16/2021	<p>2034 Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # 2033) Entered on 3/16/2021. (Okafor, M.)</p>
03/16/2021	<p>2035 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1944 Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)</p>

03/16/2021	<u>2036</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	<u>2037</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	<u>2038</u> Second Notice of Additional Services to be Provided by Deloitte Tax LLP filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	<u>2039</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	<u>2040</u> Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). (Hogewood, A.)
03/17/2021	<u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	<u>2042</u> Certificate of service re: 1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., <u>2023</u> Joinder by the Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2022</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/17/2021	<u>2043</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M) (Vasek, Julian)
03/17/2021	

	<u>2044</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2045</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2046</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2047</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2044</u>). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2045</u>). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2046</u>). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2047</u>). (U.S. Treasury)
03/17/2021	<u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
03/18/2021	<u>2052</u> Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20-CV-03408-G (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	<u>2053</u> Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s) <u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	<u>2054</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	<u>2055</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). (Draper, Douglas)
03/18/2021	

	<u>2056</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal). (Taylor, Clay)
03/18/2021	<u>2057</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal, <u>2056</u> Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	<u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33) (Annable, Zachery)
03/18/2021	<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	<u>2060</u> Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	<u>2061</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	<u>2062</u> Support/supplemental document <i>Appendix to Motion to Recuse</i> filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/19/2021	<u>2063</u> Request for transcript regarding a hearing held on 3/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
03/19/2021	<u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	<u>2065</u> Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents

	<u>1943</u> Order confirming chapter 11 plan)). (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	<u>2066</u> Witness List (<i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	<u>2067</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2068</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2069</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2070</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending

	<p>appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)</p>
03/19/2021	<p><u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).</p>
03/19/2021	<p><u>2072</u> Certificate of service re: <i>1) Second Notice of Additional Services to be Provided by Deloitte Tax LLP; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2038</u> <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2039</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/19/2021	<p><u>2077</u> Hearing set – follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>. (Ellison, T.) (Entered: 03/22/2021)</p>
03/20/2021	<p><u>2073</u> Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2067</u> Hearing held on 3/19/2021. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas</p>

	<p>bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2068 Hearing held on 3/19/2021. (RE: related document(s)<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2069 Hearing held on 3/19/2021. (RE: related document(s)<u>1971</u> Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s)<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)</p>
03/22/2021	<p><u>2074</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)<u>2041</u> Appellant designation). (Hogewood, A.)</p>
03/22/2021	<p><u>2075</u> Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)</p>
03/22/2021	<p><u>2076</u> Order granting motion to continue hearing on (related document # <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.)</p>
03/22/2021	<p><u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit</p>

	Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , (Annable, Zachery)
03/22/2021	<u>2079</u> Declaration re: (<i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). (Annable, Zachery)
03/22/2021	<u>2080</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>2016</u> Appellant designation). (Rukavina, Davor)
03/23/2021	<u>2081</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	<u>2082</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Order) (Draper, Douglas)
03/23/2021	<u>2083</u> Order denying motion to recuse (related document # <u>2060</u>) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # <u>1955</u>), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # <u>1967</u>), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document # <u>1971</u>), denying Joinder by filed by Interested Party James Dondero (related document # <u>1973</u>). Hearing to be held on 3/24/2021 at 09:30 AM at https://us-courts.webex.com/meet/jernigan for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>1878</u> , (Montgomery, Paige)
03/23/2021	<u>2086</u> Support/supplemental document (<i>Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 2077 Hearing set/continued, <u>2084</u> Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	<u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related

	documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	<u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 34) (Annable, Zachery)
03/23/2021	<u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	<u>2090</u> Certificate of service re: <i>Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/23/2021	<u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).
03/24/2021	<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)

03/24/2021	<u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)
03/24/2021	<u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2104</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2105</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2106</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2107</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2108</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party

	CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2109</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2110</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2111</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2112</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2113</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2114</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2115</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2116</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,7). (Hoffman, Juliana)
03/24/2021	<u>2117</u> Certificate of service re: <i>Documents Served on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2066</u> Witness List (<i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., <u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2092</u>).

	(U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2093</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2094</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2096</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2097</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2098</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2099</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2100</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2101</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2102</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2103</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2104</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2105</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2106</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2107</u>). (U.S. Treasury)

03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2108</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2109</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2110</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2111</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2112</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2113</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2114</u>). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2115</u>). (U.S. Treasury)
03/25/2021	<u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2120</u> INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	<u>2121</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u>), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u>), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u>), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u>). Hearing to be held on 3/24/2021 at 09:30 AM at https://us-courts.webex.com/meet/jernigan for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)

03/26/2021	<u>2122</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana)
03/26/2021	<u>2123</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga . (Annable, Zachery)
03/26/2021	<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)
03/26/2021	<u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i> ; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> ; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>1878</u> , Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: (<i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/26/2021	<u>2126</u> Certificate of service re: <i>Documents Served on March 23, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u>), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u>), denying Joinder by Joinder to Motions for Stay Pending Appeal of the

	<p>Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document 1971), denying Joinder by filed by Interested Party James Dondero (related document 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us-courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.), 2085 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 2087 Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., 2088 Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2058 List (witness/exhibit/generic), 2066 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., 2089 Supplemental Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
03/26/2021	<p>2127 BNC certificate of mailing – PDF document. (RE: related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)</p>
03/29/2021	<p>2128 Motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
03/29/2021	<p>2129 Motion to file document under seal. (<i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery)</p>
03/29/2021	<p>2130 Certificate of service re: <i>Supplemental Order on Motions for Stay Pending Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)</p>

03/29/2021	<u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i>)). (Annable, Zachery)
03/29/2021	<u>2132</u> Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal). (Sosland, Martin)
03/29/2021	<u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	<u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	<u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	<u>2136</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2137</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2138</u> INCORRECT EVENT: Attorney to refile. Notice (<i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	<u>2139</u> Withdrawal of claim(s): (<i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i>) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/31/2021	<u>2140</u> Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # <u>2128</u>) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	<u>2141</u> Certificate of service re: 1) <i>Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC</i> ; and 2) <i>Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	<u>2142</u> Adversary case 21-03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount \$350. Nature(s) of suit: 72 (Injunctive relief – other). (Sosland, Martin)
03/31/2021	<u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)

03/31/2021	<p><u>2144</u> Certificate of service re: 1) <i>Amended Notice of Status Conference</i>; and 2) <i>Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2123</u> <i>Amended Notice of hearing (Amended Notice of Status Conference)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1826</u> <i>Application for administrative expenses</i> Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P., <u>2124</u> <i>Application for compensation Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/31/2021	<p><u>2145</u> Certificate of service re: <i>Documents Served on March 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2129</u> <i>Motion to file document under seal. (Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2129</u> <i>Motion to file document under seal. (Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)</i>). filed by Debtor Highland Capital Management, L.P., <u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., <u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/01/2021	<p><u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # <u>2129</u>) Entered on 4/1/2021. (Okafor, M.)</p>
04/01/2021	Adversary case 3:20-ap-3105 closed (Ecker, C.)
04/01/2021	<p><u>2147</u> Response unopposed to (related document(s): <u>2128</u> <i>Motion for leave to file Adversary Complaint and Other Materials Under Seal</i> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
04/01/2021	<p><u>2148</u> SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2146</u> Order on motion to seal). (Annable, Zachery)</p>
04/01/2021	<p><u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s)<u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # <u>1</u> Exhibit)(Lang, Michael)</p>
04/01/2021	<p>Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal.ntcapl] (298.00). Receipt number 28609730, amount \$ 298.00 (re: Doc# <u>2149</u>). (U.S. Treasury)</p>

04/02/2021	<u>2150</u> Certificate of service re: <i>re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2138</u> INCORRECT EVENT: Attorney to refile. Notice (<i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	<u>2151</u> Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28612120, amount \$ 100.00 (re: Doc# <u>2151</u>). (U.S. Treasury)
04/02/2021	<u>2152</u> Motion to appear pro hac vice for Kathryn K. George. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28612132, amount \$ 100.00 (re: Doc# <u>2152</u>). (U.S. Treasury)
04/02/2021	<u>2153</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Attachments: # <u>1</u> Ex. 1 # <u>2</u> Ex. 2 # <u>3</u> Ex. 3 # <u>4</u> Ex. 4 # <u>5</u> Ex. 5 # <u>6</u> Ex. 6 # <u>7</u> Ex. 7) (Assink, Bryan)
04/02/2021	<u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	<u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).
04/02/2021	<u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). (Annable, Zachery)
04/02/2021	<u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). (Annable, Zachery)
04/03/2021	<u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Montgomery, Paige)
04/05/2021	<u>2159</u> Amended Witness and Exhibit List for April 5, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Montgomery, Paige)
04/05/2021	<u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured

	Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2162</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i>) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	<u>2163</u> Certificate of service re: 1) <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ; and 2) <i>Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2139</u> Withdrawal of claim(s): (<i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	<u>2164</u> Hearing held on 4/5/2021. (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # <u>2151</u>) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # <u>2152</u>) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2167</u> Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s) <u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	<u>2168</u> Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>2081</u> Clerk's correspondence). (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
04/06/2021	<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal). (Lang, Michael)
04/06/2021	<u>2170</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> ; and 2) <i>Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)

	<p>Filed by Debtor Highland Capital Management, L.P. (related document <u>2129</u>) Entered on 4/1/2021. (Okafor, M.), <u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/07/2021	<p><u>2171</u> Request for transcript regarding a hearing held on 4/5/2021. The requested turn-around time is hourly. (Edmond, Michael)</p>
04/07/2021	<p><u>2172</u> Certificate of service re: <i>Documents Served on or Before April 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James D. Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., <u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1970</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1966</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
04/07/2021	<p><u>2173</u> Certificate of service re: <i>Documents Served on April 5, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2159</u> Amended Witness and Exhibit List for April 5, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2158</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2162</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/08/2021	<p><u>2174</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80.). (Hesse, Gregory)</p>
04/08/2021	<p><u>2175</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54.). (Hesse, Gregory)</p>

04/08/2021	<p><u>2176</u> Transcript regarding Hearing Held 04/05/2021 (75 pages) RE: Motion to Compel (1878). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2164 Hearing held on 4/5/2021. (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.)). Transcript to be made available to the public on 07/7/2021. (Rehling, Kathy)</p>
04/08/2021	<p><u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document # <u>1878</u>) Entered on 4/8/2021. (Okafor, M.)</p>
04/08/2021	<p><u>2178</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document <u>2151</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/08/2021	<p><u>2179</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document <u>2152</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/09/2021	<p><u>2181</u> Certificate of service re: (<i>Supplemental Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i>; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i>; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William</p>

	<p>Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: (<i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
04/09/2021	<p><u>2182</u> Application for compensation (<i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)</p>
04/09/2021	<p><u>2183</u> Motion to withdraw as attorney (Brian P. Shaw) Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Jennifer G. Terry, Joshua Terry (Attachments: # <u>1</u> Proposed Order) (Shaw, Brian)</p>
04/09/2021	<p><u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)<u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)</p>
04/11/2021	<p><u>2185</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)<u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 04/11/2021. (Admin.)</p>
04/12/2021	<p><u>2186</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Jennifer G. Terry, Joshua Terry. (Prostok, Jeff)</p>
04/13/2021	<p><u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s)<u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)</p>
04/13/2021	<p><u>2189</u> Order granting motion to withdraw as attorney (attorney Brian Patrick Shaw terminated). (related document # <u>2183</u>) Entered on 4/13/2021. (Ecker, C.)</p>
04/13/2021	<p><u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-00261-L (Lindsay) (RE: related document(s)<u>1870</u> Notice of appeal. Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)</p>
04/13/2021	<p><u>2191</u> Notice of Transmittal 3:21-CV-00261-L (Lindsay) TRANSMITTED 5 SEALED DOCUMENTS (RE: related document(s)<u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-00261-L (Lindsay) (RE: related document(s)<u>1870</u> Notice of appeal.</p>

	Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)). (Blanco, J.)
04/13/2021	<u>2192</u> Certificate of service re: 1) <i>Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> ; 2) <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2020 Through December 31, 2020</i> ; and 3) <i>Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document <u>1878</u>) Entered on 4/8/2021. (Okafor, M.), <u>2182</u> Application for compensation (<i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)). (Kass, Albert)
04/13/2021	<u>2193</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2003</u> Application for compensation (<i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i>) for Deloitte Ta). (Annable, Zachery)
04/13/2021	<u>2194</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, O). (Annable, Zachery)
04/13/2021	<u>2195</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Deloitte Tax L). (Annable, Zachery)
04/14/2021	<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/14/2021	<u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). (Annable, Zachery)
04/14/2021	<u>2198</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (Annable, Zachery)

04/15/2021	<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/15/2021	<u>2200</u> Declaration re: (<i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
04/15/2021	<u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2199</u> , (Annable, Zachery)
04/15/2021	<u>2203</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
04/15/2021	<u>2204</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2169</u> Amended Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Attachments: # <u>1</u> Exhibit)) (Whitaker, Sheniqua)
04/15/2021	<u>2205</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Lang, Michael)
04/15/2021	<u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021. (Lang, Michael)
04/15/2021	<u>2207</u> Certificate of service re: (<i>Supplemental</i>) <i>Debtor's Third Omnibus Objection to Certain No Liability Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James

	Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/15/2021	<u>2208</u> INCORRECT EVENT: Attorney to refile. Notice of Transfer of Claim Other Than for Security filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/15/2021	<u>2209</u> INCORRECT EVENT: Attorney to refile. Notice of Transfer of Claim Other Than for Security filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/16/2021	<u>2210</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021.) Responses due by 4/20/2021. (Blanco, J.)
04/16/2021	<u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff)
04/16/2021	<u>2212</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management L.P. (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2211</u>). (U.S. Treasury)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2212</u>). (U.S. Treasury)
04/16/2021	<u>2213</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2206</u> Appellant designation). (Lang, Michael)
04/16/2021	<u>2214</u> Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
04/16/2021	<u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/16/2021	

	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] (26.00). Receipt number 28646419, amount \$ 26.00 (re: Doc# <u>2215</u>). (U.S. Treasury)</p>
04/16/2021	<p><u>2216</u> Certificate of service re: 1) <i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>; 2) <i>Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>; and 3) <i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). filed by Debtor Highland Capital Management, L.P., <u>2198</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/18/2021	<p><u>2217</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00879-K. (RE: related document(s)<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal).) (Whitaker, Sheniqua)</p>
04/19/2021	<p><u>2218</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 t). (Pomerantz, Jeffrey)</p>
04/19/2021	<p><u>2219</u> Certificate of service re: <i>Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(1) or 3001(e)(3) [Re Docket No. 1959]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC). (Kass, Albert)</p>
04/19/2021	<p><u>2220</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>; 2) <i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i>; and 3) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2200</u> Declaration re: (<i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch</i></p>

	<p><i>and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2199</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/19/2021	<p><u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. (Hoffman, Juliana)</p>
04/20/2021	<p><u>2222</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)</p>
04/20/2021	<p><u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. (Pomerantz, Jeffrey)</p>
04/20/2021	<p><u>2224</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Interested Party CPCPM, LLC. (Smith, Frances)</p>
04/20/2021	<p><u>2225</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCPM, LLC. (Smith, Frances) Filed by Interested Party CPCPM, LLC (related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roerber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Smith, Frances)</p>
04/20/2021	<p><u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim) Filed by Interested Party CPCPM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)</p>
04/20/2021	<p><u>2227</u> Motion for expedited hearing(related documents <u>2226</u> Motion to continue) Filed by Interested Party CPCPM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)</p>
04/20/2021	<p><u>2228</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2214</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October</i></p>

	<p>16, 2019 to February 28, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/20/2021	<p><u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
04/20/2021	<p><u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u>. (Annable, Zachery)</p>
04/21/2021	<p><u>2231</u> Certificate of service re: Notice of Appearance, Preliminary Response to Debtors Third Omnibus Objection to Certain No Liability Claims, Motion to Continue Hearing on Debtors Third Omnibus Objection to Certain Liability Claims, and Motion for Setting and Request for Expedited Hearing filed by Interested Party CPCM, LLC (RE: related document(s)<u>2224</u> Notice of appearance and request for notice, <u>2225</u> Response to objection to claim, <u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim), <u>2227</u> Motion for expedited hearing(related documents <u>2226</u> Motion to continue)). (Smith, Frances)</p>
04/21/2021	<p><u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2229</u>. (Annable, Zachery)</p>
04/21/2021	<p><u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. (Hoffman, Juliana)</p>
04/22/2021	<p><u>2234</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga. (Annable, Zachery)</p>
04/23/2021	<p><u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified</p>

	on 4/26/2021 (Ecker, C.).
04/23/2021	<u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2237</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2239</u> Certificate of service re: <i>Documents Served on April 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. filed by Debtor Highland Capital Management, L.P., <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/23/2021	<u>2240</u> Certificate of service re: <i>1) Notice of Hearing; and 2) Fifth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through and Including February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2229</u> , filed by Debtor Highland Capital Management, L.P., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48.</i> Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/23/2021	<u>2241</u> INCORRECT EVENT: See # <u>2248</u> for correction. Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE:

	related document(s) <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Attachments: # <u>1</u> Exhibit 1_Complaint # <u>2</u> Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2242</u> DUPLICATE ENTRY: See # <u>2241</u> . Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Attachments: # <u>1</u> Exhibit 1_Complaint # <u>2</u> Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.) (Entered: 04/27/2021)
04/24/2021	<u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
04/26/2021	<u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
04/26/2021	<u>2245</u> Certificate of service re: Notice of Status Conference Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2234</u> Notice of hearing (Notice of Status Conference) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga . filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/26/2021	<u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u> , (Hoffman, Juliana)
04/27/2021	<u>2247</u> Motion for order to show cause (Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating

	<i>Two Court Orders</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/27/2021	<u>2249</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/27/2021	<u>2250</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$). (Hoffman, Juliana)
04/27/2021	<u>2251</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00.). (Hoffman, Juliana)
04/27/2021	<u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/28/2021	<u>2253</u> Certificate of service re: 1) <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; 2) <i>Debtor's Memorandum of Law in Support of Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; and 3) <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2237</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2021	<u>2254</u> Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by

	Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2248</u> , (Sbaiti, Mazin)
04/29/2021	<u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document # <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)
04/29/2021	<u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021. (Draper, Douglas)
04/29/2021	<u>2257</u> Certificate of service re: filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3.). (Attachments: # <u>1</u> Exhibit – Matrix) (Draper, Douglas)
04/29/2021	<u>2258</u> Certificate of service re: <i>1) Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2021	<u>2259</u> Certificate of service re: <i>1) Notice of Hearing on the Fourth and Fifth Interim Applications for Compensation and Reimbursement of Expenses; and 2) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

04/30/2021	<u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. (Hoffman, Juliana)
04/30/2021	<u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	<u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2261</u>). (U.S. Treasury)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2262</u>). (U.S. Treasury)
04/30/2021	<u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (156.00). Receipt number 28682148, amount \$ 156.00 (re: Doc# <u>2263</u>). (U.S. Treasury)
04/30/2021	<u>2264</u> Certificate of service re: <i>(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	<u>2265</u> Certificate of service re: <i>Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)). (Kass, Albert)
05/03/2021	<u>2266</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Sahan Abayarathna To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
05/03/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (26.00). Receipt number 28684014, amount \$ 26.00 (re: Doc# <u>2266</u>). (U.S. Treasury)

05/03/2021	<p><u>2267</u> Status conference held on 5/3/2021., Trial set (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.) Trial date set for 9/21/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this. (Ellison, T.)</p>
05/03/2021	<p><u>2269</u> INCORRECT ENTRY: DUPLICATE ENTRY. Hearing held on 5/3/2021. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this.) (Edmond, Michael) Modified on 5/4/2021 (Tello, Chris). (Entered: 05/04/2021)</p>
05/04/2021	<p><u>2268</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P.)<u>Limited Preliminary Objection</u> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
05/04/2021	<p><u>2270</u> PDF with attached Audio File. Court Date & Time [05/03/2021 01:33:52 PM]. File Size [3670 KB]. Run Time [00:15:40]. (admin).</p>
05/04/2021	<p><u>2271</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2133</u> Objection to claim). (Annable, Zachery)</p>
05/04/2021	<p><u>2272</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2182</u> Application for compensation (<i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i>) for Deloitte). (Annable, Zachery)</p>
05/04/2021	<p><u>2296</u> Order from circuit court re: appeal on appellate case number: 21-10449, (RE: related document(s)<u>1957</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). IT IS ORDERED that the</p>

	motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED. Civil Case 3:21-cv-00538-N. Entered on 5/4/2021 (Whitaker, Sheniqua) (Entered: 05/12/2021)
05/05/2021	<u>2273</u> Debtor-in-possession quarterly operating report (post-confirmation) for filing period January 1, 2021 to March 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2275</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
05/05/2021	<u>2276</u> Certificate of service re: <i>Seventeenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2021 to and Including March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc. for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00.</i> Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/06/2021	<u>2277</u> Notice (<i>Notice of Cancellation of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). (Annable, Zachery)
05/06/2021	<u>2278</u> Response opposed to (related document(s): <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
05/06/2021	<u>2279</u> Brief in opposition filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>), <u>2278</u> Response). (Drawhorn, Lauren)
05/06/2021	<u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Appendix) (Drawhorn, Lauren)
05/07/2021	<u>2281</u> Notice of Appearance and Request for Notice by Brant C. Martin filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Martin, Brant)
05/07/2021	<u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/07/2021	

	<u>2283</u> Application for compensation (<i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC (Annable, Zachery)
05/07/2021	<u>2284</u> Order granting motion to continue hearing on (related document # <u>2282</u>) (related documents Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Hearing to be held on 6/1/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for 2229, Entered on 5/7/2021. (Okafor, M.)</i>)
05/10/2021	<u>2285</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Clubok, Andrew)
05/10/2021	<u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2229</u> , (Annable, Zachery)
05/10/2021	<u>2287</u> Certificate of service re: 1) <i>Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ; and 2) <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2275</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2021	<u>2288</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0.). (Hoffman, Juliana)
05/11/2021	<u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/11/2021	<u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
05/11/2021	<u>2291</u> Notice <i>Notice of Return of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust.). (Draper, Douglas)
05/11/2021	<u>2292</u> Certificate of service re: <i>Notice of Cancellation of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2277</u> Notice (<i>Notice of Cancellation of Status Conference</i>) filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2021	<u>2293</u> Supplemental Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P.)with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
05/12/2021	<u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/12/2021	<u>2295</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/12/2021	<u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us-courts.webex.com/meet/jerniga for <u>2199</u> , (Annable, Zachery)
05/12/2021	<u>2298</u> Certificate of service re: <i>1) Motion to Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 Through November 30, 2020; and 3) Order Continuing Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2283</u> Application for compensation (<i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC, <u>2284</u> Order granting motion to continue hearing on (related document <u>2282</u>) (related documents Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Hearing to be held on 6/1/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2229</u>, Entered on 5/7/2021. (Okafor, M.)). (Kass, Albert)</i>
05/13/2021	<u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s) <u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)

05/13/2021	<u>2300</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey). (Pomerantz, Jeffrey)
05/13/2021	<u>2301</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2229</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	<u>2302</u> Certificate of service re: <i>Notice of Deposition</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	<u>2303</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2261 and 2262]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC). (Kass, Albert)
05/13/2021	Receipt Number 338881, Fee Amount \$207.00 (RE: related document(s) <u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s)1957 Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)) (Floyd, K) (Entered: 05/14/2021)
05/14/2021	<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/14/2021	<u>2305</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Sosland, Martin)
05/14/2021	<u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit) (Hoffman, Juliana)
05/14/2021	<u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and

	Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , (Annable, Zachery)
05/14/2021	<u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Annable, Zachery)
05/14/2021	<u>2309</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Respondent Mark Patrick. (Phillips, Louis)
05/14/2021	<u>2310</u> Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/14/2021	<u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/14/2021	<u>2312</u> Objection to (related document(s): <u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P., <u>2255</u> Order on motion to show cause. MODIFIED to correct linkage on 5/17/2021 (Ecker, C.).
05/14/2021	<u>2313</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Plaintiff The Charitable DAF Fund, L.P.. (Attachments: # <u>1</u> Appendix) (Sbaiti, Mazin)
05/14/2021	<u>2314</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Draper, Douglas)
05/14/2021	<u>2315</u> Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). (Hoffman, Juliana)
05/14/2021	<u>2316</u> Motion to withdraw as attorney (John J. Kane, Brian W. Clark and the law firm of Kane Russell Coleman Logan PC) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Proposed Order) (Kane, John)
05/17/2021	<u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u>) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).
05/17/2021	<u>2318</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of

	Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,). (Hoffman, Juliana)
05/17/2021	<u>2319</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/17/2021	<u>2320</u> Certificate of service re: 1) <i>Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ; and 2) <i>Notice of Change of Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us-courts.webex.com/meet/jerniga for <u>2199</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/18/2021	<u>2321</u> Notice (<i>Notice of Cancellation of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). (Annable, Zachery)
05/18/2021	<u>2322</u> Notice of Appearance and Request for Notice for <i>BH Equities LLC</i> by Casey William Doherty Jr. filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2323</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i>))
05/18/2021	<u>2325</u> Order granting fifth interim fee application for compensation (related document # <u>2221</u>) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded: \$0.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2326</u> Order granting fourth interim application for compensation (related document # <u>1655</u>) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2327</u> Order granting fifth interim application for compensation (related document # <u>2233</u>) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty,

	Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. (Hoffman, Juliana)
05/18/2021	<u>2329</u> Order granting fourth interim application for compensation (related document # <u>1853</u>) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2330</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
05/18/2021	<u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73) (Annable, Zachery)
05/18/2021	<u>2360</u> Hearing held on 5/18/2021. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P., (Matter continued) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2221</u> Application for compensation Fifth Interim Application for Compensation of FTI Consulting, Inc., for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman). (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1853</u> Application for compensation Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1655</u> Application for compensation Fourth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers**) (Edmond,

	Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2233</u> Application for compensation Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/19/2021	<u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2334</u> Withdrawal of claim(s): #93 Filed by Interested Party Integrated Financial Associates, Inc.. (Attachments: # <u>1</u> Exhibit Ex. 1 – POC #93 Integrated Financial Associates) (Bryant, M.)
05/19/2021	<u>2335</u> Notice (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2336</u> Amended Witness and Exhibit List for May 21, 2021 Hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2305</u> List (witness/exhibit/generic)). (Sosland, Martin)
05/19/2021	<u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by <i>to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/19/2021	<u>2338</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u>) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 05/19/2021.

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	(Admin.)
05/20/2021	<u>2339</u> Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2314</u> List (witness/exhibit/generic)). (Draper, Douglas)
05/20/2021	<u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) (<i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/20/2021	<u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/20/2021	<u>2342</u> Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2339</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29) (Draper, Douglas)
05/20/2021	<u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2341</u> Response). (Hoffman, Juliana)
05/20/2021	<u>2344</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2319</u> <i>Notice (Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	<u>2345</u> Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) <u>2274</u> Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2274</u> , Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2346</u> Order granting motion to withdraw as attorney for CLO Holdco, LTD (attorney John J. Kane terminated). (related document # <u>2316</u>) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2347</u> Reply to (related document(s): <u>2311</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
05/21/2021	<u>2348</u> PDF with attached Audio File. Court Date & Time [05/21/2021 08:57:33 AM]. File Size [73177 KB]. Run Time [05:13:15]. (admin).
05/21/2021	<u>2349</u> Omnibus Reply to (related document(s): <u>2309</u> Response to show cause order filed by Respondent Mark Patrick, <u>2312</u> Objection filed by Interested Party James Dondero, <u>2313</u> Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/21/2021	<u>2350</u> Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document # <u>2243</u>) Entered on 5/21/2021. (Okafor, M.)

05/21/2021	<u>2351</u> Declaration re: (<i>Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)
05/21/2021	<u>2352</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s) <u>2335</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2353</u> Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>2133</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2354</u> Order granting motion to continue hearing on (related document # <u>2340</u>) (related documents Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relating Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2229</i> , Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2355</u> Declaration re: (<i>Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)
05/21/2021	<u>2356</u> Notice (<i>Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/21/2021	<u>2357</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
05/21/2021	<u>2358</u> Certificate of service re: <i>Documents Served on May 18, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2321</u> Notice (<i>Notice of Cancellation of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). filed by Debtor Highland Capital Management, L.P., <u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i>) <u>2325</u> Order granting fifth interim fee application for compensation (related document <u>2221</u>) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded:

	<p><i>\$0.00 Entered on 5/18/2021. (Okafor, M.), <u>2326</u> Order granting fourth interim application for compensation (related document <u>1655</u>) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.), <u>2327</u> Order granting fifth interim application for compensation (related document <u>2233</u>) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.), <u>2328</u> Application for compensation Sidley Austin LLP's Seventeenth Monthly Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2329</u> Order granting fourth interim application for compensation (related document <u>1853</u>) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021. (Okafor, M.), <u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
05/21/2021	<p><u>2359</u> Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 05/24/2021)</p>
05/21/2021	<p><u>2368</u> Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO (Edmond, Michael) (Entered: 05/24/2021)</p>
05/24/2021	<p><u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)<u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u>, Entered on 5/24/2021 (Okafor, M.)</p>
05/24/2021	

	<u>2362</u> Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)
05/24/2021	<u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2364</u> Request for transcript regarding a hearing held on 5/21/2021. The requested turn-around time is daily. (Edmond, Michael)
05/24/2021	<u>2365</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39</i>) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2367</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021.). Hearing to be held on 6/10/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2256</u> . (Draper, Douglas)
05/24/2021	<u>2369</u> Certificate of service re: Notice of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2367</u> Notice of hearing). (Attachments: # <u>1</u> Mailing Matrix) (Draper, Douglas)
05/24/2021	<u>2370</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.). (Hoffman, Juliana)
05/24/2021	<u>2371</u> Certificate of service re: <i>1) Debtor's Notice of Deposition to Mark Patrick in Connection with Debtor's Contempt Motion; 2) Debtor's Notice of Rule 30(b)(6) Deposition to (A) CLO Holdco, Ltd., and (B) Charitable DAF Fund, L.P.; and 3) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2335</u> Notice (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2021	<u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2374</u> Certificate of service re: <i>1) Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust; and 3) Joinder of the Official Committee of Unsecured Creditors to Debtors Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by</i>

	<p><i>Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) (<i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2341</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
05/26/2021	<p><u>2375</u> Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2359 Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2021. (Rehling, Kathy)</p>
05/26/2021	<p><u>2376</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Creditor Plano ISD. (Reece, Linda)</p>
05/26/2021	<p><u>2377</u> Declaration re: (<i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)</p>
05/26/2021	<p><u>2378</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). (Annable, Zachery)</p>
05/26/2021	<p><u>2379</u> Certificate of service re: [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F. R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2092 2094 and 2096 2115]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement</p>

3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2099 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2100 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2101 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2102 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2103 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2104 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2105 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2106 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2107 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2108 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2109 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2110 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2111 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2112 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2113 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2114 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC, 2115 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCMC, LLC. Filed by Interested Party CPCMC, LLC. filed by Interested Party CPCMC, LLC). (Kass, Albert)

05/26/2021

2380 Certificate of service re: *Documents Served on May 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) 2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at <https://us-courts.webex.com/meet/jerniga> for 2274, Entered on 5/21/2021 (Okafor, M.), 2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document 2243) Entered on 5/21/2021. (Okafor, M.), 2352

000339

	<p>Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)<u>2335</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), <u>2353</u> Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>2133</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), <u>2354</u> Order granting motion to continue hearing on (related document <u>2340</u>) (related documents Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat) Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2229</u>, Entered on 5/21/2021. (Okafor, M.), <u>2355</u> Declaration re: (Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) filed by Debtor Highland Capital Management, L.P., <u>2356</u> Notice (Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). filed by Debtor Highland Capital Management, L.P., <u>2357</u> Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P.) (Kass, Albert)</i></p>
05/26/2021	<p><u>2381</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2362</u> Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/26/2021. (Admin.)</p>
05/27/2021	<p><u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. (Hoffman, Juliana)</p>
05/27/2021	<p><u>2383</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i>) for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP (Annable, Zachery)</p>
05/27/2021	<p><u>2384</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal ., Transmitted: Volume 1, Mini Record. Number of appellant volumes: 38 . Civil Case Number: 3:21-CV-00879-K (RE: related document(s)<u>2149</u> Notice of appeal <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal.) (Blanco, J.)</p>
05/27/2021	<p><u>2386</u> Notice of docketing COMPLETE record on appeal. 3:21CV00879K (RE: related document(s)<u>2149</u> Notice of appeal <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal.) (Blanco, J.)</p>
05/27/2021	

	<u>2387</u> Notice of hearing (<i>Status Conference</i>) filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.). Status Conference to be held on 8/4/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga . (Drawhorn, Lauren)
05/27/2021	<u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s) <u>2365</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.)
05/27/2021	<u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # <u>2199</u>) Entered on 5/27/2021. (Okafor, M.)
05/27/2021	<u>2390</u> Certificate of service re: <i>Documents Served on May 24, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s) <u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u> , Entered on 5/24/2021 (Okafor, M.), <u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2365</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2021	<u>2391</u> Certificate of service re: <i>1) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion; and 2) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	<u>2392</u> Withdrawal / <i>Notice of Withdrawal of Appearance</i> filed by Interested Party NexBank (RE: related document(s) <u>923</u> Notice of appearance and request for notice). (Slade, Jared)
06/01/2021	<u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2229</u> , (Annable, Zachery)
06/01/2021	<u>2394</u> Certificate of service re: <i>1) Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 2) Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2377</u> Declaration re: (<i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2378</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

06/01/2021	<u>2395</u> Motion to pay (<i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/01/2021	<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. (Hoffman, Juliana)
06/02/2021	<u>2397</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2283</u> Application for compensation (<i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i>) for Hayward PLLC, Debtor's Attorney,). (Annable, Zachery)
06/02/2021	<u>2398</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021. (Draper, Douglas)
06/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28754649, amount \$ 298.00 (re: Doc# <u>2398</u>). (U.S. Treasury)
06/02/2021	<u>2399</u> Certificate of service re: <i>Documents Served on May 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2383</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i>) for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP, <u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s) <u>2365</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.), <u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document <u>2199</u>) Entered on 5/27/2021. (Okafor, M.)). (Kass, Albert)
06/02/2021	<u>2466</u> Circuit Court Order granting motions for certification to court of appeals (Related Doc # <u>2033</u>) Entered on 6/2/2021. IT IS ORDERED that the motion of Highland Global AllocationFund, Highland Income Fund, NexPoint Capital, Incorporated, and NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of James Dondero forleave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of Get Good Trust andThe Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d)is GRANTED. USCA Circuit Court Case: 21-10449 (Whitaker, Sheniqua) (Entered: 06/21/2021)
06/03/2021	<u>2400</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
06/03/2021	<u>2401</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS

	105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/03/2021	<u>2402</u> Certificate of service re: 1) Amended Notice of Hearing; and 2) Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2229</u> , filed by Debtor Highland Capital Management, L.P., <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2021	<u>2403</u> Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat filed by Debtor Highland Capital Management, L.P.) Preliminary Objection filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/04/2021	<u>2404</u> Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
06/04/2021	<u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2395</u> , (Annable, Zachery)
06/04/2021	<u>2406</u> Response opposed to (related document(s): <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Howell, William)
06/04/2021	<u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider (related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u> , (Annable, Zachery)

06/04/2021	<p><u>2408</u> Certificate of service re: <i>(Supplemental) 1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital Management, L.P., <u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by <i>to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
06/04/2021	<p><u>2409</u> Certificate of service re: <i>Eighteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2021 Through April 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
06/05/2021	<p><u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u></p>

	Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53) (Annable, Zachery)
06/05/2021	<u>2411</u> Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P., Respondent Mark Patrick (RE: related document(s) <u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43) (Phillips, Louis)
06/05/2021	<u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery)
06/06/2021	<u>2414</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
06/06/2021	<u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/06/2021	<u>2416</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01295-X. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/07/2021	<u>2417</u> Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
06/07/2021	<u>2418</u> Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2417</u> Notice (generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
06/07/2021	<u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2412</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 16 # <u>2</u> Exhibit 17) (Annable, Zachery)
06/07/2021	<u>2420</u> Amended Witness and Exhibit List <i>Exhibits 44, 45, 46</i> filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2411</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 44 # <u>2</u> Exhibit 45 # <u>3</u> Exhibit 46) (Sbaiti, Mazin)
06/07/2021	<u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2410</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 54 # <u>2</u> Exhibit 55) (Annable, Zachery)

06/08/2021	<u>2422</u> Request for transcript regarding a hearing held on 6/8/2021. The requested turn-around time is hourly. (Edmond, Michael)
06/08/2021	<u>2423</u> Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2419</u> List (witness/exhibit/generic)). (Hayward, Melissa)
06/08/2021	<u>2424</u> Reply to (related document(s): <u>2341</u> Response filed by Debtor Highland Capital Management, L.P.) <i>Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit 1) (Draper, Douglas)
06/08/2021	<u>2425</u> Certificate of service re: Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2424</u> Reply). (Draper, Douglas)
06/08/2021	<u>2426</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional). (Hoffman, Juliana)
06/08/2021	<u>2427</u> Certificate of service re: [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
06/08/2021	<u>2428</u> Certificate of service re: <i>1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 Through March 31, 2021; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2400</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2401</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/08/2021	<u>2430</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.) (Edmond, Michael)

06/08/2021	2431 Hearing held on 6/8/2021. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90-day continuance without prejudice. Counsel to upload order.) (Edmond, Michael)
06/08/2021	<u>2519</u> Court admitted exhibits date of hearing June 8, 2021 (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (COURT ADMITTED DEBTOR'S EXHIBIT'S #12 THROUGH #55 THAT APPEAR AT DOC. #2410 BY JOHN MORRIS; (NOTE* EXHIBIT'S #1 THROUGH #11 WERE NOT ADMITTED) & THE COURT ADMITTED DEFENDANT'S EXHIBIT'S #1, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, & #30 THRUHT #44 ALL ADMITTED BY LOUIS PHILLIPS; (NOTE* EXHIBIT'S #13, #14 & #29 WERE NOT ADMITTED) (Edmond, Michael) (Entered: 07/02/2021)
06/09/2021	<u>2432</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 54 . Civil Case Number: 3:21-CV-00538-N (RE: related document(s) <u>1957</u> Notice of appeal) (Blanco, J.)
06/09/2021	<u>2433</u> Notice of docketing record on appeal. 3:21-cv-00538-N (RE: related document(s) <u>1957</u> Notice of appeal) (Blanco, J.)
06/09/2021	<u>2434</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Notice of Hearing</i> ; and 3) <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2404</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay (<i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2395</u> , filed by Debtor Highland Capital Management, L.P., <u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2435</u> Certificate of service re: 1) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> ; and 2) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2255</u> Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11

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	<p>Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) filed by Debtor Highland Capital Management, L.P., <u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/09/2021	<p><u>2436</u> Certificate of service re: <i>Documents Served on June 7, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2417</u> Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2418</u> Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2417</u> Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2412</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) filed by Debtor Highland Capital Management, L.P., <u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2410</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/09/2021	<p><u>2437</u> Certificate of service re: <i>Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2423</u> Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2419</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/09/2021	<p><u>2438</u> BNC certificate of mailing. (RE: related document(s)<u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>2398</u> Notice of appeal <i>and Statement of Election</i>. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2389</u> Order on motion to compromise controversy.) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)</p>
06/10/2021	<p><u>2439</u> Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for <u>2248</u>, (Sbaiti, Mazin)</p>
06/10/2021	<p><u>2440</u> Transcript regarding Hearing Held 06/08/2021 (298 pages) RE: Show Cause Hearing (2255); Motion to Modify Order (2248); Motion to Extend Time (2304). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/8/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2430 Hearing held on 6/8/2021. (RE: related document(s)<u>2255</u> Order requiring violators to show cause why they should not be</p>

	<p>held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.), 2431 Hearing held on 6/8/2021. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90-day continuance without prejudice. Counsel to upload order.)). Transcript to be made available to the public on 09/8/2021. (Rehling, Kathy)</p>
06/10/2021	<p><u>2441</u> Agreed Motion to continue hearing on (related documents <u>2248</u> Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # <u>1</u> Proposed Order) (Sbaiti, Mazin)</p>
06/10/2021	<p><u>2442</u> Hearing held on 6/10/2021. (RE: related document(s)<u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero-related entities for clarification of their standing.) (Edmond, Michael) (Entered: 06/11/2021)</p>
06/11/2021	<p>Receipt Number 338903, Fee Amount \$207.00 – Filing Fee for Direct Appeal to Fifth Circuit Court of Appeals paid by K&L Gates LLP (RE: related document(s)<u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)) (Floyd, K)</p>
06/11/2021	<p><u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document # <u>2306</u>) Entered on 6/11/2021. (Okafor, M.)</p>
06/11/2021	<p><u>2444</u> Request for transcript regarding a hearing held on 6/10/2021. The requested turn-around time is hourly. (Edmond, Michael)</p>
06/12/2021	<p><u>2445</u> Transcript regarding Hearing Held 06/10/2021 (91 pages) RE: Motion to Compel Compliance (2256). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2442</u> Hearing held on 6/10/2021. (RE: related document(s)<u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b)</p>

	certain information from Dondero-related entities for clarification of their standing.)). Transcript to be made available to the public on 09/10/2021. (Rehling, Kathy)
06/14/2021	Receipt Number 338904, Fee Amount \$207.00 – Filing fee for Direct Appeal to Fifth Circuit Court of Appeals paid by Heller, Draper, Patrick, Horn & Dabney, LLC (Fifth Circuit Docket No. 21-10449) (RE: related document(s) <u>2014</u> Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust.(RE: related document(s) <u>1943</u> Order confirming chapter 11 plan)).
06/14/2021	<u>2446</u> Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2248</u> , (Sbaiti, Mazin)
06/14/2021	<u>2447</u> Notice to take deposition of Trussway Industries, LLC filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/14/2021	<u>2448</u> Notice to take deposition of Highland Capital Management, LP filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/15/2021	<u>2449</u> Certificate of service re: <i>Order Pursuant to Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors Effective April 15, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document <u>2306</u>) Entered on 6/11/2021. (Okafor, M.)). (Kass, Albert)
06/15/2021	<u>2450</u> Certificate of service re: <i>(Supplemental) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2427</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/16/2021	<u>2451</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Draper, Douglas)
06/16/2021	<u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021. (Draper, Douglas)
06/16/2021	<u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:# <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.)

06/16/2021	<u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)
06/16/2021	<u>2455</u> Support/supplemental document (<i>Notice of Final Term Sheet</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela.</i>). (Annable, Zachery)
06/16/2021	<u>2456</u> Order granting unopposed emergency motion to continue hearing on (related document # <u>2441</u>) (related documents Motion to Reconsider(related documents <u>854</u> Order on application to employ)) Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2248</u> , Entered on 6/16/2021. (Okafor, M.)
06/17/2021	<u>2457</u> Clerk's correspondence requesting exhibits from attorney for appellant. (RE: related document(s) <u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021.) Responses due by 6/21/2021. (Blanco, J.)
06/17/2021	<u>2458</u> Order requiring a trustee of The Dugaboy Investment Trust and the The Get Good Trust to appear at all hearings in the bankruptcy case and adversary cases in which they take positions. Entered on 6/17/2021 (Okafor, M.)
06/17/2021	<u>2459</u> Motion for leave to Amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document(s) <u>2452</u> Appellant designation) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
06/18/2021	<u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)
06/18/2021	<u>2461</u> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC (Annable, Zachery)
06/18/2021	<u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). (Annable, Zachery)
06/21/2021	<u>2465</u> Certificate of service re: 1) Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 3) Notice of Final Term Sheet Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document: <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.), <u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 23

	# 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2455</u> Support/supplemental document (<i>Notice of Final Term Sheet</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela</i>). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/21/2021	<u>2467</u> Supplemental Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela</i> filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/21/2021	<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)
06/22/2021	<u>2469</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC t/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Appendix)) Responses due by 6/29/2021. (Ecker, C.)
06/22/2021	<u>2470</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2383</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i>) for Pachulsk). (Pomerantz, Jeffrey)
06/22/2021	<u>2471</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0.). (Hoffman, Juliana)
06/22/2021	<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay (<i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery)
06/22/2021	<u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela</i>). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
06/23/2021	<u>2474</u> Order granting motion for leave to amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document # <u>2459</u>) Entered on 6/23/2021. (Okafor, M.)
06/23/2021	<u>2475</u> Witness and Exhibit List with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela</i>). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4A # <u>5</u> Exhibit 4B # <u>6</u> Exhibit 5 # <u>7</u> Exhibit 6 # <u>8</u> Exhibit 7 # <u>9</u> Exhibit 8 # <u>10</u> Exhibit 9 # <u>11</u> Exhibit 10) (Draper, Douglas)

06/23/2021	<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.).
06/23/2021	<u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2473</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 5 # <u>3</u> Exhibit 6 # <u>4</u> Exhibit 7 # <u>5</u> Exhibit 8) (Annable, Zachery)
06/23/2021	<u>2478</u> Certificate of service re: 1) <i>Order Requiring Disclosures</i> ; 2) <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020</i> ; and 3) <i>Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <u>2461</u> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/23/2021	<u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). (Kass, Albert)
06/24/2021	<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. (Pomerantz, Jeffrey)
06/24/2021	<u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u> , (Pomerantz, Jeffrey)
06/24/2021	

	<p><u>2482</u> Declaration re: (Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). (Annable, Zachery)</p>
06/25/2021	<p><u>2483</u> Certificate of service re: 1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtors Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtors Chief Executive Officer and Chief Restructuring Officer; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital Management, L.P., <u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2484</u> Certificate of service re: 1) Debtor's Reply in Support of Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; and 2) Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2473</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2485</u> Amended U.S. Trustee's appointment of committee of Unsecured Creditors (Lambert, Lisa)</p>
06/25/2021	<p><u>2486</u> Certificate of service re: U.S. Trustee's Amended Appointment of Committee of Unsecured Creditors filed by U.S. Trustee United States Trustee (RE: related document(s)<u>2485</u> UST appointment of committee). (Lambert, Lisa)</p>
06/25/2021	<p><u>2487</u> Hearing held on 6/25/2021. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland</p>

	Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2488 INCORRECT ENTRY (corrected by DE 2490) Hearing held on 6/25/2021. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael) Modified on 6/29/2021 (Ellison, T.).
06/25/2021	2489 Hearing held on 6/25/2021. (RE: related document(s) <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2490 Hearing held on 6/25/2021. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.) (Edmond, Michael)
06/25/2021	<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
06/25/2021	<u>2492</u> Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.), <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPEARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THORUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
06/28/2021	<u>2493</u> Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
06/28/2021	

	Receipt Number 338916, Fee Amount \$207.00 for Direct Appeal to the Fifth Circuit Court of Appeals (Reference 21-90011 and 21-10449) (RE: related document(s) <u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)) (Floyd, K)
06/28/2021	<u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)
06/28/2021	<u>2495</u> Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
06/28/2021	<u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2491</u> , (Annable, Zachery)
06/29/2021	<u>2497</u> Request for transcript regarding a(ENTIRE) hearing held on 6/25/2021. The requested turn-around time is hourly (Jeng, Hawaii)
06/29/2021	<u>2498</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation for Official Committee of Unsecured Creditors</i> , Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$2). (Hoffman, Juliana)
06/29/2021	<u>2499</u> Certificate of service re: <i>1) Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021; 2) Notice of Hearing on Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021; and 3) Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. filed by Debtor Highland Capital Management, L.P., <u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u> , filed by Debtor Highland Capital Management, L.P., <u>2482</u> Declaration re: (<i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's</i>

	<p><i>Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>), filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/30/2021	<p><u>2500</u> Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>
06/30/2021	<p><u>2501</u> Transcript regarding Hearing Held 06/25/2021 (79 pages) (Excerpt 1: Proceedings from 9:36 am to 11:25 am) RE: Motion to Borrow (2229) and Motion to Pay Restructuring Fee (2395). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2487 Hearing held on 6/25/2021. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.), 2489 Hearing held on 6/25/2021. (RE: related document(s)<u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>
06/30/2021	<p><u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. (Pomerantz, Jeffrey)</p>
06/30/2021	<p><u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document # <u>2229</u>) Entered on 6/30/2021. (Okafor, M.)</p>
06/30/2021	

	<u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document # <u>2395</u>) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2505</u> Order granting motion to seal appendix (related document # <u>2280</u>) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document # <u>2248</u>) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2507</u> Notice (<i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2508</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2509</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief</i>) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2480</u> , (Annable, Zachery)
07/01/2021	<u>2511</u> Certificate of service re: <i>1) Order Requiring Post-Hearing Submissions; 2) Notice of Filing of Second Amended and Restated Investment Advisory Agreement; and 3) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.), <u>2495</u> Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i)</i>

	<i>Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2491</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2512</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$). (Hoffman, Juliana)
07/02/2021	<u>2513</u> Notice of appeal . Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021. (Sbaiti, Mazin)
07/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28822100, amount \$ 298.00 (re: Doc# <u>2513</u>). (U.S. Treasury)
07/02/2021	<u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. (Hoffman, Juliana)
07/02/2021	<u>2515</u> Notice (<i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2021	<u>2516</u> Declaration re: (<i>Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
07/02/2021	<u>2517</u> Motion for leave (<i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i>) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/02/2021	<u>2518</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave (<i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i>) (related document(s) <u>2247</u> Motion for order to show cause)). (Attachments: # <u>1</u> Exhibit 56) (Annable, Zachery)
07/06/2021	<u>2520</u> Withdrawal of claim(s) Claim has been satisfied. Claim: <i>194</i> Filed by Creditor Crescent TC Investors, L.P.. (Held, Michael)
07/06/2021	<u>2522</u> Notice of transmittal of appellee supplemental record vol. 1 3:21-CV-00261-L (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8

	Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	<u>2523</u> Notice of transmittal SEALED DOCUMENTS 3;21-cv00261 (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	<u>2524</u> Certificate of service re: <i>Documents Served on June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. filed by Debtor Highland Capital Management, L.P., <u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document <u>2229</u>) Entered on 6/30/2021. (Okafor, M.), <u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document <u>2395</u>) Entered on 6/30/2021. (Okafor, M.), <u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document <u>2248</u>) Entered on 6/30/2021. (Okafor, M.), <u>2507</u> Notice (<i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2508</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	<u>2525</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2480</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	<u>2526</u> Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. (Hoffman, Juliana)
07/07/2021	<u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document # <u>2517</u>) Entered on 7/7/2021. (Okafor, M.)

07/08/2021	<u>2530</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2513</u> Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
07/08/2021	<u>2531</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	<u>2532</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) <u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	<u>2533</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
07/08/2021	<u>2534</u> Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2494</u> Order (generic)). (Attachments: # <u>1</u> Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # <u>2</u> Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # <u>3</u> Exhibit 3_Subscription and Transfer Agreement # <u>4</u> Exhibit 4_Members Agreement) (Sbaiti, Mazin)
07/08/2021	<u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
07/08/2021	<u>2536</u> Certificate of service re: <i>Documents Served on July 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2515</u> Notice (<i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2516</u> Declaration re: (<i>Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2517</u> Motion for leave (<i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i>) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2518</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave (<i>Debtor's Unopposed</i>

	<i>Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> (related document(s) <u>2247</u> Motion for order to show cause). (Attachments: # 1 Exhibit 56) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2021	<u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit D # <u>3</u> Exhibit E) (Annable, Zachery)
07/08/2021	Receipt of filing fee for Motion to Sell(19-34054-sgj11) [motion,msell] (188.00). Receipt number 28834907, amount \$ 188.00 (re: Doc# <u>2537</u>). (U.S. Treasury)
07/08/2021	<u>2538</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/09/2021	<u>2539</u> Notice and Disclosures of Funds Pursuant to Court's Sua Sponte Order filed by Interested Parties Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages); ¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Hogewood, A.)
07/09/2021	<u>2540</u> Support/supplemental document (<i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i>). (Annable, Zachery)
07/09/2021	<u>2541</u> Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages); ¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	<u>2542</u> Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management,

	<p>L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2543</u> Notice (<i>Advisors' Disclosures in Response to Sua Sponte Order</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Rukavina, Davor)</p>
07/09/2021	<p><u>2544</u> Notice and Disclosures of NexPoint RE Entities and HMCS Inc. in Response to Sua Sponte Order filed by Creditor Highland Capital Management Services, Inc., Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A) (Drawhorn, Lauren)</p>
07/09/2021	<p><u>2545</u> Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2546</u> Amended Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a</p>

	<p>direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<u>10</u> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1.Patrick Declaration # <u>2</u> 2.Transcript, June 8, 2021 Hearing, Excerpts # <u>3</u> Exhibit 3.Structure Chart # <u>4</u> Exhibit 4.Kenneth K. Bebozo Memorandum # <u>5</u> Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # <u>6</u> Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # <u>7</u> Exhibit 7.Ordinary Share Registry– CLO HoldCo # <u>8</u> Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # <u>9</u> Exhibit 9.DAF Fund LP Agreement # <u>10</u> Exhibit 10.DAF Fund General Partner Register # <u>11</u> Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # <u>12</u> Exhibit 12.Register of Management Shares DAF Holdco # <u>13</u> Exhibit 13.Register of Participating Shares DAF Holdco # <u>14</u> Exhibit 14.Certificate of Formation of DAF GP # <u>15</u> Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # <u>16</u> Exhibit 16.HDF Certificate of Incorporation # <u>17</u> Exhibit 17.IRS Determination – HDF # <u>18</u> Exhibit 18.Narrative Description of Activities # <u>19</u> 19.RESERVED FOR POSSIBLE SUPPLEMENTATION # <u>20</u> Exhibit 20.HDF Bylaws # <u>21</u> Exhibit 21.HSBF Certificate of Incorporation # <u>22</u> Exhibit 22.IRS Determination – HSBF # <u>23</u> Exhibit 23.SBF Overview Letter # <u>24</u> Exhibit 24.GKCCF Certificate of Formation # <u>25</u> Exhibit 25.GKCCF Letter # <u>26</u> Exhibit 26.Bylaws HKCF # <u>27</u> Exhibit 27.Share Transfer Form # <u>28</u> Exhibit 28.March 25 Resolution – DAF Holdco # <u>29</u> Exhibit 29.April 2 Resolution – CLO HoldCo # <u>30</u> Exhibit 30.Written Resolution – Murphy # <u>31</u> Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # <u>32</u> Exhibit 32.The Family Place Letter # <u>33</u> Exhibit 33.Cristo Rey Letter # <u>34</u> Exhibit 34.DCAC Letter # <u>35</u> Exhibit 35.Complaint # <u>36</u> Exhibit 36.CLO HoldCo – Register of Directors # <u>37</u> Exhibit 37.DAF Holdco – Register of Directors # <u>38</u> Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # <u>39</u> Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # <u>40</u> Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # <u>41</u> Exhibit 41.Share Register – MGM Studios Holdco, Ltd # <u>42</u> Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # <u>43</u> Exhibit 43.Share Register – HCT Holdco 2, Ltd.) (Phillips, Louis)</p>
07/09/2021	<p><u>2548</u> Certificate of service re: (Supplemental) 1) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims; and 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), <u>2478</u> Certificate of service re: 1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee</p>

	<p>Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
07/09/2021	<p>2549 Amended Notice <i>Second Amended Response of Dugaboy Investment Trust to Order Requiring Disclosures</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2541 Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)), 2545 Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p>2550 Certificate of service re: <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2526 Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/12/2021	<p>2551 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale</i></p>

	<p><i>of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2537</u> and for <u>2535</u>, (Annable, Zachery)</p>
07/12/2021	<p><u>2552</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)<u>2461</u> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor). (Annable, Zachery)</p>
07/12/2021	<p><u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to Fed. R. Bankr. P. 8009 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2452</u> Appellant designation). (Draper, Douglas)</p>
07/12/2021	<p><u>2554</u> Application for compensation (<i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC (Annable, Zachery)</p>
07/12/2021	<p><u>2555</u> Certificate of service re: <i>Order Granting Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document <u>2517</u>) Entered on 7/7/2021. (Okafor, M.)). (Kass, Albert)</p>
07/12/2021	<p><u>2556</u> Notice of Filing of Supplement and Additional Exhibits filed by Interested Parties CLO Holdco, Ltd., Highland Dallas Foundation, Inc., The Charitable DAF Fund, L.P. (RE: related document(s)<u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);¹⁰ (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registry– CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination – HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination – HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25</p>

	<p>Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution – DAF Holdco # 29 Exhibit 29.April 2 Resolution – CLO HoldCo # 30 Exhibit 30.Written Resolution – Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo – Register of Directors # 37 Exhibit 37.DAF Holdco – Register of Directors # 38 Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register – MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # 43 Exhibit 43.Share Register – HCT Holdco 2, Ltd.)). (Attachments: # <u>1</u> Supplement # <u>2</u> Exhibit 19. Letter From The Dallas Foundation # <u>3</u> Exhibit Exhibit 44. Baltimore Sun Article re: Nonprofit Offshore Structures) (Phillips, Louis)</p>
07/13/2021	<p><u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2533</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>2538</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/14/2021	<p><u>2559</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
07/14/2021	<p><u>2560</u> PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [4798 KB]. Run Time [00:20:29]. (admin).</p>
07/14/2021	<p><u>2561</u> PDF with attached Audio File. Court Date & Time [06/08/2021 02:03:12 PM]. File Size [26321 KB]. Run Time [01:52:35]. (admin).</p>
07/14/2021	<p><u>2562</u> PDF with attached Audio File. Court Date & Time [06/08/2021 04:04:27 PM]. File Size [27205 KB]. Run Time [01:56:13]. (admin).</p>
07/14/2021	<p><u>2563</u> Objection to (related document(s): <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an</i></p>

	<i>Indemnity Trust Agreement and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust. (Taylor, Clay)
07/14/2021	<u>2564</u> PDF with attached Audio File. Court Date & Time [06/08/2021 09:34:21 AM]. File Size [26132 KB]. Run Time [01:51:38]. (admin).
07/14/2021	<u>2565</u> PDF with attached Audio File. Court Date & Time [06/08/2021 11:30:55 AM]. File Size [23135 KB]. Run Time [01:38:51]. (admin).
07/14/2021	<u>2566</u> PDF with attached Audio File. Court Date & Time [06/10/2021 09:44:23 AM]. File Size [31458 KB]. Run Time [02:14:19]. (admin).
07/14/2021	<u>2567</u> PDF with attached Audio File. Court Date & Time [06/25/2021 08:48:05 AM]. File Size [77915 KB]. Run Time [05:33:38]. (admin).
07/14/2021	<u>2568</u> Certificate of service re: <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2540</u> Support/supplemental document (<i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i>)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	<u>2569</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> ; and 2) <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2540</u> Support/supplemental document (<i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i>)). filed by Debtor Highland Capital Management, L.P., <u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2533</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> <i>Order granting application to employ Development Specialists, Inc. as Other Professional</i> (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> <i>Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>)

	<p><i>Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., 2538 Motion to file document under seal. (Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2568 Certificate of service re: Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document (Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</i></p>
07/14/2021	<p><u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. (Hoffman, Juliana)</p>
07/15/2021	<p><u>2571</u> Response opposed to (related document(s): <u>2534</u> Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
07/15/2021	<p><u>2572</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)</p>
07/15/2021	<p><u>2573</u> Certificate of service re: <i>1) Notice of Hearing; and 2) Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2551</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2537</u> and for <u>2535</u>, filed by Debtor Highland Capital Management, L.P., <u>2554</u> Application for compensation (<i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
07/16/2021	<p><u>2574</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2480</u> Application for compensation <i>Fourth Interim Application for</i></p>

	<i>Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30,). (Pomerantz, Jeffrey)</i>
07/16/2021	<u>2575</u> Witness and Exhibit List filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>)). (Attachments: # <u>1</u> Objectors Ex. A # <u>2</u> Objectors Ex. B # <u>3</u> Objectors Ex. C # <u>4</u> Objectors Ex. D # <u>5</u> Objectors Ex. E # <u>6</u> Objectors Ex. F # <u>7</u> Objectors Ex. G # <u>8</u> Objectors Ex. H # <u>9</u> Objectors Ex. I # <u>10</u> Objectors Ex. J # <u>11</u> Objectors Ex. K # <u>12</u> Objectors Ex. L # <u>13</u> Objectors Ex. M # <u>14</u> Objectors Ex. N # <u>15</u> Objectors Ex. O) (Taylor, Clay)
07/16/2021	<u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) (<i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2021	<u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). (Hoffman, Juliana)
07/16/2021	<u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021. (Sbaiti, Mazin)
07/16/2021	<u>2579</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2559</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2021	<u>2580</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021.) Responses due by 7/21/2021. (Blanco, J.)
07/19/2021	<u>2581</u> PDF with attached Audio File. Court Date & Time [07/19/2021 09:30:44 AM]. File Size [19741 KB]. Run Time [01:24:28]. (admin).
07/19/2021	<u>2582</u> Court admitted exhibits date of hearing July 19, 2021 (RE: related document(s) <u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF'S/DEBTOR'S EXHIBITS #1, #2, #3, #4, #5 & #6 BY JOHN

	MORRIS AND DEFENDANT/RESPONDENT EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N & #O BY DAVOR RUKAVINA) (Edmond, Michael)
07/19/2021	<u>2583</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2480</u> Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2584</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Hoffman, Juliana)
07/19/2021	<u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
07/19/2021	<u>2587</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2578</u> Appellant designation). (Sbaiti, Mazin)
07/20/2021	<u>2588</u> Order granting fourth interim application for compensation (related document # <u>2480</u>) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP , fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.)
07/20/2021	<u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/20/2021	<u>2590</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendan). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement) (Annable, Zachery)
07/20/2021	<u>2592</u> Notice of docketing APPELLANT SUPPLEMENTAL record on appeal. 3:21-CV-00879-K (RE: related document(s) <u>2149</u> Notice of appeal filed by Interested

	Party James Dondero (RE: related document(s) 2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) (Blanco, J.)
07/20/2021	2593 Request for transcript regarding a hearing held on 7/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
07/20/2021	2594 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us-courts.webex.com/meet/jerniga for 2589 , (Annable, Zachery)
07/20/2021	2595 Application for compensation (<i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/20/2021	2596 Declaration re: (<i>Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 604 Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). (Annable, Zachery)
07/20/2021	2597 Certificate of service re: 1) <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i> ; 2) <i>Debtor's Reply to Plaintiffs' Post-Hearing Brief Regarding Motion for Modification of Order</i> ; and 3) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on July 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 2570 Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2571 Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2572 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2491 Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/21/2021	2598 Transcript regarding Hearing Held 07/19/2021 (59 pages) RE: Debtor's Motion for Entry of Order Authorizing Creation of Indemnity Sub-Trust (2491); Pachulski Stang Fourth Interim Fee Application (2480). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com , Telephone number 972-786-3063. (RE: related document(s) 2583 Hearing held on 7/19/2021. (RE: related document(s) 2480 Application for compensation Fourth Interim Application for Compensation and for Reimbursement of

	<p>Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 2584 Hearing held on 7/19/2021. (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 10/19/2021. (Rehling, Kathy)</p>
07/21/2021	<p><u>2599</u> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document # <u>2491</u>) Entered on 7/21/2021. (Okafor, M.)</p>
07/21/2021	<p><u>2600</u> Certificate of service re: <i>1) Debtor's Reply in Support of Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief; and 2) The Official Committee of Unsecured Creditors' Response and Joinder to the Debtor's Response to the Objection to Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) (<i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/22/2021	<p><u>2601</u> Certificate of service re: <i>1) Sixth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021; and 2) First Consolidated Monthly Fee Application of Teneo Capital, LLC as Litigation Advisor for the Official Committee of Unsecured Creditors for the Period from April 15, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/22/2021	<p><u>2602</u> Certificate of service re: (<i>Supplemental</i>) <i>1) Debtor's Third Omnibus Objection to Certain No Liability Claims; 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello;</p>

Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No–Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: 1) *Order Requiring Disclosures*; 2) *Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020*; and 3) *Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non–Debtor Dondero–Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non–Debtor Dondero–Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation (*Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020*) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No–Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)

07/23/2021

2603 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2502 Application for compensation *Twentieth Monthly Application for*

000374

	<i>Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021.</i> (Pomerantz, Jeffrey)
07/23/2021	<u>2604</u> Order granting motion to seal exhibits (related document # <u>2538</u>) Entered on 7/23/2021. (Okafor, M.)
07/23/2021	<u>2605</u> Certificate of service re: <i>Documents Served on July 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2588</u> Order granting fourth interim application for compensation (related document <u>2480</u>) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP, fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.), <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2590</u> Declaration re: <i>(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendan). (Attachments: # 1 Exhibit 1—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>2594</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2589</u> , filed by Debtor Highland Capital Management, L.P., <u>2595</u> Application for compensation (<i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2596</u> Declaration re: <i>(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2021	<u>2606</u> Certificate of service re: <i>Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2599</u> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document <u>2491</u>) Entered on 7/21/2021. (Okafor, M.)). (Kass, Albert)
07/26/2021	<u>2607</u> Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2345</u> Order to set hearing). (Annable,

	Zachery)
07/26/2021	<u>2608</u> Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2021	<u>2609</u> Application for compensation (<i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2610</u> Application for compensation (<i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. (Hoffman, Juliana)
07/27/2021	<u>2612</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0.). (Hoffman, Juliana)
07/27/2021	<u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
07/27/2021	<u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
07/28/2021	<u>2615</u> Objection to (related document(s): <u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Initial Objection To Motion For Leave And To Emergency Consideration Of The Motion For Leave</i> filed by Interested Party Highland Dallas Foundation, Inc., Respondent Mark Patrick. (Phillips, Louis)
07/28/2021	<u>2616</u> Support/supplemental document (<i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>). (Attachments: # <u>1</u> Exhibit B--Redacted PetroCap Partnership Agreement # <u>2</u> Exhibit C--Redacted SLP Partnership Agreement) (Annable, Zachery)
07/28/2021	<u>2617</u> SEALED document regarding: Exhibit B: PetroCap Partnership Agreement per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)

07/28/2021	<u>2618</u> SEALED document regarding: Exhibit C: SLP Partnership Agreement per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)
07/28/2021	<u>2619</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing the Filing Under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2604</u> Order granting motion to seal exhibits (related document <u>2538</u>) Entered on 7/23/2021. (Okafor, M.)). (Kass, Albert)
07/29/2021	<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15) (Montgomery, Paige)
07/29/2021	<u>2621</u> Objection to (related document(s): <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property filed by Debtor Highland Capital Management, L.P.</i>) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – NexPoint PSA # <u>2</u> Exhibit B – PSA Redline) (Berghman, Thomas)
07/29/2021	<u>2623</u> Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal . (Whitaker, Sheniqua)
07/29/2021	<u>2624</u> Transmittal of addendum to record on appeal to U.S. District Court . Number of appellee records: 5 Sealed Documents (RE: related document(s) <u>2623</u> Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal .) (Whitaker, Sheniqua)
07/29/2021	<u>2625</u> Notice of docketing supplemental record on appeal. (RE: related document(s) <u>1957</u> Notice of appeal . (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Civil Case 3:21–CV–00538–N, Circuit Court Case 21–10449 (Whitaker, Sheniqua)
07/29/2021	<u>2626</u> Objection to (related document(s): <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – PSA # <u>2</u> Exhibit B – PSA Redline) (Berghman, Thomas)
07/29/2021	<u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty–Five Page (related document # <u>2613</u>) Entered on 7/29/2021. (Okafor, M.)
07/29/2021	<u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
07/29/2021	<u>2629</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
07/29/2021	<u>2630</u> Certificate of service re: <i>1) Stipulation (A) Amending Scheduling Order and (B) Consolidating and Resolving Certain Matters; and 2) Debtors Amended Notice of Rule 30(b)(6) Deposition to Wick Phillips Gould & Martin, LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2607</u> Stipulation by Highland

	Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2345</u> Order to set hearing). filed by Debtor Highland Capital Management, L.P., <u>2608</u> Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/30/2021	<u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/30/2021	<u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. (Pomerantz, Jeffrey)
07/30/2021	<u>2633</u> Witness and Exhibit List filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property, <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i>) (Berghman, Thomas)
07/30/2021	<u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property.</i>) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2635</u> Witness and Exhibit List filed by Interested Party PetroCap, LLC (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i>) (Schultz, Sarah)
07/30/2021	<u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i>) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2620</u> , (Montgomery, Paige)
07/30/2021	<u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal, (Annable, Zachery).

07/30/2021	<p><u>2639</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket No. 2263]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)</p>
07/30/2021	<p><u>2640</u> Certificate of service re: 1) <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 Through January 31, 2021</i>; 2) <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i>; and 3) <i>Sixth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2609</u> Application for compensation (<i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2610</u> Application for compensation (<i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</i></p>
08/01/2021	<p><u>2641</u> Motion to compel Mediation. Filed by Interested Party James Dondero (Taylor, Clay)</p>
08/02/2021	<p><u>2642</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2620</u>. (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)</p>
08/02/2021	<p><u>2643</u> Application for compensation (<i>Fourth Monthly Fee Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)</p>
08/02/2021	<p><u>2644</u> Application for compensation (<i>Fifth Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)</p>
08/02/2021	<p><u>2645</u> Application for compensation (<i>Sixth Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)</p>

08/02/2021	<u>2646</u> Application for compensation (<i>Seventh Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2647</u> Certificate of service re: 1) <i>The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> ; 2) <i>Motion for Expedited Consideration on the Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> ; and 3) <i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2613</u> <i>Motion for leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> <i>Motion for expedited hearing(related documents 2613 Motion for leave) Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2616</u> <i>Support/supplemental document (Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> <i>Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)</i> . (Attachments: # 1 Exhibit B--Redacted PetroCap Partnership Agreement # 2 Exhibit C--Redacted SLP Partnership Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/02/2021	<u>2648</u> Reply to (related document(s): <u>2621</u> <i>Objection</i> filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/02/2021	<u>2649</u> Reply to (related document(s): <u>2626</u> <i>Objection</i> filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/02/2021	<u>2650</u> Joinder by <i>the Official Committee of Unsecured Creditors to the Debtor's Reply and Response</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2648</u> <i>Reply</i> , <u>2649</u> <i>Reply</i>). (Hoffman, Juliana)
08/02/2021	<u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. (Hoffman, Juliana)
08/02/2021	<u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> <i>Motion for examination</i>) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)
08/02/2021	<u>2653</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2636</u> <i>List (witness/exhibit/generic)</i>). (Attachments: # <u>1</u> Exhibit 18) (Annable, Zachery)

08/02/2021	<u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)
08/03/2021	<u>2655</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2554</u> Application for compensation (<i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Hayward PLLC, Debto). (Annable, Zachery)
08/03/2021	<u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) (<i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
08/03/2021	<u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Exhibit UST Questionnaire and Information Sheet (Ex A) # <u>2</u> Exhibit Proposed Order (Ex B)) (Taylor, Clay)
08/03/2021	<u>2658</u> Certificate of service re: <i>Documents Served on July 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty-Five Page (related document <u>2613</u>) Entered on 7/29/2021. (Okafor, M.), <u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2629</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/03/2021	<u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/04/2021	<u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)
08/04/2021	<u>2661</u> Motion to appear pro hac vice for Thomas P. Cimino. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2662</u> Motion to appear pro hac vice for Michael M. Eidelman. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2663</u> Motion to appear pro hac vice for David L. Kane. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2664</u> Motion to appear pro hac vice for William W. Thorsness. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2665</u> Motion to appear pro hac vice for Douglas J. Lipke. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)

08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2661</u>). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2662</u>). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2663</u>). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2664</u>). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2665</u>). (U.S. Treasury)
08/04/2021	<u>2666</u> PDF with attached Audio File. Court Date & Time [08/04/2021 08:49:40 AM]. File Size [28979 KB]. Run Time [02:03:57]. (admin).
08/04/2021	<u>2667</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14 & #15 THAT APPEAR AT DEOC. 2634 IN REGARDS TO MAPLE HOLDINGS BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	<u>2668</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17 THAT APPEAR AT DOC. #2636 AND EXHIBIT #18 THAT APPEAR AT DOC. #2653 FOR PETROCAP III; BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	<u>2669</u> Hearing held on 8/4/2021. (RE: related document(s) <u>1888</u> Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.) (Edmond, Michael)
08/04/2021	<u>2670</u> Hearing held on 8/4/2021. (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)

08/04/2021	2671 Hearing held on 8/4/2021. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	<u>2672</u> Request for transcript regarding a hearing held on 8/4/2021. The requested turn-around time is hourly. (Edmond, Michael)
08/04/2021	<u>2673</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # <u>1</u> Exhibit A)(Vasek, Julian)
08/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28895617, amount \$ 298.00 (re: Doc# <u>2673</u>). (U.S. Treasury)
08/04/2021	<u>2674</u> Certificate of service re: <i>Documents Served on July 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i>). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2620</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal,. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/05/2021	<u>2675</u> Transcript regarding Hearing Held 08/04/2021 (83 pages) RE: Status Conference re: Application for Administrative Expenses; Motions to Sell. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling,

kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2669 Hearing held on 8/4/2021. (RE: related document(s) 1888 Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.), 2670 Hearing held on 8/4/2021. (RE: related document(s) 2535 Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.), 2671 Hearing held on 8/4/2021. (RE: related document(s) 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 11/3/2021. (Rehling, Kathy)

08/05/2021

2676 Certificate of service re: *Documents Served on August 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 2642 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <https://us-courts.webex.com/meet/jerniga> for 2620, (Attachments: # 1 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2648 Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P.) (*Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief*) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2649 Reply to (related document(s): 2626 Objection filed by Interested Party NexPoint Advisors, L.P.) (*Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief*) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2650 Joinder by the Official Committee of Unsecured Creditors to the Debtor's Reply and Response filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2648 Reply, 2649 Reply). filed by Creditor Committee Official Committee of Unsecured Creditors, 2651 Application for compensation *Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) 2620 Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, 2653 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2636 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) filed by Debtor Highland Capital Management, L.P., 2654 Motion for expedited hearing(related documents 2652 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1

	Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/06/2021	<u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2679</u> Certificate Certificate of Conference filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u>)). (Taylor, Clay)
08/06/2021	<u>2680</u> Certificate of service re: <i>1) Debtor's Amended Reply in Support of its Motion for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Debtor's Objection to Application for Administrative Claim of NexBank Capital Inc., NexBank Securities, Inc., NexBank Title, Inc., and NexBank</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) (<i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2021	<u>2681</u> Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document # <u>2661</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2682</u> Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document # <u>2662</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2683</u> Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document # <u>2663</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2684</u> Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document # <u>2664</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2685</u> Order granting motion to appear pro hac vice adding Douglas J. Lipke for James Dondero (related document # <u>2665</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2687</u> Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document # <u>2535</u>) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to

	shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2689</u> Certificate of service re: <i>Memorandum Opinion and Order Holding Certain Parties and Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)). (Kass, Albert)
08/06/2021	<u>2690</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)) No. of Notices: 3. Notice Date 08/06/2021. (Admin.)
08/08/2021	<u>2691</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2681</u> Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document <u>2661</u>) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2692</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2682</u> Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document <u>2662</u>) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2693</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2683</u> Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document <u>2663</u>) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2694</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2684</u> Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document <u>2664</u>) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/09/2021	<u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. (Hoffman, Juliana)
08/09/2021	<u>2696</u> Adversary case 21–03051. Complaint by James Dondero against Alvarez & Marsal CRF Management, LLC and Farallon Capital Management, L.L.C.. Fee Amount \$350 (Attachments: # <u>1</u> Appendix # <u>2</u> Adversary Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Rosenthal, Michael)
08/09/2021	<u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
08/09/2021	<u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (Leen, Edward)

08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2697</u>). (U.S. Treasury)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] (52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2698</u>). (U.S. Treasury)
08/10/2021	<u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document # <u>2537</u>) Entered on 8/10/2021. (Rielly, Bill)
08/11/2021	<u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
08/11/2021	<u>2701</u> Certificate of No Objection filed by Other Professional Teneo Capital, LLC (RE: related document(s) <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89.). (Hoffman, Juliana)
08/11/2021	<u>2702</u> Certificate of service re: <i>Documents Served on August 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.), <u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.), <u>2687</u> Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document <u>2535</u>) Entered on 8/6/2021. (Okafor, M.), <u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)). (Kass, Albert)
08/12/2021	<u>2703</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2595</u> Application for compensation (<i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Hayward PLLC, Deb). (Annable, Zachery)
08/12/2021	<u>2704</u> Certificate of service re: <i>Twentieth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)

08/13/2021	<u>2706</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/13/2021	<u>2707</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2708</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01895-D. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2709</u> Certificate of service re: <i>Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document <u>2537</u>) Entered on 8/10/2021.). (Kass, Albert)
08/16/2021	<u>2710</u> Application for compensation – <i>Eighth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: \$161,981.82, Expenses: \$1,100.68. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/16/2021	<u>2711</u> Motion to appear pro hac vice for Blaire Cahn. Fee Amount \$100 Filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (Smith, Frances)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28921283, amount \$ 100.00 (re: Doc# <u>2711</u>). (U.S. Treasury)
08/16/2021	<u>2712</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # <u>1</u> Ex. 1 – Order)(Assink, Bryan)
08/16/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28921379, amount \$ 298.00 (re: Doc# <u>2712</u>). (U.S. Treasury)
08/16/2021	<u>2713</u> Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . Fee Amount \$298 filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Appellant Designation due by 08/30/2021. (Sbaiti, Mazin)
08/16/2021	<u>2714</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Transcript) (Taylor, Clay)
08/16/2021	<u>2715</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official

	Committee of Unsecured Creditors) filed by Dolomiti LLC, Dana Scott Breault, SLHC Trust, The Get Good Non Exempt Trust No 2, Get Good Non Exempt Trust No 1, The Dondero Insurance Rabbi Trust, Get Better Trust, Canis Minor Trust, Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
08/16/2021	<u>2716</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Advisors GP, LLC, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Vasek, Julian)
08/16/2021	<u>2717</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party NexPoint Strategic Opportunities Fund. (Hogewood, A.)
08/16/2021	<u>2718</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order</i> filed by Highland Dallas Foundation, Inc., Charitable DAF GP, L.P., Charitable DAF HoldCo, Ltd., Interested Party Charitable DAF Fund, LP. (Phillips, Louis)
08/16/2021	<u>2719</u> Notice of Appearance and Request for Notice by Cortney C. Thomas filed by Interested Parties Okada Family Foundation, Inc., The Okada Insurance Rabbi Trust, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Mark & Pamela Okada Family Trust – Exempt Trust #1, Mark Okada. (Thomas, Cortney)
08/16/2021	<u>2720</u> Motion to appear pro hac vice for Brian Glueckstein. Fee Amount \$100 Filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust (Thomas, Cortney)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28921800, amount \$ 100.00 (re: Doc# <u>2720</u>). (U.S. Treasury)
08/16/2021	<u>2721</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust. (Thomas, Cortney)
08/16/2021	<u>2722</u> Joinder by <i>NexPoint RE Entities' to Objections to 2004 Motion</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc., Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2714</u> Objection, <u>2715</u> Objection, <u>2716</u> Objection). (Drawhorn, Lauren)
08/16/2021	<u>2723</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>and Reservation of Rights</i> filed by Witness Nancy Dondero. (Attachments: # <u>1</u> Exhibit A) (Deutsch-Perez, Deborah)

08/16/2021	<u>2724</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order</i> filed by Interested Parties Mary Jalonick, Highland Kansas City Foundation, Inc., Highland Santa Barbara Foundation, Inc., The Greater Kansas City Community Foundation, The Santa Barbara Foundation, The Dallas Foundation. (Attachments: # <u>1</u> Publication Regarding Ms. Jalonicks Service) (Phillips, Louis)
08/16/2021	<u>2725</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse. (Smith, Frances)
08/16/2021	<u>2726</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor Grant James Scott III. (Kane, John)
08/17/2021	<u>2727</u> Certificate of service re: Reservation of Rights Regarding Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (RE: related document(s) <u>2725</u> Objection). (Soderlund, Eric)
08/17/2021	<u>2728</u> Motion to appear pro hac vice for Susheel Kirpalani. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige) MODIFIED attorney name on 8/19/2021 (Okafor, M.).
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28924194, amount \$ 100.00 (re: Doc# <u>2728</u>). (U.S. Treasury)
08/17/2021	<u>2729</u> Motion to appear pro hac vice for Benjamin Finestone. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28924291, amount \$ 100.00 (re: Doc# <u>2729</u>). (U.S. Treasury)
08/17/2021	<u>2730</u> Motion to appear pro hac vice for Deborah Newman. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28924312, amount \$ 100.00 (re: Doc# <u>2730</u>). (U.S. Treasury)
08/17/2021	<u>2731</u> Motion to appear pro hac vice for Jordan Harap. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 28924326, amount \$ 100.00 (re: Doc# <u>2731</u>). (U.S. Treasury)
08/17/2021	<u>2732</u> Witness and Exhibit List <i>for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Montgomery,

	Paige)
08/17/2021	<u>2733</u> Witness and Exhibit List filed by Creditor Grant James Scott III (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Kane, John)
08/17/2021	<u>2734</u> Application for compensation – <i>Ninth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: \$59,205.24, Expenses: \$169.36. Filed by Attorney Gregory Getty Hesse, Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/17/2021	<u>2735</u> Witness and Exhibit List filed by Interested Party Highland Dallas Foundation, Inc. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 27 # <u>16</u> 28 # <u>17</u> Exhibit 36 # <u>18</u> Exhibit 37) (Phillips, Louis)
08/17/2021	<u>2736</u> Certificate of service re: Motion for Order on Rule 2004 Parties, Notice of Hearing on Motion for Order on Rule 2004 Parties, Amended Notice of Hearing on Motion for Order on Rule 2004 Parties, Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Motion for Expedited Consideration on Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Order Granting Emergency Motion to Set Briefing Schedule, Motion for Leave to File Brief in Excess of 25–pages, Motion for Expedited Consideration of Motion for Leave, Order Granting Leave to File Brief in Excess of 25–pages filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty–Five Pages</i> , <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty–Five Pages</i> , <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2627</u> Order on motion for leave, <u>2637</u> Notice of hearing, <u>2642</u> Notice of hearing, <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination), <u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) , <u>2688</u> Order on motion to extend/shorten time). (Montgomery, Paige)
08/18/2021	<u>2737</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X # <u>25</u> Dondero Ex. Y # <u>26</u> Dondero Ex. Z # <u>27</u> Dondero Ex. AA # <u>28</u> Dondero Ex. BB # <u>29</u> Dondero Ex. CC # <u>30</u> Dondero Ex. DD # <u>31</u> Dondero Ex. EE # <u>32</u> Dondero Ex. FF # <u>33</u> Dondero Ex. GG # <u>34</u> Dondero Ex. HH # <u>35</u> Dondero Ex. II # <u>36</u> Dondero Ex. JJ) (Assink, Bryan)
08/18/2021	<u>2738</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). Appellee designation due by 09/1/2021. (Vasek, Julian)
08/18/2021	<u>2739</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). (Vasek, Julian)
08/18/2021	<u>2740</u> Witness and Exhibit List filed by Witness Nancy Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully

	in the Motion.). (Deutsch–Perez, Deborah)
08/18/2021	<u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
08/18/2021	<u>2742</u> Application for compensation <i>Twenty–Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. (Pomerantz, Jeffrey)
08/18/2021	<u>2743</u> Notice of Agreed Order filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # <u>1</u> Exhibit A–Proposed Order) (Montgomery, Paige)
08/19/2021	<u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document # <u>2711</u>) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document # <u>2720</u>) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2746</u> Hearing held on 8/19/2021. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.) (Edmond, Michael)
08/19/2021	<u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/19/2021	<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/19/2021	<u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at

	https://us-courts.webex.com/meet/jerniga for <u>2748</u> , (Annable, Zachery)
08/20/2021	<u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc # <u>2620</u>) Entered on 8/20/2021. (Okafor, M.)
08/20/2021	<u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/20/2021	<u>2752</u> Certificate of service re: <i>1) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; and 2) Twenty-Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/21/2021	<u>2753</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document <u>2711</u>) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/21/2021	<u>2754</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document <u>2720</u>) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/23/2021	<u>2755</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/). (Pomerantz, Jeffrey)
08/23/2021	<u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u>) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/23/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] (298.00). Receipt number 28936978, amount \$ 298.00 (re: Doc# <u>2713</u>). (U.S. Treasury)
08/23/2021	<u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30

	AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u> , Entered on 8/23/2021 (Okafor, M.)
08/23/2021	<u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal). (Sbaiti, Mazin)
08/23/2021	<u>2760</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/23/2021	<u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . (Whitaker, Sheniqua)
08/23/2021	<u>2762</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01974-X. (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021 (Whitaker, Sheniqua).
08/24/2021	<u>2763</u> Withdrawal (<i>Notice of Withdrawal of Amended Motion to Compel Mediation</i>) filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u>)). (Assink, Bryan)
08/24/2021	<u>2765</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # 1 Ex. 1 – Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/24/2021	<u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order)) (Whitaker, Sheniqua)
08/24/2021	<u>2767</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01979-S. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Whitaker, Sheniqua)
08/24/2021	<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u>). Hearing to be held on 12/15/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.).
08/24/2021	<u>2769</u> Order granting motion to appear pro hac vice adding Susheel Kirpalani for Litigation Sub-Trust (related document # <u>2728</u>) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub-Trust (related document # <u>2729</u>) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub-Trust (related document # <u>2730</u>) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub-Trust (related document # <u>2731</u>) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2773</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>) filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	<u>2774</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	<u>2775</u> Certificate of service re: <i>1) Notice of Proposed Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; 2) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 3) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2743</u> Notice of Agreed Order filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # 1 Exhibit A–Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust, <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2748</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/24/2021	<u>2776</u> Certificate of service re: (<i>Supplemental</i>) <i>1) The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing; and 2) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust, <u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2752</u> Certificate of service re: <i>1) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; and 2) Twenty–Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland

	Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/25/2021	<u>2777</u> Certificate of service re: <i>Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc <u>2620</u>) Entered on 8/20/2021. (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2778</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to Fed. R. Bankr. P. 8009 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2452</u> Appellant designation).). (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
08/26/2021	<u>2779</u> Certificate of service re: <i>1) Debtors Response to James Donderos First Amended Motion for Entry of an Order (I) Compelling Mediation and (II) Granting Related Relief; and 2) Agreed First Amended Scheduling Order with Respect to Debtors Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u>) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2196</u> . Entered on 8/23/2021 (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2780</u> Application for compensation (<i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC (Annable, Zachery)
08/26/2021	<u>2781</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2643</u> Application for compensation (<i>Fourth Monthly Fee Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90.). (Hesse, Gregory)
08/26/2021	<u>2782</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2644</u> Application for compensation (<i>Fifth Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69.). (Hesse, Gregory)
08/26/2021	<u>2783</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2645</u> Application for compensation (<i>Sixth Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00.). (Hesse, Gregory)

08/26/2021	<u>2784</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2646</u> Application for compensation (<i>Seventh Monthly Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00.). (Hesse, Gregory)
08/26/2021	<u>2785</u> BNC certificate of mailing. (RE: related document(s) <u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges.</i>) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2786</u> BNC certificate of mailing. (RE: related document(s) <u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order))) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2787</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub–Trust (related document <u>2729</u>) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 0. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2788</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub–Trust (related document <u>2730</u>) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2789</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub–Trust (related document <u>2731</u>) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/27/2021	<u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/27/2021	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] (100.00). Receipt number 28948918, amount \$ 100.00 (re: Doc# <u>2790</u>). (U.S. Treasury)
08/27/2021	<u>2791</u> Certificate of service re: 1) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2768</u> <i>Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims</i> (related document <u>2226</u> and <u>2267</u>). Hearing to be held on 12/15/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.), <u>2773</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2774</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

08/27/2021	<p><u>2792</u> Certificate of service re: <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2780</u> Application for compensation (<i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
08/27/2021	<p><u>2793</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
08/28/2021	<p><u>2794</u> Transcript regarding Hearing Held 08/19/2021 (52 pages) RE: Motion for 2004 Exam (#2620). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/26/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2746 Hearing held on 8/19/2021. (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.)). Transcript to be made available to the public on 11/26/2021. (Rehling, Kathy)</p>
08/30/2021	<p><u>2795</u> Notice (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
08/30/2021	<p><u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)</p>
08/30/2021	<p><u>2797</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)<u>2712</u> Notice of appeal). Appellee designation due by 09/13/2021. (Assink, Bryan)</p>
08/30/2021	<p><u>2798</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)<u>2713</u> Notice of appeal). Appellee designation due by 09/13/2021. (Sbaiti, Mazin)</p>

08/31/2021	<u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document # <u>2790</u>) Entered on 8/31/2021. (Okafor, M.)
09/01/2021	<u>2800</u> Certificate of service re: <i>Motion for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2801</u> Notice (<i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2021	<u>2802</u> Certificate of service re: <i>1) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197; and 2) Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2795</u> Notice (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2803</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u>) Entered on 8/31/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/02/2021. (Admin.)
09/03/2021	<u>2804</u> Certificate of service re: <i>1) Order for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.; and 2) Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u>) Entered on 8/31/2021. (Okafor, M.), <u>2801</u> Notice (<i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/03/2021	<u>2805</u> Certificate of service re: [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2697 and 2698]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
09/03/2021	<u>2806</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).

	<p>filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
09/03/2021	<p><u>2807</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: &#036). (Hoffman, Juliana)</p>
09/03/2021	<p><u>2808</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, E). (Hoffman, Juliana)</p>
09/03/2021	<p><u>2809</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,9). (Hoffman, Juliana)</p>
09/07/2021	<p><u>2811</u> Notice of Transmittal; 3:21-CV-01590-N – Appellant Supplemental Record Vol. 1 and 2 per District Court order entered 8/24/2021 . (Blanco, J.) Modified TEXT on 9/7/2021 (Blanco, J.).</p>

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 2**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

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9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

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Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachary Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel and Proposed Counsel for the Debtor and Debtor in Possession

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

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

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

The above-captioned debtor and debtor in possession (the “Debtor”) files this motion (the “Motion”) for the entry of an order (the “Order”) approving the terms of a settlement

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

between the Debtor and the Committee (as defined below) regarding governance of the Debtor and procedures for operations in the ordinary course of business, as embodied in the term sheet attached hereto as **Exhibit A** (the “Term Sheet”). In support of this Motion, the Debtor respectfully represents as follows:

Preliminary Statement

1. Following weeks of negotiations, the Debtor and the Committee have reached a proposed settlement, which contemplates the creation of a new independent board of directors (the “Independent Directors”) at Strand Advisors, Inc. (“Strand”), the Debtor’s general partner and ultimate party in control, and the implementation of certain protocols governing the operation of the Debtor’s business in the ordinary course. The Independent Directors will consist of the following three highly qualified and independent individuals: James Seery, John Dubel, and a third director to be selected by or otherwise acceptable to the Committee.² Two of the Independent Directors were chosen by the Committee and the third Independent Director will be selected by or otherwise acceptable to the Committee. Background information for each of the Independent Directors is attached hereto as **Exhibit B**.

2. Pursuant to the Term Sheet, and effective upon entry of the Order, James Dondero will no longer be a director, officer, managing member, or employee of the Debtor or Strand and will have no authority, directly or indirectly, to act on the Debtor’s behalf. Going forward, the Independent Directors, through Strand, will have sole and exclusive management and control of the Debtor. The Independent Directors will have the discretion to appoint an interim

² The Committee’s agreement to the Term Sheet in its entirety is contingent upon the selection of a third Independent Director acceptable to the Committee. In the event the Committee and the Debtor cannot reach an agreement on an acceptable Independent Director to fill the third seat of the Board of Directors, the Term Sheet shall be null and void.

Chief Executive Officer (the “CEO”) who will manage the Debtor’s day-to-day business operations. Subject to Court approval, the Debtor still intends to retain Development Specialists, Inc. (“DSI”) to provide a Chief Restructuring Officer (the “CRO”) that will serve at the direction of the Independent Directors (or CEO, if appointed).

3. It bears emphasis that the Independent Directors will not be mere figureheads. The Debtor and the Committee envision that the Independent Directors will be actively involved and intimately familiar with all material aspects of the Debtor’s business and restructuring efforts. Moreover, with guidance of the CRO and CEO (if appointed), the Independent Directors will endeavor to prevent any negative influence Mr. Dondero or any of his affiliates or agents may have on the Debtor and its employees. Further, as part of the Term Sheet, the Committee will be granted standing to pursue estate claims against Mr. Dondero and other former insiders of the Debtor who were not employed by the Debtor as of the execution of the Term Sheet. The Committee will also retain the right to move for a chapter 11 trustee.

4. In sum, the Term Sheet resolves months of litigation between the Debtor and the Committee over the Debtor’s governance structure and operating protocols, allowing all parties to refocus on a path forward for this chapter 11 case. With the Independent Directors in place, the Debtor can move forward expeditiously, efficiently, and effectively with the substantive aspects of this case and consider any available restructuring options that will maximize value for all constituents. The Debtor therefore urges the Court to approve the Term Sheet and allow the key economic interest holders to proceed with a productive restructuring effort.

Jurisdiction and Venue

5. The United States Bankruptcy Court for the District of Northern District of Texas, Dallas Division (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

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

9. To assist and coordinate the restructuring process, the Debtor retained DSI and Bradley D. Sharp to serve as the CRO on October 7, 2019. On October 29, 2019, the Debtor filed the *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date* [Docket No. 74] (the “CRO Motion”) seeking to formally retain the CRO. The CRO Motion remains pending, and the Debtor is filing a supplement to the CRO Motion concurrently herewith.

10. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court. On November 12, 2019, the Committee filed an omnibus objection to the CRO Motion, cash management motion, and

motion for approval of ordinary course protocols [Docket No. 130] (the “Committee Objection”), raising various concerns regarding the Debtor’s governance and business practices.

11. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s bankruptcy case to this Court [Docket No. 186].³ The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

12. On December 23, 2019, the U.S. Trustee filed a motion in this Court to appoint a chapter 11 trustee for the Debtor [Docket No. 271] (the “Trustee Motion”). Although the Debtor will be filing a separate response to the Trustee Motion, it suffices to say that the Trustee Motion (filed without even considering the proposed Term Sheet) completely lacks merit given the governance changes and other resolutions encompassed in the Term Sheet agreed to by the Committee, as the representative of the primary economic stakeholders here.

Terms of the Proposed Settlement

13. Pursuant to the Term Sheet, the Debtor and the Committee have agreed to: (a) implement certain changes to the Debtor’s governance, including the appointment of the Independent Directors; (b) provide the Committee with additional transparency into the operation of the Debtor’s business; (c) retain the CRO on updated terms; and (d) implement certain protocols governing the ordinary course business operations of the Debtor. The terms of this agreement are contained in the Term Sheet.⁴ A summary of the Term Sheet is as follows:

³ All docket numbers refer to the docket maintained by this Court.

⁴ In the event of any inconsistency between the summary of the Term Sheet contained herein and the Term Sheet, the Term Sheet will govern.

Independent Directors

The Debtor's general partner, Strand will appoint the following three (3) Independent Directors: James Seery, John Dubel, and a third director to be selected by or otherwise acceptable to the Committee. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors' appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached to the Term Sheet (the "Governing Documents"), which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement).

The Independent Directors shall be compensated in a manner to be determined, with an understanding that the source of funding, whether directly or via reimbursement, will be the Debtor.

As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether a CEO should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee's written consent or Order of the Court.

The Committee shall have regular, direct access to the Independent Directors, provided, however that (1) if the communications include FTI Consulting Inc. ("FTI"), Development Specialists Inc. ("DSI") shall also

participate in such communications; and (2) if the communications include counsel, then either Debtor's counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.

Role of Mr. James Dondero

Upon approval of the Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as an employee of the Debtor.

CRO

Bradley Sharp and DSI shall, subject to approval of the Court, be retained as the CRO to the Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. Mr. Sharp's and DSI's retention is subject to this Court's approval. The Debtor has filed the CRO Motion, as supplemented as of the date hereof, which requests authority to retain Mr. Sharp and DSI.⁵

DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.

Estate Claims

The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Mark Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the "Estate Claims"); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor.

Document Management, Preservation, and Production

The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached to the Term Sheet, which requirements cannot be modified without the consent of the Committee or Court order (the "Document Production Protocol").

Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are

⁵ For the avoidance of doubt, the Debtor is not seeking retention of the CRO pursuant to this Motion. The Debtor is seeking such relief pursuant to the CRO Motion (as supplemented).

within the Debtor's possession, custody, or control ("Shared Privilege").

With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by the Debtor under this process will not be used as a basis for a claim of subject matter waiver.

Reporting Requirements

The Debtor shall be subject to and comply with the reporting requirements attached to the Term Sheet, which reporting requirements cannot be modified without the consent of the Committee or Court order (the "Reporting Requirements").

Plan Exclusivity

The Independent Directors may elect to waive the Debtor's exclusive right to file a plan under section 1121 of the Bankruptcy Code.

Operating Protocols

The Debtor shall comply with the operating protocols attached to the Term Sheet, regarding the Debtor's operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order (the "Operating Protocols" and, together with the Reporting Requirements, the "Protocols").

14. By this Motion, the Debtor is seeking the Court's approval of the Term Sheet, the terms contained therein, and the exhibits attached thereto. For the avoidance of doubt, approval of the Term Sheet includes the approval of the following:

- Independent Directors: The appointment of James Seery, John Dubel, and a third director to be selected by or otherwise acceptable to the Committee as the Independent Directors of Strand, the Debtor's general partner, with power to oversee the operations of the Debtor as set forth in the Term Sheet. Mr. Seery and Mr. Dubel were selected by the Committee, and the Debtor agreed to their appointment as Independent Directors. The Debtor is also seeking approval of the Governing Documents appointing the Independent Directors, to the extent required, and the authority to compensate the Independent Directors either directly from the assets of the Debtor or via the reimbursement of Strand of any compensation paid to the Independent Directors.

- Document Management and Preservation: The implementation of the Document Production Protocol, which will govern how the Debtor retains and produces documents and information to the Committee during the pendency of its bankruptcy case. The Debtor is also agreeing to allow the Committee to access certain documents that are otherwise subject to the Shared Privilege to assist the Debtor in investigating the Estate Claims.

- Estate Claims. The Debtor has agreed to grant the Committee standing to pursue any Estate Claims. Estate Claims do not include claims or causes of action against any current employees of the Debtor; however, if any employee ceases to be employed by the Debtor, the Committee will have standing to pursue claims against such former employee.

- Reporting Requirements and Operating Protocols: The Debtor has agreed to provide certain reporting to the Committee and to operate under certain protocols, which set forth the parameters of how the Debtor can conduct its business without the requirement of Court approval. The Protocols provide, in certain circumstances, how the CRO and the Independent Directors will oversee the Debtor's operations. The purpose of the Protocols is to allow the Debtor to function in the ordinary course of its business while providing transparency to the Committee.

15. The Debtor believes that appointing the Independent Directors and otherwise effectuating the terms of the Term Sheet is in the best interests of the Debtor, its estate, and its creditors. The Term Sheet will allow the Debtor to proceed with a productive reorganization effort that will maximize value for all constituents. Accordingly, the Debtor seeks approval of the Term Sheet.

Relief Requested

16. By this Motion, the Debtor seeks entry of an order pursuant to sections 105(a), 363(b)(1), and 363(c)(1) of the Bankruptcy Code and Bankruptcy Rule 9019: (a) approving the Debtor's settlement with the Committee as set forth in the Term Sheet and outlined herein; (b)

authorizing the Debtor to take any action as may be reasonably required to effectuate the terms of the Term Sheet, including entering into the Governing Documents and compensating – either directly or through reimbursement – the Independent Directors; (c) granting the Committee standing to pursue the Estate Claims; and (d) granting related relief.

Authority for the Relief Requested

A. Section 363(c)(1) of the Bankruptcy Code Authorizes the Debtor to Enter Into Certain Aspects of the Term Sheet in the Ordinary Course

17. Because the Debtor is not settling any claims or causes of action through the Term Sheet or otherwise expending estate resources, the Debtor believes that it has the authority to effectuate the majority of the transactions and compromises set forth in the Term Sheet without Court approval under section 363(c)(1) of the Bankruptcy Code. Specifically, section 363(c)(1) provides:

[i]f the business of the debtor is authorized to be operated under section. . . 1108. . . of this title. . . the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). As such, a debtor may engage in postpetition actions if the debtor is authorized to operate its business under section 1108 and such transactions are “in the ordinary course of business.”

18. An activity is “ordinary course” if it satisfies both the “horizontal test” and the “vertical test.” *See, e.g., Denton Cty. Elec. Coop. v. Eldorado Ranch, Ltd. (In re Denton Cty. Elec. Coop.)*, 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *see also In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). The vertical test looks to “whether the transaction subjects a

hypothetical creditor to a different economic risk than existed when the creditor originally extended credit.” *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The horizontal test considers “whether the transaction was of the sort commonly undertaken by companies in the industry.” *Id.* Here, both the vertical test and horizontal test are satisfied.

19. Under the Term Sheet, the Debtor is seeking authority to (a) appoint the Independent Directors at Strand (a non-debtor entity), (b) have Mr. Dondero removed from his role at the Debtor and Strand; (c) agree to seek the retention of the CRO under a revised engagement letter that provides that the CRO will report to the Independent Directors; (d) grant the Committee standing to pursue the Estate Claims; (e) enter into and implement the Document Production Protocols; (f) grant the Independent Directors the exclusive right to determine whether to waive exclusivity; and (g) enter into and implement the Protocols. Only the compensation of the Independent Directors, the entrance into the Protocols (which provide the Committee with certain right to object to the Debtor engaging in a “Transaction” (as defined in the Protocols) and allow the Debtor to seek a hearing before this Court on an expedited basis), and the grant of standing to the Committee to pursue Estate Claims could be construed as outside of the ordinary course of business. The balance of the terms of the Term Sheet either involve non-debtors⁶ or will be the subject of separate motions seeking Court approval at the appropriate time.

B. The Court Should Approve the Term Sheet Under Rule 9019 of the Bankruptcy Code

20. Although the Debtor believes that it has authority to implement the majority of the Term Sheet in the ordinary course of its business under section 363(c), the Debtor is seeking

⁶ With respect to the Independent Directors, they are being appointed to a new independent board of Strand, the Debtor’s general partner, and Strand is not a debtor in this case or subject to this Court’s jurisdiction.

this Court's approval of the Term Sheet under section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules out of an abundance of caution. Section 105(a) of the Bankruptcy Code provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 105(a) has been interpreted to expressly empower bankruptcy courts with broad equitable powers to "craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain." *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (en banc); *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1116 (5th Cir. 1995) (stating that section 105(a) of the Bankruptcy Code "authorizes bankruptcy courts to fashion such orders as are necessary to further the substantive provisions of the Code").

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

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

Fed. R. Bankr. P. 9019(a).

22. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve

a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

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

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

25. Here, the Debtor submits that effectuating the transactions set forth in the Term Sheet satisfies the Fifth Circuit's three-part test. The settlement embodied in the Term Sheet was driven in large part by the Debtor's creditors and has the support of the Committee, which consists of the Debtor's principal creditors. The Term Sheet was negotiated at arm's length, and there was no fraud or collusion in its negotiation. The settlement is also fair and reasonable and in the best interests of the Debtor's estate and also resolves the open disputes regarding the CRO Motion, the *Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver*, as supplemented [Docket Nos. 51 & 259], and *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 76].

26. The Debtor and members of the Committee have been entangled in highly contentious litigation that has spanned many years and multiple venues. As evidenced by the brief history of the Debtor's bankruptcy case,⁷ that contention and mistrust has carried over into this proceeding and could derail any chance that the Debtor has to successfully reorganize and structure a plan to pay its creditors. The governance and operational changes set forth in the Term Sheet, will provide greater transparency to the Committee and start the process of rebuilding the trust necessary to negotiate a successful resolution of this case. Without the Term Sheet, the Debtor

⁷ See, e.g., *Declaration of Frank Waterhouse in Support of First Day Motions* [Docket No. 11], *Motion of the Official Committee of Unsecured Creditors for an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas* [Docket No. 85], *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officers, and (III) Precautionary Motion for Approval of Protocol for "Ordinary Course" Transactions* [Docket No. 130], and *United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee* [Docket No. 271].

anticipates that the Committee would move to appoint a chapter 11 trustee and the U.S. Trustee has already done so (without even seeing the Term Sheet). The Debtor will contest such motions because the appointment of a chapter 11 trustee could gravely harm the Debtor's business. The implementation of the Term Sheet will head off any potential issues that could arise, eliminate costly, time consuming and uncertain litigation, and give the Debtor sufficient breathing room to work towards rebuilding trust with its creditor body and allow the Debtor to exit bankruptcy and preserve the value of its business. The Debtor's bankruptcy case has been pending for over two and a half months, and it is time for the parties to put the acrimony that marked the initial stages of this case behind them and to move forward in a productive manner – precisely what the Term Sheet seeks to accomplish.

C. Consummating the Settlement Agreement is a Sound Exercise of the Debtors' Business Judgment.

27. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate,” after notice and a hearing. It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business under this provision if there is a good business reason for doing so. *See, e.g., ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (*quoting In re Cont'l Air Lines, Inc.*, 780 F.3d 1223, 1226 (5th Cir. 1986)); 441 B.R. 813, 830 (Bankr. S.D. Tex.

2010); *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005).

28. The transactions contemplated by the Term Sheet are within the sound business judgment of the Debtor. The Term Sheet resolves potentially costly and protracted litigation with the Committee over the Debtor's corporate governance and will give the Debtor the breathing room necessary to negotiate and effectuate the terms of a plan acceptable to the Debtor's creditors. Further, providing standing to the Committee to investigate Estate Claims and the payment of the Independent Directors from the assets of the estate are each necessary components of the Term Sheet. The Committee would not have agreed to the Term Sheet without the grant of standing to investigate Estate Claims. Moreover, Strand, a non-debtor, is unable to cover the costs of the Independent Directors. As such, there is a good business reason for the Debtor's payment of the Independent Directors' compensation: the Term Sheet and the appointment of the Independent Directors would not have been agreed to or possible without that condition.⁸ The foregoing is sufficient grounds to approve the Term Sheet and authorize the Debtor to effectuate the terms of the Term Sheet under Section 363(b)(1).

No Prior Request

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

⁸ Further, although the Debtor seeks to reimburse Strand for the cost of the Independent Directors, the Debtor is otherwise obligated to reimburse Strand for any costs or expenses incurred by Strand in its management of the Debtor. See Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., § 3.10(b).

Notice

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

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit C**, (a) approving the Debtor's settlement with the Committee as set forth in the Term Sheet and outlined herein; (b) authorizing the Debtor to take any action as may be reasonably required to effectuate the terms of the Term Sheet, including entering into the Governing Documents and compensating – either directly or through reimbursement – the Independent Directors; and (c) granting related relief.

Dated: December 27, 2019

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
(admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084)
(admitted pro hac vice)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992)
(admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pcszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Melissa S. Hayward

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachary Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

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

Highland Capital Management, L.P.

Preliminary Term Sheet

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

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

	<p>source of funding, whether directly or via reimbursement, will be the Debtor.</p> <p>As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the “<u>CEO</u>”) should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee’s written consent or Order of the Court.</p> <p>The Committee shall have regular, direct access to the Independent Directors, <u>provided, however</u> that (1) if the communications include FTI Consulting Inc. (“<u>FTI</u>”), Development Specialists Inc. (“<u>DSI</u>”) shall also participate in such communications; and (2) if the communications include counsel, then either Debtor’s counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.</p>
<p>Role of Mr. James Dondero</p>	<p>Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as an employee of the Debtor.</p>
<p>CRO</p>	<p>DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer (“<u>CRO</u>”) to the Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as <u>Exhibit B</u>.</p> <p>DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.</p>
<p>Estate Claims</p>	<p>The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the “<u>Estate Claims</u>”); provided, however, that the term Estate Claims will not</p>

	include any estate claim or cause of action against any then-current employee of the Debtor.
Document Management, Preservation, and Production	<p>The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as Exhibit C, which requirements cannot be modified without the consent of the Committee or Court order (the “<u>Document Production Protocol</u>”).</p> <p>Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor’s possession, custody, or control (“<u>Shared Privilege</u>”).</p> <p>With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by the Debtor under this process will not be used as a basis for a claim of subject matter waiver.</p>
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as Exhibit D , which reporting requirements cannot be modified without the consent of the Committee or Court order (the “ <u>Reporting Requirements</u> ”).
Plan Exclusivity	The Independent Directors may elect to waive the Debtor’s exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in Exhibit D hereto, regarding the Debtor’s operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.

Reservation of Rights	This agreement is without prejudice to the Committee's rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.
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Exhibit A

Debtor's Corporate Governance Documents

Exhibit B

Amended DSI Retention Letter

Exhibit C

Document Production Protocol

*PSZJ Revisions 12/23/19
Privileged & Confidential
Subject to FRE 408*

Exhibit D

Reporting Requirements

000426

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

[____]

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

I. AMENDMENT OF BYLAWS

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

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

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

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

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

II. ELECTION OF DIRECTORS

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

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

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

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

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

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

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

III. STIPULATION WITH THE BANKRUPTCY COURT

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

WHEREAS, the Company is the general partner for HCMLP;

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

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

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

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

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

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

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

[Signature pages follow.]

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

STOCKHOLDER:

James Dondero

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

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

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

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

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

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

Section 6. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation’s stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the stockholders, (y) a retired bankruptcy judge and nominated jointly by the stockholders and any official committee of unsecured creditors in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the “Committee”) currently pending in the Bankruptcy Court for the Northern District of Texas (the “Court”), Case No. 19-34054-sgj11; or (z) nominated by the Committee and reasonably acceptable to the stockholders.

3. The following shall be added as Section 7 to Article III of the Bylaws:

Section 7. Removal of Directors. Once appointed, the Independent Directors (i) cannot be removed without the Committee’s written consent or Order of the Court, and (ii) may be removed and replaced at the Committee’s direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement).

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this [__] day of [__], 20__.

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[_____]

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

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

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

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

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

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

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board and no fewer than fifty percent (50%) of these meetings of the Board in person, and no more than fifty percent (50%) of such meetings by telephone or teleconference. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

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

d. Information Provided by the Companies. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company, except to the extent that any such access may impair any attorney client privilege to which the Company may be entitled; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows,

properties, financial condition and prospects of the Company that you reasonably request in connection with the services to be provided to the Company. You will rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns. You are under no obligation to update data submitted to you or to review any other information unless specifically requested by the Board to do so.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the “Retainer”) to be paid in monthly installments of \$[TBD]. The Company’s obligation to pay the Retainer will cease upon the termination of the Term.

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

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment will be due to you within 10 business days after receipt of each such invoice, subject to the Company’s receipt of appropriate documentation required by the Company’s expenses reimbursement policy.

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

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated December 5, 2019, a copy of which is attached hereto as **Appendix A** (the “Indemnification Agreement”). You will also be provided coverage under the Company’s directors’ and officers’ insurance policy as set forth in the Indemnification Agreement.

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

3. PROPRIETARY INFORMATION OBLIGATIONS.

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

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

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

4. OUTSIDE ACTIVITIES.

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

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

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

5. TERMINATION OF DIRECTORSHIP.

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

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

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

6. GENERAL PROVISIONS.

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

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

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder without the written consent of the Company.

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

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

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

[NAME]
Date: _____

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“**Agreement**”), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the “**Company**”), and [_____] (the “**Indemnitee**”).

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

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

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

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee’s agreement to provide services to the Company, the parties agree as follows:

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

(a) “**Change in Control**” means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) “**Claim**” means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or

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

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

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

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

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

(f) **“Enterprise”** means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit

plan, trust or other entity or other enterprise of which Indemnatee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

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

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

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

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

(k) “**Independent Counsel**” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the Company or Indemnatee (other than in connection with matters concerning Indemnatee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnatee in an action to determine Indemnatee’s rights under this Agreement.

(l) “**Losses**” means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee

benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

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

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

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

2. Indemnification.

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

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

3. Contribution.

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

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

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an “**Expense Advance**”) any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee’s right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of

the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee's ability to repay the Expense Advance.

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

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give

prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

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

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

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

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

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

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

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

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

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

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

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

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

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

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

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of “Independent Counsel” in Section 1(k), and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware (“**Delaware Court**”) to resolve any objection which shall have been made by the Company or Indemnitee to the other’s selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court

shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

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

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

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

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

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

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

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

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

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

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

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

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced

pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

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

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

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other

Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

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

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

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

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

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek

indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

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

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

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

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

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

Strand Advisors, Inc.
Attention: Isaac Leventon

Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

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

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

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

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

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

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

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the

same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

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

STRAND ADVISORS, INC.

By: _____
Name:
Title:

[SIGNATURE PAGE – INDEMNIFICATION AGREEMENT]

INDEMNITEE:

Name: [_____]

Address: _____

Email:

December ____, 2019

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

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

Dear Members of the Board:

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

Section 1 – Scope of Work

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

1. Bradley D. Sharp will act as the Company’s Chief Restructuring Officer (“CRO”) with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, as CRO, Mr. Sharp will assume control of the Company’s restructuring and direct the Company with respect to its bankruptcy filed on October 16, 2019 (the “Chapter 11 Case”), which Chapter 11 Case has now been transferred to the Bankruptcy Court.
3. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company (“CEO”) and will comply with the Company’s corporate governance requirements.
4. As directed by the Independent Directors and/or CEO, the CRO will be responsible for the implementation and prosecution of the Chapter 11 Case, including negotiations with creditors, reconciliation of claims, and confirmation of a plan or plans of reorganization.
5. Provide other personnel of DSI (“Additional Personnel”) to provide restructuring support services as requested or required to the Company, which may include but are not limited to:

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

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

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

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

Section 2 – Rates, Invoicing and Retainer

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

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may

Highland Capital Management, LP
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also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

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

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

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

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

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

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

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Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

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

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

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

Section 5 – Indemnity

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

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The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

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

Section 6 – Conflicts

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

Section 7 – No Audit

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

Section 8 – Non-Solicitation

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

Highland Capital Management, LP
December ____, 2019
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Section 9 – Survival

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

Section 10 – Governing Law

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

Section 11 – Entire Agreement, Amendment

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

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

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

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

By: _____, Independent Director
Date: _____

A. Definitions

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

B. Preservation of ESI - Generally

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

C. Preservation of ESI – Specific Forms

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

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

D. Not Reasonably Accessible Documents

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

E. Collection and Search Methodology

- a. Searches for emails in Debtor’s custody shall be conducted by DSI on Debtor’s Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than [date]. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.
- b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.
- c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above.

Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xls or .xlsx) format.

- d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
- e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
- f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
- g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

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

original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.

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

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

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

typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

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

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

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

Metadata List

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

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

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

I. **Definitions**

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

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

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

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

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

B. Operating Requirements

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

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

- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. Redemption requests payable to Related Entities will be held in escrow and will not prevent the winding up or liquidation of any fund or entity.
- c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

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

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

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

B. Operating Requirements

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

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

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

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

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.²
- B. **Operating Requirements**
 1. Ordinary Course Transactions do not require Court approval (All Stages).
 - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
 - b) Stage 3: ordinary course determined by the Debtor.
 2. Related Entity Transactions

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

- a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - b) Stage 3:
 - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
3. Third Party Transactions (All Stages):
- a) Except as set forth in (b) and (c) below, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) \$3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

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

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

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

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

VII. Transactions involving Non-Discretionary Accounts

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

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

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

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

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

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

IX. Shared Services

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

X. Representations and Warranties

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

Schedule A⁶

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

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

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

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

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

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

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

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

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

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

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

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

James P. Seery, Jr.

New York, NY



James P. Seery, Jr. is a high yield and distressed investing professional who was most recently a Senior Managing Director and co-Head of Credit at Guggenheim Securities LLC, where he is responsible for helping direct the development of a leveraged finance and credit distribution business. Prior to joining Guggenheim, Mr. Seery was the President and a senior investing partner of River Birch Capital, LLC, a \$1.3bn global credit fund manager. In that role, he developed and led many of the firm's most profitable credit investments. Mr. Seery is a licensed attorney and was formerly a partner and co-Head of the Sidley Austin LLP New York Corporate Reorganization and Bankruptcy Group, and he also recently served as a Commissioner on The American Bankruptcy Institute's Commission to Study the Reform of Chapter 11.

Before his joining Sidley Austin, Mr. Seery was a Managing Director and the Global Head of Lehman Brothers' Fixed Income Loan business. In that position, he was responsible for managing the Lehman Brothers' Fixed Income investment grade and high yield loan businesses, including underwriting commitments, distribution, hedging, trading and sales (including CLO manager relationships), portfolio management, and restructuring. Mr. Seery was also a member of the Lehman Brothers' Fixed Income Operating Committee and Global Credit Products Operating Committee as well as the High Yield Commitment and New Business Committees. From 2000 to 2004, Mr. Seery ran Lehman Brothers' restructuring and workout businesses with responsibility for management of distressed corporate debt investments, and in 2008 he was a key member of the small team that successfully sold Lehman to Barclays.

Mr. Seery was selected as one of the Top Restructuring Lawyers in the U.S. Under 40 by *Turnarounds and Workouts* in 1999. Mr. Seery graduated in 1990 from New York Law School, *magna cum laude*, where he was an editor of the Law Review and Colgate University in 1984. He was a member of the Board of Directors of the Loan Syndications and Trading Association from 2006 to 2008 and a member of the INSOL International Lenders Group from 2016-2017.

JAMES P. SEERY, JR.
795 Columbus Ave., 12A
New York, New York 10025
631-804-2049 · jpseeryjr@gmail.com

Experience

Guggenheim Securities LLC, New York, New York Aug. 2017-Nov. 2019
Senior Managing Director, Co-Head Credit

- Responsible for developing leveraged finance and credit portfolio advisory businesses
- Management of teams of leveraged finance bankers and trading and sales professionals

River Birch Capital, LLC, New York, New York April 2012-July 2017
President, River Birch Capital, LLC

- President and senior investing partner at New York based \$1.3bn global long-short credit fund focused on corporate credit from investment grade to distressed
- Responsible for originating, executing and managing stressed and distressed credit investments with a team of 6 investing partners and 5 analysts and traders
- Led finance and operations team with CFO/CCO; firm grew from approx. \$200mm in 2012 to \$1.3bn in 2017

Sidley Austin LLP, New York, New York May 2009-April 2012
Co-head New York Corporate and Reorganization Group

- Built and managed a creditor focused restructuring group as part of an international company side practice in a nearly 2000 attorney firm
- Represented banks, corporations, hedge funds, and structured investment vehicles in a variety of restructuring, financing and litigation matters

Lehman Brothers, New York, New York April 1999-May 2009
Global Head Fixed Income Loans

- Managing Director responsible for managing the global fixed income loan business, including investment grade and high yield commitments, global distribution, hedging, trading and sales, CLO origination, portfolio management, and restructuring; managed underwritten loan commitments and teams of credit sales and trading professionals as well as structuring, portfolio management and work-out specialists
- Member Fixed Income Operating Committee, Global Credit Products Operating Committee, and High Yield Commitment and New Business Committees
- Responsible for originating, structuring and managing proprietary distressed debt investments, rescue financings, and restructurings 1999-2004
- Key member of team that negotiated and completed the sale of Lehman Brothers to Barclays Sept. 2008; remained at Barclays through April 2009

Phillips Nizer, Garden City, New York May 1995-April 1999
Senior Associate in corporate reorganization group of boutique New York City law firm

Cadwalader, Wickersham & Taft, New York, New York May 1989-May 1995
Associate in corporate reorganization group of New York City based international law firm

Education

New York Law School, New York, New York, J.D., *magna cum laude*, Editor Law Review 1990
Colgate University, Hamilton, New York, B.A. History 1984

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Experience

Director, River Birch International, Ltd. Board	2015-2017
Director, Camphill Foundation Board	2017-2019
Member, INSOL International Lenders Group Board	2016-2017
Commissioner, ABI Commission to Study Reform of Ch. 11	2012-2015
Director, Loan Syndications and Trading Association	2006-2008

Selected River Birch Sample Investments

Cash America International 5.75% Senior Unsecured Notes due 2018 and Litigation Claim – Developed and led execution of successful note purchase and make-whole litigation strategy based on company's improper spin of payday lending business; U.S. District Court published decision in note holders' favor led to settlement

Chesapeake Energy Corp 6.775% Senior Notes due 2019 Litigation Claims – Developed and led execution of successful note purchase and make-whole litigation strategy based on company's improper call of notes; ultimately prevailed in \$450mm judgment discussed in published Second Circuit and U.S. District Court decisions

Caesars Entertainment Resort Properties 8% 1st Lien Notes due 2020; 11% 2^d Lien Notes due 2021 – Developed and led (with senior investment analyst partner) execution of successful bankruptcy investment strategy focused on lower beta part of the capital structure of bankrupt casino operator; investment designed for high return with significant downside protection

Intelsat Jackson Holdings 9.5% Senior Secured Notes due 2022 – Developed and led (with senior investment analyst partner) execution of successful new issue stressed secured note investment strategy; responsible for structuring and tightening covenant package and increasing size of offering after determining that potential litigation threat was low risk; responsible for recommending ICF 12.5% note investment in the low 80s in February 2018

Motors Liquidation Company GUC Trust Publicly Traded Units – Developed and led successful investment strategy in publicly traded bankruptcy liquidation units (GM); took the opposite side of sell-side analyst recommendations and engineered a successful settlement in high return/low downside position

Hypo Alpe Adria Bank (Hetar) Senior Guaranteed Notes – Developed and led (with senior investment analyst partner) execution of successful investment strategy in insolvent Austrian bank with notes guaranteed by an Austrian State

Presidio Inc. 10.25% Senior Notes due 2023 – Developed and led execution of successful investment strategy to purchase newly developed mezzanine part of the capital structure on struggling new issue deal; ultimately sponsor purchased the mezzanine but aggressive structuring and bidding for the mezzanine tranche led to outsized allocation of new notes

Nortel Networks Ltd. 6.875% Senior Notes due 2023 – Developed and led (with senior investment analyst partner) execution of bankruptcy liquidation strategy based on litigation and ultimate leverage of Canadian liquidating estate

Selected Speaking Engagements

American Law Institute/ NYU Law – Credit Markets and Corporate Reorganization, New York City, April 2017
Moderator, *Auctions and Asset Sales In and Out of Bankruptcy*

University of Texas Law/American Bankruptcy Institute -- Emerging Valuation Issues in Bankruptcy, Las Vegas, March 2017

Panelist, *Determining Valuation and the Fulcrum Security*

Panelist, *Distressed Investments Strategies*

NYU Law – Claim Priority Roundtable, New York City, September 2016

Panelist, *Allocating Value in and Out of Bankruptcy*

University of Texas Law/ABI – Emerging Valuation Issues in Bankruptcy, Las Vegas, March 2016

Panelist, *ABI Commission Report Proposed Amendments and Their Impact on Valuation*

The M&A Advisor – Distressed Investing Summit, Palm Beach, January 2016

Panelist, *Using Options to Bridge Value Gaps*

NYU Law – Seligman Bankruptcy and Business Reorganization Workshop, New York City, September 2015

Panelist, *Valuation Approaches and Methodologies*

Skadden Arps/Colgate University – Law and Finance Summit, New York City, November 2014

Presenter, *Recent Developments in Bankruptcy and Distressed Debt*

John S. Dubel

Board of Directors Experience

- **Purdue Pharma Inc. – July 2019 to Present** - Independent Board Member and Chair of the Special Committee of Directors

In addition to being a member of the Board of Directors of Purdue Pharma Inc., I am the Chair of the Special Committee of Independent Directors charged with overseeing the investigation of relationships between Purdue and Purdue owners, the Sackler family.

- **WMC Mortgage, LLC – Indirect Subsidiary GE – July 2018 to December 2019** - Independent Board Member and Chair of the Special Independent Committee of Directors

WMC's chapter 11 plan was recently confirmed and WMC will emerge from Chapter 11 in early December 2019. I am the Chair of the Special Independent Committee of Independent Directors for this indirect subsidiary of GE. The Special Committee was tasked with reviewing the relationship between the insolvent WMC and GE and resolving its insolvency issues through a court supervised chapter 11 proceeding. I was the lead person responsible for negotiations with the parent concerning the level of support that the parent was required to provide and worked with our creditors to negotiate a resolution amongst all parties.

- **Werner Co. – January 2013 to Present – Sole Independent Director**

Werner is a global leader in access equipment, secure storage, light duty construction and fall protection products with operations across all geographies. A consortium of private equity investors bought the assets out of a bankruptcy proceeding in 2007. I was asked to serve on the Board as the sole Independent Director by the largest shareholder. Werner more than doubled the size of its business, diversified its product offering and substantially improved its EBITDA prior to its sale in July 2017. As an independent director, working with one other director, we lead the effort in the sale process that achieved an additional \$180 million increase in the sale price of the company for its distressed investors. I am currently the lead director responsible for the resolution of post-sale purchase price adjustments.

- **Old PSG f/k/a Performance Sports Group – August 2017 to December 2017**

Asked to serve on the Board, by the Official Equity Committee, after the sale of Performance Sports Group's assets. My role was to oversee the plan of reorganization process to drive to a smooth confirmation.

- **FXI Holdings** – September 2010 to October 2017 – Independent Director

FXI is a leading producer of engineered polyurethane foam solutions serving the largest customers in the largest markets. It has the broadest customer and consumer reach of any North American foam producer. FXI's assets were purchased during a bankruptcy proceeding in 2009. I was asked to serve on the board of directors by one of the two private equity firms that owned FXI. Shortly after joining the Board, I was asked to Chair a Special Committee of the Board to manage certain litigation and government investigations related to alleged anti-trust infractions. FXI was the subject of over 50 different class action and individual litigations alleging damages in excess of \$3 billion. Over a period of several years, FXI was able to settle all of its litigation for a minor fraction of the alleged damages and all investigations by the government were dropped. During this time, the company's performance improved in a consistent manner with EBITDA more than doubling. Once these litigations were settled, the company was marketed and ultimately sold in October 2017.

- **ResCap Liquidating Trust** – December 2013 to March 2017 – Chairman of the Board - December 2013 to late 2015

After the ResCap chapter 11 plan was confirmed, I served on the Board of the ResCap Liquidating Trust, as FGIC's representative, to guide the wind down of the remaining assets and prosecute claims in excess of \$4 billion against institutions that caused harm to ResCap. During this time, I also served as Liquidating Trustee while we brought on board a new in-house lawyer to prosecute these claims and transitioned this individual into the permanent Liquidating Trustee role.

- **FGIC Corporation and FGIC** - December 2008 to April 2014 – Chairman of the Board during various parts of that time frame – while serving as CEO
- **Barneys New York** – February 2012 to May 2012 – Sole Independent Director

After Barneys' 2007 sale to Istithmar World, the Government of Dubai's private investment fund, Barneys was impacted by the recession in the late 2000's. I was brought in to serve as the sole independent director during the out of court restructuring process which resulted in a consensual change of control for Barneys to its distressed investor creditors.

- **The Leslie Fay Companies** – April 1993 to May 1996 – while serving as the EVP of Restructuring and CFO
- Mr. Dubel has also served as a member and chairperson of various ad hoc and official creditor committees.

John S. Dubel

Key Management Experience

- **Noble Environmental Power** – Restructuring Advisor to the Company - 2018

Noble was the owner of two utility scale wind power plants in upstate New York which were in default on their debt instruments. Working closely with Noble's investment bankers we were able to complete a sale of these plants while keeping the companies out of chapter 11 and returning net sale proceeds to its shareholders.

- **SunEdison, Inc.** – Chief Executive Officer and Chief Restructuring Officer – 2016-2017

SunEdison was the largest global renewable energy development company prior to its filing for chapter 11 in April 2016. SunEdison had over \$10 billion of liabilities and 4,500 employees spread across operations in over 50 countries on 6 continents. A decline in energy prices along with loss of faith in management by investors and numerous litigations filed against the company caused the closing of the capital markets for SunEdison which led to its filing for chapter 11. I was brought in as a requirement of the DIP agreement. SunEdison's assets were sold in a manner to preserve the greatest value for its creditors. I am currently assisting the wind down SunEdison entity as requested.

- **Financial Guaranty Insurance Company** – Chairman and Chief Executive Officer – 2008-2014

FGIC was the third largest monoline bond insurer, insuring in excess of \$300 billion of public finance instruments, RMBS securitizations and CDS contracts with over \$4 billion of capital. After the collapse of the residential mortgage market in the 2007/08 timeframe, FGIC lost its AAA ratings and experienced tremendous losses on its insurance contracts. This led to an insolvency proceeding under NY State insurance law with an innovative resolution through a pre-arranged rehabilitation plan. This enabled it to continue to pay its policy holders in a timely manner.

- **Residential Capital** – Co-Chairman of the Official Creditors Committee – 2012-2013

ResCap, a wholly owned subsidiary of Ally Financial, was one of the largest mortgage originators in the US. FGIC was its 2nd largest creditor and after its chapter 11 filing in May of 2012, I was appointed as the Co-Chair of ResCap's Official Unsecured Creditors Committee. As the lead negotiator for the UCC, the UCC was able to negotiate an increase in the contribution to the plan of reorganization by the parent, Ally, from approximately \$650 million to \$2.1 billion. This contribution settled all of the litigation between Ally and Rescap and enabled ResCap to emerge from chapter 11.

Dubel & Associates, L.L.C.

- **Anchor Glass Container Corporation** – Chief Restructuring Officer – 2005-2006

Anchor Glass was the 3rd largest manufacturer of glass containers in the US, with Anheuser Busch and Snapple as its largest customers, where it provided “just in time” deliveries to enable its customers plants to operate 24/7. Its third trip through chapter 11 resulted from poor contract pricing and high legacy costs. I worked closely with the CEO to renegotiate these contracts and reduce the cost structure which enabled it to emerge from chapter 11 as a viable business which continues to operate today.

- **RCN Corporation** – President and Chief Operating Officer - 2004

RCN was a Bundled 3-product cable provider offering integrated voice, video and data products in the US Northeast, Midwest and West Coast markets with over \$1.7 billion of debt incurred during its build out period. Working with the Lead Director, a pre-arranged chapter 11 plan was negotiated with all of its creditor constituencies to enable it to emerge as a profitable business in its markets where it continues to operate today.

- **Cable & Wireless America** – Chief Executive Officer – 2003-2004

C&W America was a premier hosting business with 14% share of the US market and world class a Tier 1 IP Network. When its British parent company experienced financial difficulties, they attempted to abandon C&W America which caused stress for its major customers, including Yahoo, Google and others. A plan was put in place, though a chapter 11 process, to dramatically reduce its daily cash burn and sell the entity while maintaining its customer base.

- **Acterna Corporation** – Chief Restructuring Officer - 2003

Acterna was a multi-national manufacturer of telecommunications and cable equipment with revenues of approximately \$1.7 billion and debt of \$1 billion prior to the industry down turn. I worked closely with the CEO to stabilize the operations and avoid a fire sale of the business. A quick turn through chapter 11 enabled it to emerge as a viable business, where upon the CEO was able to regrow the business and position it for a successful sale to an industry player 18 months later.

- **WorldCom, Inc.** – Chief Financial Officer – 2002, Advisor – 2003

WorldCom was one of the largest telecommunication companies with assets of over \$107 billion and operations across the globe. It filed for chapter 11 during 2002 due to a massive fraud which covered up the significant operational deficiencies and losses it was experiencing. I was brought in as a condition of the DIP agreement and worked closely with the CEO and other members of the senior management to stabilize the company, restructure the operations to reduce opex, provide stability to the international operations and assist with the plan of reorganization negotiations and confirmation.

- **CellNet Data Systems, Inc.** – Chief Restructuring Officer – 1999-2001

CellNet was a startup technology company that provided smart grid and smart metering and billing solutions for the utility industry. After burning through in excess of \$600 million of initial funding it was not able to access the capital markets to continue to build out its platform and realize the cost synergies across contracts that would make it profitable. Working closely with the new CEO, we reduced the cost structure and sold the company to one of its meter suppliers enabling it to continue to operate in a successful manner.

- **Barneys New York** – Chief Financial Officer – 1996-1999

Barneys was, at this time, a family owned high end retail store chain operating with over 30 stores and international affiliations in Asia. After an uncontrolled growth plan and management that did not understand its cost structure, it filed for chapter 11. I was brought in at the request of the DIP lender to oversee the family's management, to control its costs, close unprofitable locations, renegotiate store leases and work out a consensual chapter 11 plan that included its largest creditors providing financing through a rights offering to enable Barneys to successfully emerge from chapter 11 as a profitable retailer.

- **The Leslie Fay Companies** – EVP Restructuring and Chief Financial Officer – 1993-1995

Leslie Fay was one of the larger designer and manufacturer of ladies dresses, sportswear and suits in the US. A public company, it was the victim of fraud by its financial management team to hide the true cost of operations and manufacturing of its products. This led to a chapter 11 filing. I worked closely with the CEO and President to stabilize its financial management team, reduce costs and position it for an emergence from chapter 11.

- **Robert Maxwell Group** – Head of US Private Companies – 1991-1993

Robert Maxwell was a British entrepreneur who invested heavily in the publishing space. After financial improprieties were uncovered and his subsequent suicide, I was appointed by the UK Administrators to run all of his US operations, which included over 40 private companies. I worked closely with the UK administrators to realize value through sales of these US operations and turn those proceeds over to the UK Administrators.

Dubel & Associates, L.L.C.

Mr. Dubel is a past board member and officer of the Association of Insolvency and Reorganization Advisors, a Certified Insolvency and Reorganization Advisor and is a member of the Turnaround Management Association and the American Bankruptcy Institute. Mr. Dubel received a Bachelor in Business Administration degree from the College of William and Mary.

Dubel & Associates, LLC

Selected Case Studies

SunEdison, Inc.
John Dubel – Chief Executive Officer and Chief Restructuring Officer

Situation

- ▶ SunEdison (SUNE) was the largest global renewable energy development company prior to its filing for chapter 11 in April 2016. SUNE had over \$10 billion of liabilities and 4,500 employees spread across operations in over 50 countries on 6 continents
- ▶ Continued downward pressure on energy prices caused renewable energy projects to experience stress. Lack of proper integration of acquisitions and overpayment on other acquisitions caused a liquidity crisis. Public spin-offs of profitable yieldco assets cut off cash flow that was needed to run the operations.
- ▶ Senior management control of the Yieldcos enabled borrowings from the Yieldcos which could not be repaid

Actions Taken

- ▶ Hired initially as CRO with a clear mandate to take on CEO responsibilities
- ▶ An immediate assessment of the opportunity to maintain a going concern was initiated.
- ▶ Programs were put in place to plug the employee exodus that SUNE was experiencing
- ▶ In consultation with our lenders made the determination that an orderly sale of assets was the best path to optimum value realization
- ▶ Maintained an open line of communication with the DIP, 1L and 2 L lenders to build back trust in the company
- ▶ Engaged with the Board of the Yieldcos, TERP and GBL, to work towards a resolution of the disputes between the Yieldcos and SUNE

Results

- ▶ Took on CEO role after a short transition with the former CEO
- ▶ Reorganization of key personnel functions including the hiring of a new CFO and Controller provided stability in the Finance functions for the company to operate within the limits of the DIP agreement.
- ▶ Executed a global marketing process which resulted in over 60 asset sales with approximately \$1.5 billion of gross proceeds
- ▶ Executed a plan which resulted in the transition of administrative and operational functions from SUNE to the Yieldcos which helped stabilize the value of our ownership stake in these entities

SunEdison, Inc. (continued)
John Dubel – Chief Executive Officer and Chief Restructuring Officer

Situation	Actions Taken	Results
<ul style="list-style-type: none"> ▶ Class and individual litigation against SUNE and the Yieldcos related to these control issues ensued. ▶ Shortly after a Feb 2016 2L financing the company has exhausted those funds and was out of available funds to operate the business. ▶ Additional litigation commenced related to cancelled acquisitions. ▶ During this timeframe, the creditors lost faith in the CEO and CFO. ▶ SUNE filed for chapter 11 in late April 2016 funded by a DIP provided by the 1L and 2L creditors. 	<ul style="list-style-type: none"> ▶ Engaged with the Board and management of the Yieldcos, TERP and GBL, to start to work towards a resolution of the disputes between the Yieldcos and SUNE ▶ Put in place a path to seek resolution of all of the Class Action and individual shareholder litigations by seeking a mediation in the District Court and Bankruptcy Court litigation related to both SUNE and the Yieldcos ▶ Commenced negotiations to settle the various litigations amongst SUNE's creditor groups and between SUNE and its Yieldcos ▶ Worked closely with Chief Judge Morris, the mediator appointed in the case, to craft a resolution to all intercreditor disputes 	<ul style="list-style-type: none"> ▶ Drove a plan, through a directed litigation strategy, to force a resolution of the over \$3 billion of claims brought against SUNE by the Yieldcos which resulted in a cooperative sale of the Yieldcos netting SUNE approximately \$825 million ▶ A replacement DIP agreement was put in place to eliminate certain concerned creditors and align the interests of the DIP lenders and the prepetition secured creditors. ▶ Settlements of the vast majority of class and individual shareholders were negotiated ▶ A mediated resolution amongst SUNE's creditor resulted in a successful chapter plan of reorg funded by a rights offering led by SUNE's 2L creditors

Financial Guaranty Insurance Company

John Dubel – Chief Executive Officer and member of the Board of Directors

Situation

- ▶ FGIC was the third largest monoline bond insurer, insuring in excess of \$300 billion of public finance instruments, RMBS securitizations and CDS contracts
- ▶ At the start of 2008, FGIC was at risk of losing its AAA ratings
- ▶ The residential real estate meltdown caused FGIC to face billions of dollars of claims from CDS and RMBS contracts it had insured
- ▶ In addition, several of FGIC's largest public finance deals were on the cusp of defaulting
- ▶ In late 2009, FGIC's statutory capital went negative and was subject to immediate takeover by the NYS Department of Financial Services

Actions Taken

- ▶ Raised capital surplus by \$830 million through reinsurance agreements and preferred stock
- ▶ Negotiated settlements of CDS contracts
- ▶ Managed the workout of multiple public finance insurance contracts
- ▶ Managed affirmative litigation actions to recover from parties that harmed FGIC's insurance contracts
- ▶ Developed an innovative restructuring plan to allow FGIC to file a pre-arranged rehabilitation plan in NYS Court
- ▶ Positioned the company to be able to operate in the post rehabilitation environment to pay claims to policyholders in a timely manner

Results

- ▶ Planned and executed an orderly Rehabilitation Plan process which resulted in an innovative and precedent setting proceeding for FGIC's policyholders
- ▶ Managed down the overall exposure from \$312 billion to under \$30 billion
- ▶ Settled parent/subsidiary issues without litigation
- ▶ Recovered in excess of \$1.25 billion for policyholders from parties that harmed FGIC's contracts
- ▶ All of these results were accomplished while maintaining an independent view towards protecting all policyholders interests

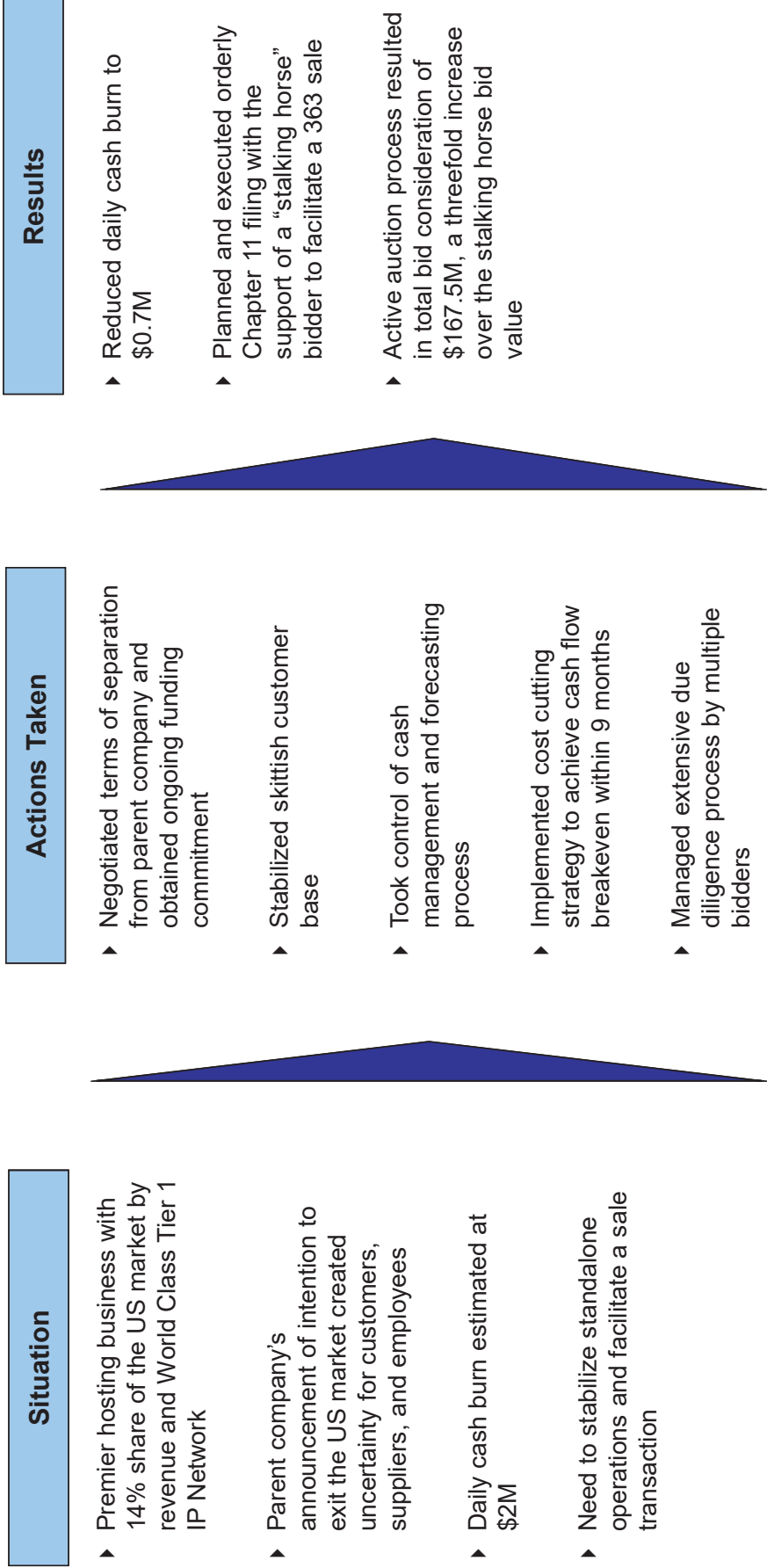
RCN Corporation – Integrated Triple Play Service Provider

John Dubel – President and Chief Operating Officer

Situation	Actions Taken	Results
<ul style="list-style-type: none"> ▶ Bundled 3-product cable provider offering integrated voice, video and data products in the US Northeast, Midwest and West Coast markets ▶ Revenues of approximately \$500 million ▶ Over 1 million connections ▶ \$1.7 BN of debt in default ▶ Secured creditors pushing the Company to a forced liquidation ▶ Lack of confidence in management's business plan and ability to rationalize the business ▶ Company lacked adequate liquidity to maintain operations 	<ul style="list-style-type: none"> ▶ Hired as President and CRO to lead RCN during this crisis. ▶ Implemented reorganization of operating costs achieving positive EBITDA and cash flow ▶ Actions included: <ul style="list-style-type: none"> – Rationalized customer base – Segmented Customer Service activity and automated where possible – Consolidated Network Operations to drive efficiency – Reduced IT functions – Reduced customer service call volume through web-based solutions – Simplified product offering – Generated Tech Operations savings 	<ul style="list-style-type: none"> ▶ Streamlined operations and reduced breakeven costs achieving positive cash flow and EBITDA ▶ Reduced annualized SG&A costs by 20% ▶ Reduced headcount by 25% ▶ Improved Customer Service quality ▶ Company emerged with over \$125 million of cash in hand ▶ Instituted rigorous cost reduction procedures within the company ▶ Positioned the company for future positive growth

Cable & Wireless America – Successfully Positioned the Company for a Sale

John Dubel – Chief Executive Officer



Acterna – Reduced Costs, Drove a Successful Turnaround

John Dubel – Chief Restructuring Officer

Situation	Actions Taken	Results
<ul style="list-style-type: none"> ▶ Leading Telecom Network equipment supplier with worldwide operations that was facing a severe liquidity crisis ▶ Test equipment market was crippled by the drought of capital spending from Telecom Network companies ▶ Debt levels were not sustainable in then current market conditions 	<ul style="list-style-type: none"> ▶ Assumed role of CRO to lead company through Chapter 11 ▶ Restructured \$1.0 BN of debt ▶ Preserved non-domestic assets across 30 countries necessary to a successful reorganization. ▶ Focused sales activity on core markets ▶ Worked with management to reduce SG&A costs ▶ Rationalized headcount through centralization of manufacturing activity ▶ Managed the subsidiary divestiture program ▶ Integrated worldwide cash control procedures improving liquidity 	<ul style="list-style-type: none"> ▶ Acterna emerged from Chapter 11 with 80% less debt and a reduction of 85% of interest costs in less than 6 months ▶ Improved international cash liquidity sufficiently for non-US operations to become self funding ▶ Cash at emergence was over \$60 million ▶ Reduced operating cash costs so the company was self funding and the DIP was never used to operate the company ▶ 18 months after C-11, Acterna announced a sale to JDS Uniphase, for a three fold increase in value.

WorldCom – Stabilized Operations and Finance Function

John Dubel – Chief Financial Officer

Situation	Actions Taken	Results
<ul style="list-style-type: none"> ▶ A massive fraud which masked operational, financial and reporting issues crippled the company’s credibility ▶ WorldCom suffered from excess debt with declining value of assets, financial fraud issues, contentious relationship with creditors, and a substantial cash burn ▶ Significant negative cash flow from international operations ▶ WorldCom filed for bankruptcy in July of 2002, becoming the largest bankruptcy filing in history at the time 	<ul style="list-style-type: none"> ▶ Assumed role Chief Financial Officer until a permanent management team could be put in place then worked as financial advisor for pendency of Chapter 11 case ▶ Put turnaround teams, operational restructuring plans, and cash management plans in place ▶ Led the international restructuring efforts ▶ Assisted in negotiations with creditors ▶ Implemented an achievable 2003 business plan, facilitated several cost reduction initiatives, and managed the 13-week cash flow forecast ▶ Reduced capital spending 	<ul style="list-style-type: none"> ▶ Achieved \$2 BN of operational savings ▶ Increased cash flow by more than \$100M in international operations and avoided bankruptcy in many jurisdictions ▶ Worked with all stakeholders to reach consensus on a plan of reorganization ▶ Successfully restructured the balance sheet

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

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

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the “Motion”),² filed by the above-captioned debtor and debtor in possession (the “Debtor”); the Court having reviewed the Motion, and finding that (a) the Court has

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

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

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein.
2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) entering into the Governing Documents and compensating the Independent Directors for their services either directly or by reimbursing Strand for any costs incurred in connection with the appointment and compensation of the Debtor; (ii) implementing the Document Production Protocol; and (ii) implementing the Protocols.
3. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.
4. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.
5. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER



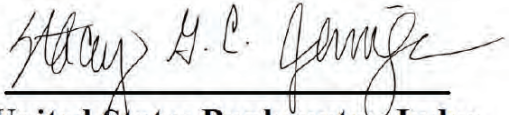
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed December 31, 2019


United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
Debtor.	§	Chapter 11

ORDER REGARDING REQUEST FOR EXPEDITED HEARING

On this day, the Court considered the Debtor’s request for expedited hearing on *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the “Governance Motion”). Based on the pleadings filed, the Court finds that good cause exists to grant the Debtor’s Motion for Setting and Expedited Hearing. Therefore, the Court GRANTS the Motion for Expedited Hearing.

IT IS THEREFORE ORDERED that the Motion for Setting and Expedited Hearing is

GRANTED. It is further

ORDERED that the hearing on the Governance Motion shall be held on January 9, 2020 at 9:30 a.m. (prevailing Central Time) in the United States Bankruptcy Court for the Northern District of Texas, 1100 Commerce Street, 14th Floor, Courtroom #2, Dallas, Texas 75242. It is further

ORDERED that the deadline for objecting to the Governance Motion shall be 5:00 p.m. Central Time on January 6, 2020, and the deadline for filing any reply briefs in support of the Governance Motion shall be 5:00 p.m. Central Time on January 8, 2020. Counsel for movant shall serve this order on interested parties.

End of Order

United States Bankruptcy Court
Northern District of Texas

In re:
Highland Capital Management, L.P.
Debtor

Case No. 19-34054-sgj
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3

User: sheniquaw
Form ID: pdf012

Page 1 of 2
Total Noticed: 2

Date Rcvd: Dec 31, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jan 02, 2020.

aty +James E. O'Neill, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Fl.,
Wilmington, DE 19801-3034
aty +Maxim B Litvak, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15th Floor,
San Francisco, CA 94111-4554

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jan 02, 2020

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 31, 2019 at the address(es) listed below:

Alyssa Russell on behalf of Creditor Committee Official Committee of Unsecured Creditors
alyssa.russell@sidley.com
Bojan Guzina on behalf of Creditor Committee Official Committee of Unsecured Creditors
bguzina@sidley.com
Brian Patrick Shaw on behalf of Creditor Acis Capital Management GP, LLC
shaw@roggedunngroup.com, cashion@roggedunngroup.com
Brian Patrick Shaw on behalf of Creditor Acis Capital Management, L.P.
shaw@roggedunngroup.com, cashion@roggedunngroup.com
Casey William Doherty, Jr. on behalf of Interested Party Jefferies LLC
casey.doherty@dentons.com, stephanie.sciba@dentons.com
Charles Martin Persons, Jr. on behalf of Creditor Committee Official Committee of Unsecured
Creditors cpersons@sidley.com
David Grant Crooks on behalf of Debtor Highland Capital Management, L.P.
dcrooks@foxrothschild.com, etaylor@foxrothschild.com, jsagui@foxrothschild.com,
plabov@foxrothschild.com, jmanfrey@foxrothschild.com; jdistanislao@foxrothschild.com
David Grant Crooks on behalf of Creditor Committee Official Committee of Unsecured Creditors
dcrooks@foxrothschild.com, etaylor@foxrothschild.com, jsagui@foxrothschild.com,
plabov@foxrothschild.com, jmanfrey@foxrothschild.com; jdistanislao@foxrothschild.com
David Grant Crooks on behalf of Creditor PensionDanmark Pensionsforsikringsaktieselskab
dcrooks@foxrothschild.com, etaylor@foxrothschild.com, jsagui@foxrothschild.com,
plabov@foxrothschild.com, jmanfrey@foxrothschild.com; jdistanislao@foxrothschild.com
Edmon L. Morton on behalf of Creditor Committee Official Committee of Unsecured Creditors
emorton@ycst.com
Elizabeth Weller on behalf of Creditor Upshur County dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Grayson County dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Dallas County dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Irving ISD dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Rockwall CAD dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Tarrant County dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Fannin CAD dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Allen ISD dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com

000503

District/off: 0539-3

User: sheniquaw
Form ID: pdf012

Page 2 of 2
Total Noticed: 2

Date Rcvd: Dec 31, 2019

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Elizabeth Weller on behalf of Creditor Kaufman County dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Elizabeth Weller on behalf of Creditor Coleman County TAD dallas.bankruptcy@publicans.com,
dora.casiano-perez@lgbs.com;Melissa.palo@lgbs.com
Gregory V. Demo on behalf of Creditor Committee Official Committee of Unsecured Creditors
gdemo@pszjlaw.com, jo'neill@pszjlaw.com;ljones@pszjlaw.com
Gregory V. Demo on behalf of Debtor Highland Capital Management, L.P. gdemo@pszjlaw.com,
jo'neill@pszjlaw.com;ljones@pszjlaw.com
J. Seth Moore on behalf of Creditor Siepe, LLC smoore@ctstlaw.com, jstele@ctstlaw.com
Jaclyn C. Weissgerber on behalf of Creditor Committee Official Committee of Unsecured
Creditors bankfilings@ycst.com, jweissgerber@ycst.com
Jason Patrick Kathman on behalf of Creditor Patrick Daugherty jkathman@pronskepc.com,
gpronske@pronskepc.com;btittle@pronskepc.com;lvargas@pronskepc.com;admin@pronskepc.com
Jeffrey Kurtzman on behalf of Creditor BET Investments II, L.P. kurtzman@kurtzmansteady.com
Jeffrey Nathan Pomerantz on behalf of Debtor Highland Capital Management, L.P.
jpomerantz@pszjlaw.com
John A. Morris on behalf of Debtor Highland Capital Management, L.P. jmorris@pszjlaw.com
John J. Kane on behalf of Creditor CLO Holdco, Ltd. jkane@krcl.com,
ecf@krcl.com;jkane@ecf.courtdrive.com
Juliana Hoffman on behalf of Creditor Committee Official Committee of Unsecured Creditors
jhoffman@sidley.com, txefilingnotice@sidley.com;julianna-hoffman-8287@ecf.pacerpro.com
Juliana Hoffman on behalf of Debtor Highland Capital Management, L.P. jhoffman@sidley.com,
txefilingnotice@sidley.com;julianna-hoffman-8287@ecf.pacerpro.com
Laurie A. Spindler on behalf of Creditor City of Allen Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Allen ISD Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Grayson County Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Kaufman County Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Dallas County Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Irving ISD Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Laurie A. Spindler on behalf of Creditor Tarrant County Laurie.Spindler@lgbs.com,
Dora.Casiano-Perez@lgbs.com
Linda D. Reece on behalf of Creditor Garland ISD lreece@pbfc.com
Linda D. Reece on behalf of Creditor Wylie ISD lreece@pbfc.com
Linda D. Reece on behalf of Creditor City of Garland lreece@pbfc.com
Lisa L. Lambert on behalf of U.S. Trustee United States Trustee lisa.l.lambert@usdoj.gov
Mark A. Platt on behalf of Interested Party Redeemer Committee of the Highland Crusader Fund
mplat@fbtlaw.com, aortiz@fbtlaw.com
Matthew A. Clemente on behalf of Creditor Committee Official Committee of Unsecured Creditors
mclemente@sidley.com, matthew-clemente-8764@ecf.pacerpro.com;efilingnotice@sidley.com
Melissa S. Hayward on behalf of Debtor Highland Capital Management, L.P.
MHayward@HaywardFirm.com, mholmes@HaywardFirm.com
Michael I. Baird on behalf of Interested Party Pension Benefit Guaranty Corporation
baird.michael@pbgc.gov, efile@pbgc.gov
Michael I. Baird on behalf of Creditor Pension Benefit Guaranty Corporation
baird.michael@pbgc.gov, efile@pbgc.gov
Michael Scott Held on behalf of Creditor Crescent TC Investors, L.P. mhheld@jw.com,
lcrumble@jw.com
Paige Holden Montgomery on behalf of Creditor Committee Official Committee of Unsecured
Creditors pmontgomery@sidley.com
Penny Packard Reid on behalf of Creditor Committee Official Committee of Unsecured Creditors
preid@sidley.com, txefilingnotice@sidley.com;penny-reid-4098@ecf.pacerpro.com;ncade@sidley.com
Phillip L. Lamberson on behalf of Creditor Acis Capital Management GP, LLC
plamberson@winstead.com
Phillip L. Lamberson on behalf of Creditor Acis Capital Management, L.P.
plamberson@winstead.com
Rakhee V. Patel on behalf of Creditor Acis Capital Management, L.P. rpatel@winstead.com,
lbayliss@winstead.com;achiarello@winstead.com
Rakhee V. Patel on behalf of Creditor Acis Capital Management GP, LLC rpatel@winstead.com,
lbayliss@winstead.com;achiarello@winstead.com
Sean M. Beach on behalf of Creditor Committee Official Committee of Unsecured Creditors
bankfilings@ycst.com, sbeach@ycst.com
United States Trustee ustpregion06.da.ecf@usdoj.gov
Zachery Z. Annable on behalf of Debtor Highland Capital Management, L.P.
zannable@haywardfirm.com

TOTAL: 57

000504



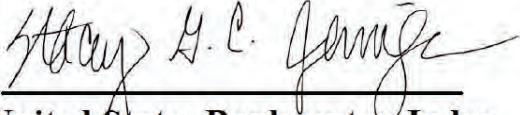
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 9, 2020


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF ORDER

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	
	§	

**Response Deadline: July 10, 2020 at 5:00 p.m.
Hearing Date: July 14, 2020 at 1:30 p.m.**

**DEBTOR'S MOTION UNDER BANKRUPTCY CODE
SECTIONS 105(a) AND 363(b) FOR AUTHORIZATION TO
RETAIN JAMES P. SEERY, JR., AS CHIEF EXECUTIVE OFFICER,
CHIEF RESTRUCTURING OFFICER AND FOREIGN REPRESENTATIVE
*NUNC PRO TUNC TO MARCH 15, 2020***

000510

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves (the “Motion”) pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), authorizing the Debtor (a) (i) to retain James P. Seery, Jr. as the chief executive officer and chief restructuring officer of the Debtor, pursuant to the terms of the letter attached as Exhibit 1 to the Proposed Order (the “Agreement”) *nunc pro tunc* to March 15, 2020, and (ii) for Mr. Seery to replace the Debtor’s current chief restructuring officer as the Debtor’s foreign representative pursuant to 11 U.S.C. § 1505, and (b) granting related relief. In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”).
4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court. On December 4, 2019,

the Delaware Bankruptcy Court entered an order transferring venue of the Debtor's chapter 11 case to this Court [Docket No. 186].¹

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

6. On December 4, 2019, the Debtor filed in the Delaware Bankruptcy Court its *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) To Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc, as of the Petition Date* [Docket No. 74] (the "CRO Motion"). The CRO Motion sought, among other things, to appoint Bradley Sharp as the Debtor's chief restructuring officer and for DSI to provide financial advisory services to the Debtor in support of Mr. Sharp.

7. On December 27, 2019, the Debtor filed the *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). The Settlement Motion sought approval of the settlement between the Debtor and the Committee and provided for, among other things, the creation of a new independent board of directors of Strand Advisors, Inc.² (the "New Board") consisting of

¹ All docket numbers refer to the docket maintained by this Court.

² Strand Advisors, Inc. ("Strand") is the general partner of the Debtor.

James P. Seery, Jr., John S. Dubel, and Russell Nelms (collectively, the “Independent Directors”).

8. The order granting the Settlement Motion authorized the Debtor to guarantee Strand’s obligations to indemnify each Independent Director pursuant to the terms of any indemnification agreements entered into by Strand with each of the Independent Directors (the “Indemnification Agreements”).

9. The Court entered orders approving the Settlement Motion on January 9, 2020³ and the DSI Approval Order on January 10, 2020.

10. The Settlement Order approved, among other things, a term sheet setting forth the agreement between the Debtor and the Committee. The final term sheet was attached to the *Notice of Final Term Sheet* filed in the Court on January 14, 2020 [Docket No. 354] (the “Final Term Sheet”). The Settlement Order also provided that no entity could commence or pursue a claim or cause of action against any Independent Director and/or his respective advisors and agents relating in any way to his role as an independent director of Strand unless authorized by this Court pursuant to the criteria set forth in the Settlement Order.⁴

11. The Settlement Motion and Final Term each provided that “[a]s soon as practicable after their appointments, the Independent Directors shall, in consultation with the

³ See *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and the Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “Settlement Order”).

⁴ Specifically, paragraph 10 of the Settlement Order provides:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Committee, determine whether a CEO should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as possible, which may be one of the Independent Directors.” Final Term Sheet, page 3; Settlement Motion, ¶ 13.

12. On February 18, 2020, the Court entered its *Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief* [Docket No. 461] (the “Foreign Representative Order”). The Foreign Representative Order authorized Mr. Sharp, as chief restructuring officer, to act as the Debtor’s foreign representative pursuant to section 1515 of the Bankruptcy Code (the “Foreign Representative”). The Foreign Representative specifically appointed Mr. Sharp to act as the Debtor’s foreign insolvency officeholder to seek appropriate relief in Bermuda pursuant to Bermudian common law (the “Bermuda Foreign Representative”) and the Cayman Islands pursuant to Section 241(1) of the Companies Law (2019 Revision) with respect to that British overseas territory (the “Cayman Foreign Representative”).

13. Since the appointment of the Independent Directors, it was apparent that it would be more efficient to have a traditional corporate management structure oversee the Debtor – i.e., a fully engaged chief executive officer supervised by the New Board – as contemplated by the Final Term Sheet. This need was driven by the complexity of the Debtor’s organization and business operations and the need for daily management and oversight of the Debtor’s personnel. The search for a chief executive officer, however, was delayed while the Independent Directors made initial efforts to learn the Debtor’s business and its day-to-day operations. It was further delayed with the onset of the COVID-19 global pandemic, which both had a serious impact on

the Debtor's operations and assets and limited the Independent Directors' ability to search for an appropriate chief executive officer.

14. During this time, however, Mr. Seery integrated himself into the daily operations of the Debtor and became essential in stabilizing the Debtor's assets and trading accounts during the economic distress caused by COVID-19. While Mr. Dubel and Mr. Nelms were each spending on average approximately 140 hours a month addressing the operational issues facing the Debtor and certain of its fund entities, Mr. Seery's workload was at least 180 hours a month.

15. As such, it was readily apparent to the Independent Directors who would be the best fit for the role: Mr. Seery. Mr. Seery had the appropriate skill set, extensive relevant background, and was already carrying the responsibility of the role. Mr. Seery had been functionally operating as the Debtor's de facto chief executive officer since at least early March and was already overseeing the Debtor's ordinary course operations, including managing the Debtor's personnel and the daily interactions with the Debtor's bankruptcy professionals

16. The Independent Directors subsequently appointed a compensation committee consisting of Messrs. Dubel and Nelms (the "Compensation Committee") to negotiate the terms and conditions of the Agreement on behalf of the Debtor. And, on June 23, 2020, the Compensation Committee approved the appointment of Mr. Seery to serve as both the Debtor's chief executive officer and chief restructuring officer concurrently with his role as one of the Independent Directors pursuant to the terms of the Agreement. Because Mr. Seery has been fulfilling the role since March 2020, the Compensation Committee determined that it was appropriate to make Mr. Seery's appointment as the Debtor's chief executive officer and chief

restructuring officer effective as of March 15, 2020.⁵ The Independent Directors also authorized the Debtor to file this Motion.

A. The Chief Executive Officer and Chief Restructuring Officer Positions

17. Mr. Seery has agreed to, among other things, provide daily leadership and direction to the Debtor's employees on business and restructuring matters relating to the Debtor's chapter 11 case. In that capacity, he will direct the Debtor's day-to-day ordinary course operations, oversee the Debtor's personnel, make management decisions with respect to the Debtor's trading operations, direct the Debtor's reorganization efforts, monetize the Debtor's assets, oversee the claims objection and resolution process, and lead the process toward the hopeful consensual confirmation of a plan in this chapter 11 case in the capacities as chief executive officer and chief restructuring officer positions. Mr. Seery would report directly to the New Board and would continue to serve as an Independent Director, as provided under the Settlement Order.

18. Mr. Seery has extensive management and restructuring experience. Mr. Seery recently served as a Senior Managing Director at Guggenheim Securities, LLC, where he was responsible for helping direct the development of a credit business. Prior to joining Guggenheim, Mr. Seery was the President and a senior investing partner of River Birch Capital, LLC, where he was responsible for originating, executing, and managing stressed and distressed credit investments. Mr. Seery is also a long-time attorney licensed to practice in New York who

⁵ The Committee has also agreed to Mr. Seery's appointment as chief executive officer and chief restructuring officer and to the amount of Mr. Seery's Base Compensation (as defined below). The Committee has not agreed, however, as to the amount and timing of the payment of the Restructuring Fee (defined below) and are continuing to discuss payment of the Restructuring Fee with the Compensation Committee.

has run corporate reorganization groups and numerous restructuring matters. He also served as a Commissioner of the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. Mr. Seery was also a Managing Director and the Global Head of Lehman Brothers' Fixed Income Loan business where he was responsible for managing the firm's investment grade and high yield loans business, including underwriting commitments, distribution, hedging, trading and sales (including CLO manager relationships), portfolio management and restructuring. From 2000 to 2004, Mr. Seery ran Lehman Brothers' restructuring and workout businesses with responsibility for the management of distressed corporate debt investments and was a key member of the small team that successfully sold Lehman Brothers to Barclays in 2008.

The Agreement

19. The Compensation Committee negotiated the Agreement with Mr. Seery at arm's length. The additional material economic terms of the Agreement are as follows:⁶

(a) Term: Commencing retroactively to March 15, 2020.

(b) Roles: Mr. Seery shall serve as the chief executive officer and chief restructuring officer of the Debtor and shall be responsible for the overall management of the business of the Debtor during its chapter 11 case, including: directing the Debtor's day-to-day ordinary course operations, overseeing the Debtor's personnel, making management decisions with respect to the Debtor's trading operations, directing the reorganization and restructuring of the Debtor, the monetization of the Debtor's assets, resolution of claims, the development and negotiation of a plan of reorganization or liquidation, and the implementation of such plan. Mr. Seery shall remain a full member of the New Board and shall be entitled to vote on matters other than on those in which he is conflicted. Mr. Seery shall devote as much time to the engagement as he determines is required to execute his responsibilities as chief executive officer and chief restructuring officer. Mr. Seery will have no specific on-site requirements in Dallas, Texas, but shall be

⁶ What follows is by way of summary only and is qualified in its entirety by reference to the Agreement, which controls. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

on site as much as he determines is necessary to execute his responsibilities as chief executive officer and chief restructuring officer, consistent with applicable COVID-19 orders, protocols and advice.

(c) Compensation for Services: Mr. Seery's compensation under the Agreement shall consist of the following:

(1) Base Compensation: \$150,000 per month, which shall be due and payable at the start of each calendar month; plus

(2) Bonus Compensation; Restructuring Fee:

Subject to separate Bankruptcy Court approval, the Compensation Committee and Mr. Seery have reached agreement on the payment of a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").⁷ The Committee has not yet agreed to the amount, composition, and timing of the Restructuring Fee. The Compensation Committee and Mr. Seery have agreed to defer Court consideration of the Restructuring Fee until further development in the Case. The Restructuring Fee agreed to by Mr. Seery and the Compensation Committee is as follows:

Case Resolution Restructuring Plan

On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):

\$1,000,000 on confirmation of the Case Resolution Plan;

\$500,000 on the effective date of the Case Resolution Plan; and

⁷ Although the Compensation Committee and Mr. Seery have agreed on the amount and timing of the Restructuring Fee, both the Compensation Committee and Mr. Seery understand that the Restructuring Fee is payable only upon order of this Court. The Compensation Committee is reserving the right to seek approval of the Restructuring Fee from this Court in connection with the confirmation hearing on a plan or as otherwise appropriate.

\$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

Debtor/Creditor Monetization Vehicle Restructuring Fee:

On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a “Monetization Vehicle Plan”):

\$500,000 on confirmation of the Monetization Vehicle Plan;

\$250,000 on the effective date of the Monetization Vehicle Plan; and

A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

(e) Participation in Employee Benefit Plans: Mr. Seery shall act as an independent professional contractor and shall not be an employee of the Debtor. Mr. Seery will pay for his own benefits and will not participate under the Debtor’s existing employee benefit plans.

(f) Expenses: Reimbursement of actual and reasonable out-of-pocket expenses in connection with the services provided under the Agreement. Expenses will be generally consistent with expenses incurred to date as a member of the New Board.

(g) Conflicts and Other Engagements. Mr. Seery is not aware of any potential conflicts of interest based on his understanding of the various parties involved in the Debtor’s chapter 11 case to date. Mr. Seery shall not be precluded from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Debtor under the Agreement. Mr. Seery shall not undertake any engagements directly adverse to the Debtor during the term of his engagement.

(h) Termination. The Agreement may be terminated at any time by either the Debtor or by Mr. Seery upon two weeks advance written notice given to the other party. The termination of the Agreement shall not affect Mr. Seery's right to receive, and the Debtor's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of any termination notice; *provided however*, that (1) if the Agreement is terminated by Mr. Seery, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and Mr. Seery will return any Base Compensation received in excess of such amount, and (2) if the Agreement is terminated by the Debtor, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by Mr. Seery immediately upon his termination by the Debtor; *provided however*, Mr. Seery shall not be entitled to Bonus Compensation if: (A) the Debtor's chapter 11 case is converted to chapter 7 or dismissed; (B) a chapter 11 trustee is appointed in the Debtor's chapter 11 case; (C) Mr. Seery is terminated by the Debtor for Cause;⁸ or (D) Mr. Seery resigns prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section of the Agreement.

(j) Conditional Requirement to Seek Further Court Approval of Agreement. The Committee may, upon two weeks advance written notice to the Debtor, require the Debtor to file a motion with the Bankruptcy Court on normal notice seeking a continuation of the Agreement and if such motion is not filed, the Agreement will terminate at the expiration of such two week period. If the Debtor files such motion, Mr. Seery will be entitled to the Base Compensation through and including the date on which a final order is entered on such motion by this Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Debtor until a date which is more than ninety days following the date this Court enters an order approving the Agreement.

(j) Indemnification. the Debtor agrees (i) to indemnify and hold harmless Mr. Seery and any of his affiliates (the "Indemnified Party"), to the fullest extent lawful, from and against any and all

⁸ For purposes of the Agreement, "Cause" means any of the following grounds for termination of Mr. Seery's engagement, in each case as reasonably determined by the New Board within 60 days of the New Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on the part of Mr. Seery; (B) conviction of or the entry of a plea of *nolo contendere* by Mr. Seery for any felony; (C) the willful breach by Mr. Seery of any material term of the Agreement; or (D) the willful failure or refusal by Mr. Seery to perform his duties to the Debtor, which, if capable of being cured, is not cured on or before fifteen (15) days after Mr. Seery's receipt of written notice from the Debtor.

losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to the Agreement, Mr. Seery's engagement under the Agreement, or any actions taken or omitted to be taken by Mr. Seery or the Debtor in connection with the Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to the Agreement, or such engagement, or actions. However, the Debtor shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The Debtor has agreed to extend the indemnification and insurance currently covering Mr. Seery's role as a director to fully cover Mr. Seery in his roles as chief executive officer and chief restructuring officer. The Debtor is currently working to extend such coverage.

Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor.

Relief Requested

20. By this Motion, the Debtor seeks the entry of the Proposed Order authorizing the Debtor to retain Mr. Seery pursuant to the terms of the Agreement, *nunc pro tunc* to March 15, 2020. The Motion also seeks to amend the Foreign Representative Order to appoint Mr. Seery as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative in the stead of Mr. Sharp.

21. The Debtor believes that the Debtor's retention of a chief executive officer and chief restructuring officer constitutes an act in the ordinary course of business, and

consequently, is permissible under Bankruptcy Code section 363(c) without Court approval. However, out of an abundance of caution, the Debtor seeks this Court's approval of the Agreement under Bankruptcy Code section 363(b).

Basis For Relief

B. The Debtor's Entry Into the Agreement is a Valid Exercise of the Debtor's Business Judgment and the Proposed Compensation is Appropriate Under the Circumstances and Within the Range of Similar Market Transactions

22. The Compensation Committee's decision for the Debtor to retain Mr. Seery pursuant to the terms of the Agreement should be approved pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In addition, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

23. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code section 363(b) if it is supported by sound business justification. *See In re Montgomery Ward*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions"). Although established in the context of a proposed sale, the "business judgment" standard has been applied in non-sale situations. *See, e.g., Inst. Creditors of Cont'l Air Lines v. Cont'l Air Lines (In re Cont'l Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying the "business judgment" standard in context of proposed

“use” of estate property). Moreover, pursuant to section 105, this Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of a debtor’s assets. 11 U.S.C. § 105(a).

24. It is well established that courts are unwilling to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to “any rational business purpose.” *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) (citing *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971)). Whether or not there are sufficient business reasons to justify the use of assets of the estate depends upon the facts and circumstances of each case. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). In this case, the Debtor has ample justification to retain Mr. Seery as the Debtor’s chief executive officer and chief restructuring officer pursuant to the Agreement. The Final Term Sheet expressly contemplated that the New Board could appoint a chief executive officer and that the chief executive officer could also be one of the Independent Directors. Because Mr. Seery will also be serving as chief restructuring officer, it is not necessary to have two separate ranking chief restructuring officers, especially considering that Mr. Sharp (the current chief restructuring officer) and his firm has agreed to continue to provide financial advisory services on behalf of the Debtor.⁹ Mr. Seery is well- qualified to serve as the Debtor’s chief executive officer and chief restructuring officer.

⁹ See Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, *Nunc Pro Tunc*, to March 15, 2020 filed concurrently herewith

25. The Compensation Committee negotiated the Agreement in good faith and at arm's length. The Compensation Committee also worked with the Debtor's compensation consultant, Mercer (US) Inc., to determine the appropriate compensation for Mr. Seery as chief executive officer and chief restructuring officer. The Compensation Committee, therefore, believes that the terms of the Agreement are reasonable, are consistent with the market within the Debtor's industry, and are entirely appropriate given the scope of Mr. Seery's duties. Accordingly, entry into the Agreement is a sound exercise of the Debtor's business judgment.

26. Finally, the Debtor requests that the Court apply the same criteria by which parties in interest must first petition the Court prior to asserting claims against the Independent Director approved in the Settlement Order be extended to Mr. Seery in his capacity as chief executive officer and chief restructuring officer contemplated by this Motion. *See* Settlement Order, ¶ 10. The rationale for the Court to first determine whether or not a colorable claim or cause of action can be maintained against the Mr. Seery, as one of the Independent Directors, is equally applicable to Mr. Seery in his capacity as chief executive officer and chief restructuring officer, will further aid in the implementation of the Settlement Order, and discourage frivolous litigation. As was true in the Settlement Order with respect to the Independent Directors, no parties will be prejudiced by having to first apply to this Court to determine the propriety of any hypothetical claim that may be asserted against Mr. Seery in his officer capacities of the Debtor.

C. The Debtor Has Satisfied Bankruptcy Code Section 503(c)(3)

27. Bankruptcy Code section 503(c)(3) provides that “transfers or obligations that are outside the ordinary course of business . . . including transfers made to . . . consultants

hired after the date of the filing of the petition” are not allowed if they are “not justified by the facts and circumstances of the case.” 11 U.S.C. § 503(c)(3). Courts generally use a form of the “business judgment” and the “facts and circumstances” standard. *See In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 236-37 (Bankr. N.D. Tex. 2009) (citing *In re Dura Auto Sys., Inc.*, Case No. 06-11202 (Bankr. D. Del. June 29, 2007) and *In re Supplements LT, Inc.*, Case No. 08-10446 (KJC) (Bankr. D. Del. Apr. 14, 2008)). Specifically, the court examines first, whether the transaction meets the Debtor’s business judgment standard, and second, whether the facts and circumstances justify the transaction. *See In re Pilgrim’s Pride Corp.*, 401 B.R. at 237 (Bankr. N.D. Tex. 2009).

28. The Debtor submits that the proposed transaction is within the ordinary course of its business and thus that Bankruptcy Code section 503(c)(3) does not apply to the Agreement. Nevertheless, for the reasons stated above — the benefits from Mr. Seery’s leadership skills and industry experience — even if this were outside the ordinary course of business, entry into the Agreement is well within the Debtor’s business judgment as applied to the facts and circumstances of the Debtor. Further, the facts and circumstances of this case support entry into the relationship under the Agreement where the Debtor will benefit from the ability to retain Mr. Seery at a critical juncture to ongoing restructuring efforts.

29. For the reasons set forth above, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

D. The Proposed Chief Executive Officer and Chief Restructuring Officer Should Also Serve as the Debtor's Foreign Representative

30. Bankruptcy Code section 1505 provides that:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505.

31. The Debtor respectfully submits that Mr. Seery is qualified and capable of representing the Debtor's estate as the Foreign Representative. The Debtor believes it is appropriate for Mr. Seery, as an officer of the Debtor, to replace Mr. Sharp as Foreign Representative inasmuch as Mr. Sharp will no longer be an officer of the Debtor if the Motion is granted. In order to avoid any possible confusion or doubt regarding this authority and to comply with the requirements of Part XVII of the Cayman Law, the Debtor seeks entry of an order, pursuant to section 1505 of the Bankruptcy Code, explicitly substituting Mr. Seery in the place of Mr. Sharp as the Debtor's Foreign Representative, including specifically to serve as the Bermuda Foreign Representative and Cayman Foreign Representative.

32. For the reasons set forth in the Foreign Representative Motion, authorizing Mr. Seery to act as the Foreign Representative on behalf of the Debtor's estate in Bermuda, the Cayman Islands or any other foreign proceeding will allow coordination of this chapter 11 case and each of the foreign proceedings and provide an effective mechanism to protect and maximize the value of the Debtor's assets and estate. Courts have routinely granted relief similar to that requested herein in other large chapter 11 cases where a debtor has foreign assets or operations requiring a recognition proceeding. *See, e.g., In re CJ Holding Co.*, No. 16-33590 (Bankr. S.D.

Tex. July 21, 2016); ECF No. 59; *In re CHC Group Ltd.*, No. 16-31854 (Bankr. N.D. Tex. Sept. 20, 2016), ECF No. 884; *In re Ultra Petroleum Corp.*, No. 16-32202 (Bankr. S.D. Tex. May 3, 2016); *In re Digital Domain Media Grp., Inc.*, No. 12-12568 (BLS) (Bankr. D. Del. Sept. 12, 2012); ECF No. 82; *In re Probe Resources US Ltd.*, No. 10-40395 (Bankr. S.D. Tex. Mar. 21, 2011); ECF N. 320; *In re Bigler LP*, No. 09-38188 (Bankr. S.D. Tex. Jan. 12, 2010), ECF No. 159; *In re Horsehead Holdings Corp.*, No. 16-10287 (CSS) (Bankr. D. Del. Feb. 4, 2016); *In re Colt Holding Co. LLC*, No. 15-11296 (LSS) (Bankr. D. Del. June 16, 2015). The Debtor believes it is appropriate for one of its officers to serve as the Foreign Representative. In several jurisdictions, an officer or someone acting in a similar capacity is a prerequisite to serve as a Foreign Representative.¹⁰ As more fully explained in the Foreign Representative Motion, the Debtor has assets in jurisdictions other than the United States, including in Bermuda and the Cayman Islands. To the extent any disputes with respect to such assets arise, it is critical that the Foreign Representative be permitted to appear on behalf of the Debtor and its estate in any court in which a foreign proceeding may be pending.

Notice

33. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) the Debtor's principal secured

¹⁰ See e.g. Part XVII, Section 240 of the Companies Law (2018 Revision) of the Cayman Islands requiring that the foreign representative be "a trustee, liquidator or other official in respect of a debtor for the purposes of a foreign bankruptcy proceeding." In addition, and as more fully explained in the Foreign Representative Motion, Bermuda common law and conflict of laws principles will recognize the authority of a foreign insolvency officer appointed in proceedings in the jurisdiction of incorporation of a company (or, in the instant case, the jurisdiction of the establishment of a limited partnership) to act on behalf of and in the name of the company (or partnership) in Bermuda.

parties; (d)counsel to the Committee; and (e)parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
(admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084)
(admitted pro hac vice)
Gregory V. Demo (NY Bar No. 5371992)
(admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Zachery Z. Annable

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

**ORDER APPROVING DEBTOR’S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b)* for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020 (the “Motion”),¹ and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as Exhibit 1 and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

8. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

END OF ORDER

EXHIBIT A-1

Engagement Agreement

795 Columbus Ave., 12A
New York, New York 10025
631-804-2049
jpseeryjr@gmail.com

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
 - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
 - ii. Case Resolution Restructuring Plan
 1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
 - a. \$1,000,000 on confirmation of the Case Resolution Plan;
 - b. \$500,000 on the effective date of the Case Resolution Plan; and
 - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
 - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
 - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
 - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,



James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

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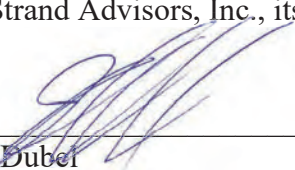
Very truly yours,

James. P. Seery, Jr.

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HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner



John Duber
Director
Strand Advisors, Inc.

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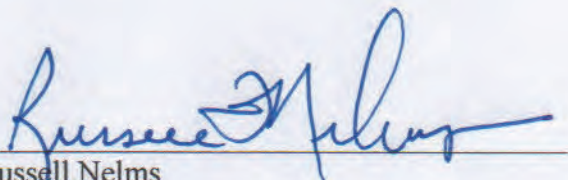
James. P. Seery, Jr.

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HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed July 16, 2020


United States Bankruptcy Judge

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

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Case No. 19-34054
L.P.,	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. 774
	§	

**ORDER APPROVING DEBTOR'S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),¹ and the

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is **GRANTED**.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

###END OF ORDER###

EXHIBIT 1

Engagement Agreement

[REDACTED]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

000547

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

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Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,



James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

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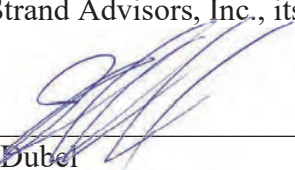
Very truly yours,

James. P. Seery, Jr.

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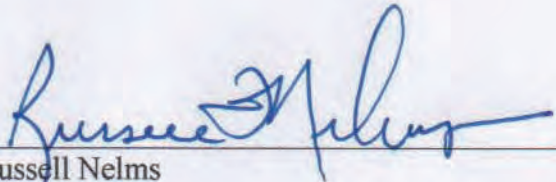
James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.

000554

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

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

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

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

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

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

JURISDICTION

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

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

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

RELEVANT BACKGROUND

A. Procedural Background

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

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

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

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

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

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

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

³ All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

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

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

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

13. HarbourVest's allegations are summarized below.⁴

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

C. Summary of HarbourVest’s Factual Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Settlement Discussions

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

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

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

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

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

F. Summary of Settlement Terms

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

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

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

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

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

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

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

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

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

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

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

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

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

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

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

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

NO PRIOR REQUEST

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

NOTICE

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

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

Dated: December 23, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
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Hayley R. Winograd (NY Bar No. 5612569)
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Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

Joseph M. Coleman (State Bar No. 04566100)
John J. Kane (State Bar No. 24066794)
KANE RUSSELL COLEMAN LOGAN PC
Bank of America Plaza
901 Main Street, Suite 5200
Dallas, Texas 75202
Telephone - (214) 777-4200
Telecopier - (214) 777-4299
Email: jcoleman@krcl.com
Email: jkane@krcl.com

ATTORNEYS FOR CLO HOLDCO, LTD.

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

In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-SGJ
§
Debtor. § Chapter 11
§

CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

CLO Holdco, Ltd. ("**CLO Holdco**") respectfully files this *Objection to Harbourvest Settlement* (the "**Harbourvest Settlement Objection**") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "**Harbourvest Settlement Motion**") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

**I.
BACKGROUND**

A. TRANSFERRING SHARES IN HCLOF

1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("**HCLOF**"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "**Harbourvest**"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "**Member Agreement**"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "**Right of First Refusal**"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

B. THE HARBOURVEST SETTLEMENT

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "**Settlement Agreement**") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "**Transferee**"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "**Plan**") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

II. **ARGUMENTS AND AUTHORITIES**

A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892–93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Grupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Fifth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

B. ANALYZING THE MEMBER AGREEMENT

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager...

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first..." comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

(ii) Absurd Results – Disparate Transfer Rights Between Members

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer all of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,

however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow *all* of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in *every instance*. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply *cannot* be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the *debtor's* contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at Lisa.L.Lambert@usdoj.gov and upon the following parties:

Paige Holden Montgomery
Penny P. Reid
Juliana L. Hoffman
2021 McKinney Avenue, Suite 2000
Dallas, Texas 74201
Email: pmontgomery@sidley.com
preid@sidley.com
jhoffman@sidley.com

Bojan Guzina
Matthew A. Clemente
Dennis M. Twomey
Alyssa Russell
One South Dearborn Street
Chicago, Illinois 60603
Email: bguzina@sidley.com
mclemente@sidley.com
dtwomey@sidley.com
alyssa.russell@sidley.com

Counsel for Harbourvest:

M. Natasha Labovitz
Erica S. Weisgerber
Daniel E. Stroik
Vickie L. Driver
Christina W. Stephenson
Email: nlabovitz@debevoise.com
eweisgerber@debevoise.com
destroik@debevoise.com
vickie.driver@crowedunlevy.com
crissie.stephenson@crowedunlevy.com

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

Melissa S. Hayward
Texas Bar No. 24044908
Zachery Z. Annable
Texas Bar No. 24053075
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

/s/ John J. Kane

John J. Kane



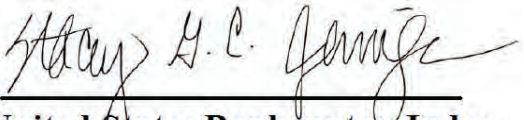
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 20, 2021


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

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

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

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

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

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

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

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

4. All objections to the proofs of claim subject to the Motion³ are overruled as moot in light of the Court's approval of the Settlement Agreement.

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

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

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

###End of Order###

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

EXHIBIT 1

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

WHEREAS, the Debtor disputes the HarbourVest Claims;

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

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

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

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

1. **Settlement of Claims.**

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

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

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

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

2. **Releases.**

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

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

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

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

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

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

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

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

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

5. **Plan Support.**

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

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

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

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

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

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

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

HARBOURVEST

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

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

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

THE DEBTOR

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

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

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

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

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

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

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

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

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

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit A

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

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

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

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

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

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

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

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

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

Prior to the Effective Date the Transferee shall procure that:

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

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

[Remainder of Page Intentionally Blank]

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

TRANSFeree:

HCMLP Investments, LLC

By: Highland Capital Management, L.P.

Its: Member

By: _____

Name: James P. Seery, Jr.

Title: Chief Executive Officer

PORTFOLIO MANAGER:

Highland HCF Advisor, Ltd.

By: _____

Name: James P. Seery, Jr.

Title: President

FUND:

Highland CLO Funding, Ltd.

By: _____

Name:

Title:

[Additional Signatures on Following Page]

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

TRANSFERORS:

HarbourVest Dover Street IX Investment L.P.

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

By: HarbourVest Partners, LLC

By: _____

Name: Michael Pugatch

Title: Managing Director

HV International VIII Secondary L.P.

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

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global AIF L.P.

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

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

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest Skew Base AIF L.P.

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

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

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global Fund L.P.

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

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

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

Exhibit A

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

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

In re:	)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054-sgj11
)	
Debtor.)	
)	

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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

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DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME,
GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH

LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

- expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
 - resolve any issues related to any matters adjudicated in the Chapter 11 Case;
 - ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
 - decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
 - enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
 - resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
 - issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
 - enforce the terms and conditions of this Plan and the Confirmation Order;
 - resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII. **MISCELLANEOUS PROVISIONS**

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring
Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)

Ira D. Kharasch (CA Bar No. 109084)

Gregory V. Demo (NY Bar No. 5371992)

10100 Santa Monica Boulevard, 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

Email: jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)

Zachery Z. Annable (TX Bar No. 24053075)

10501 N. Central Expy, Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: MHayward@HaywardFirm.com

ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 3**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor's chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

*Vol. 1
000001*

000004

000006

*Vol. 2
000401*

000501

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional Debtors <i>Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 5 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti



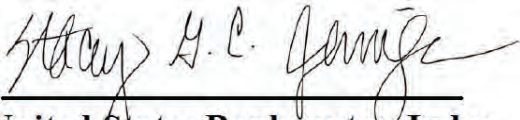
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed February 22, 2021


United States Bankruptcy Judge

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

_____)
In re:) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
)
Debtor.)
_____)

**ORDER (I) CONFIRMING THE FIFTH AMENDED
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court² having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed³ pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;⁴ (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

⁴ The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.⁵ As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,⁶ and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

⁵ This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

⁶ See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.⁷ The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

⁷ See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation**

Objections. Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure**

Statement Order. Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.⁸ Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

⁸ See *Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15th Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.⁹

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

⁹ The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots¹⁰ – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

¹⁰ As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.¹¹

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

¹¹ The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership

Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers¹² a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

¹² The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon.

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054-sgj11
Debtor.)	

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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

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DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME,
GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV. **MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring
Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

**NOTICE OF MOTION FOR MODIFICATION OF ORDER
AUTHORIZING RETENTION OF JAMES P. SEERY, JR. DUE TO
LACK OF SUBJECT MATTER JURISDICTION**

The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. respectfully bring this contested motion seeking modification of a prior order of this Court and respectfully submit that the order, as applied to them in current circumstances, exceeds this Court’s subject matter jurisdiction for the reasons that follow.

I.

NECESSITY OF MOTION¹

As applied to their action currently before the Northern District of Texas, Movants would show that this Court's Order of July 16, 2020 ("Order")² appears to overstate this Court's jurisdiction. Despite the request from the Debtor, this Court should not attempt to assert *exclusive* jurisdiction over any and all claims that might be asserted against James P. Seery, Jr. ("Seery"), relating in any way to his role as an officer of the Debtor, as the Order asserts that it can.

In 28 U.S.C. § 1334, Congress has vested the federal district courts with original jurisdiction over claims arising under, arising in, or related to title 11. Article III of the Constitution also grants such "judicial power" to the district courts. This Court's subject matter jurisdiction is derivative of the district courts' jurisdiction, and it lacks the power to strip that jurisdiction from the district courts. To the extent that the Debtor's counsel asserts that this Court does have that power, they should identify the specific source of that authority. But Movants respectfully submit that there appears to be no authority providing that this Court can undo what Article III and § 1334 have done.

This Court should modify the Order to clarify or correct the apparent jurisdictional overreach. Plainly, Movants' claims against Seery are within the jurisdiction of the district court—jurisdiction which cannot be divested.

¹ Notably, as undersigned counsel was finalizing this Motion, Highland Capital and James P. Seery, Jr.'s counsel filed a Motion to Show Cause, arguing that the act of merely *asking* the District Court to entertain the addition of James Seery somehow amounts to a Rule 11 violation or contempt of this Court's orders. The Movants intend to respond to that motion in a robust and timely fashion. Movants respectfully suggest that that Motion and this one be considered at the same time.

² Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Doc 854].

II.

BACKGROUND

On June 23, 2020, counsel for the Debtor filed a motion asking this Court to defer to the “business judgment” of the Strand board’s compensation committee and approve the terms of its appointment of Seery as chief executive officer and chief restructuring officer at the Debtor, retroactive to March.³ Counsel also asked the Bankruptcy Court to declare that it had exclusive jurisdiction over any claims asserted against Seery in this role.

On July 16, 2020, this Court granted that motion and entered the Order, stating as follows:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. ***The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.***⁴

On March 22, 2021, this Court entered an order confirming the Debtor’s reorganization plan.⁵ The confirmation order purports to extend the prohibitions on suits against Seery, and it also prohibits certain actions against the Debtor and its affiliates. By its own terms, however, the confirmation order is not yet effective due to a pending appeal. And this Court explicitly limited the scope of

³ Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative *Nunc Pro Tunc* to March 15, 2020 [Doc. 774] (“Debtors Motion”).

⁴ A related order dated January 9, 2020, contains a similar provision with regard to Seery’s role as an “Independent Director.” Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, ¶ 5 [Doc. 339].

⁵ Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) And (II) Granting Related Relief [Doc. 1943].

the “sole and exclusive jurisdiction” it asserted therein, noting that such jurisdiction would extend “only to the extent legally permissible.”⁶

On April 12, 2021, Movants here filed their Original Complaint in federal district court in the Northern District of Texas, alleging that the Debtor and related entities are liable as a result of insider trading and other violations of the antifraud provisions of the Investment Company Act of 1940, among other causes of action.⁷

The Original Complaint does not name Seery as a defendant. But the action is based on Seery’s misrepresentations, omissions, and other breaches of duty committed in his role as the Debtor’s CEO, acts which are sufficient to demonstrate his willful misconduct or gross negligence, though Movants would submit that mere negligence and breach of fiduciary duty also form sufficient bases for his personal liability.

Although Seery is not named as a defendant in that action, this is only out of an abundance of caution due to the prohibitions in the Order. Movants filed a motion for leave to amend in the district court, citing to and briefing the Order as well as this Court’s jurisdictional limitations.⁸ Movants expected that motion would likely be referred to this Court. But that motion was promptly denied without prejudice due to the foreign defendants not yet having been served.⁹

In the meantime, and in the interests of a speedier resolution, Movants here ask this Court to modify the Order to the extent it states that amending to add Seery to Movants’ action in district

⁶ *Id.* at 77, ¶ AA (“The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, ***only to the extent legally permissible*** and as provided for in Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.”) (emphasis added).

⁷ *See* generally, Original Complaint, Cause No. 3:21-cv-00842-B, Docket No. 1 (attached hereto as Exhibit 1).

⁸ *See* Cause No. 3:21-cv-00842-B, Doc. 6 (attached hereto as Exhibit 2).

⁹ *See* Cause No. 3:21-cv-00842-B, Doc. 8.

court is prohibited. Prohibiting that amendment in current circumstances, Movants submit, would be beyond this Court's jurisdiction.

III.

ARGUMENT

Movants submit that the Order should not prohibit amending their action in the district court to assert claims against Seery. To the extent the Order does so, Movants respectfully submit that the prohibition should be modified to avoid exceeding this Court's powers.

A. THIS COURT LACKS THE AUTHORITY TO STRIP THE DISTRICT COURT OF JURISDICTION

Movants respectfully submit that, because this Court's jurisdiction derives from and is dependent upon the jurisdiction of the district court, the Order's declaration that this Court has "sole jurisdiction" to the *exclusion* of the district court is an overreach.

Congress provided for and limited the jurisdiction of bankruptcy courts in 28 U.S.C. § 1334 and 28 U.S.C. § 157. As a result, bankruptcy court jurisdiction derives from and is limited by statute. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995) ("The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute."); *Williams v. SeaBreeze Fin., LLC (In re 7303 Holdings, Inc.)*, Nos. 08-36698, 10-03079, 2010 Bankr. LEXIS 2938 at *7 (Bankr. S.D. Tex. Aug. 26, 2010) ("A bankruptcy court's jurisdiction is derivative of the district court's jurisdiction. The bankruptcy court does not have jurisdiction unless the district court could exercise authority over the matter . . ."). The plain provisions of § 1334 grant to the district courts "original jurisdiction" over all bankruptcy cases and related civil proceedings. 28 U.S.C. § 1334(a)-(b). Thus, when it comes to subject matter jurisdiction, what Congress giveth, this Court cannot take away and reserve for itself.

a. The *Barton* Doctrine Does Not Apply

Movants suspect this Court’s jurisdictional overreach is the result Debtor’s counsel’s overly aggressive interpretation of the *Barton* doctrine. That doctrine protects receivers and trustees who are appointed by the bankruptcy court. *Randazzo v. Babin*, No. 15-4943, 2016 U.S. Dist. LEXIS 110465, at *3 (E.D. La. Aug. 18, 2016) (“While the *Barton* case involved a receiver in state court, the United States Court of Appeals for the Fifth Circuit has extended this principle, now known as the *Barton* doctrine, to lawsuits against bankruptcy trustees for acts committed in their official capacities.”). The doctrine does not apply to executives of a debtor, like Seery, who are not receivers or trustees, and who must stretch the truth to claim that they were “appointed” by this Court, having asked it merely to approve their appointment in deference to their discretion under the business judgment rule.¹⁰

B. THE ORDER EXCEEDS THE CONSTITUTIONAL LIMITS OF THE BANKRUPTCY COURT’S JURISDICTION

Not only does this Court lack “*sole jurisdiction*” over all causes of action that might be brought against Seery related to his role as HCM’s CEO, according to the plain language of 28 U.S.C. § 1334, this Court does not even have *concurrent jurisdiction* over *all* such claims.

The separation of powers doctrine simply does not allow that. *See Stern v. Marshall*, 564 U.S. 462, 499 (2011) (holding that Congress cannot bypass Article III and create jurisdiction in bankruptcy courts “simply because a proceeding may have *some* bearing on a bankruptcy case”);

¹⁰ *See* Debtors Motion at 14-15 (arguing that the bankruptcy court should not “interfere” with their “corporate decisions . . . as long as they are attributable to any rational business purpose”) (internal quotes omitted); *id.* at 5-7 (detailing the compensation committee’s “appointment” of Seery as CEO as well as chief restructuring officer). Moreover, Fifth Circuit law prohibits non-debtor exculpation with regard to third-party claims, with exceptions that are inapplicable here. *See, e.g., Bank of N.Y. Tr. Co., NA v. Official Unsecured Creditor’ Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 251-52 (5th Cir. 2009) (prohibiting “non-consensual non-debtor releases and permanent injunctions”)

id. at 499 (emphasis in original) (quoting at *488 *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1856), for the proposition that “Congress cannot ‘withdraw from judicial [read Article III] cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty’” with the limited exception of matters involving certain public rights); *id.* at 494 (quoting the dissent’s quote of *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 584 (1985), for the proposition that “Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law,” and then adding “tort” to the rule for purposes of the matter before it); *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality opinion) (holding that bankruptcy court could not hear debtor’s suit against third party for breach of contract, misrepresentation, coercion, and duress because “the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case.”); *cf. In re Prescription Home Health Care*, 316 F.3d 542, 548 (5th Cir. 2002) (holding that trustee’s tax liability was not within the bankruptcy court’s related-to jurisdiction and rejecting “the theory that a bankruptcy court has jurisdiction to enjoin any activity that threatens the debtor’s reorganization prospects [because that] would permit the bankruptcy court to intervene in a wide variety of third-party disputes [such as] any action (however personal) against key corporate employees, if they were willing to state that their morale, concentration, or personal credit would be adversely affected by that action”).

Simply put, this Court lacks the power to expand its jurisdiction or manufacture it where none exists. And doing so here, when Movants seek to bring in the district court “a suit at common law,” *Stern*, 564 U.S. at 488, “a traditional contract action [and tort action] arising under state law,”

id. at 494, and an “action . . . against key corporate employees,” *Prescription Home Health Care*, 316 F.3d at 548, exceeds even Congress’s power. The causes of action in Movants’ district court case are beyond this Court’s constitutional reach.

C. THE ORDER EXCEEDS THE BANKRUPTCY COURT’S STATUTORY AUTHORIZATION

Not only are there constitutional issues with the scope of the Order, there is also the plainly worded “full stop” of 28 U.S.C. § 157(d). *See TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 523 & n.40 (5th Cir. 2014) (noting bankruptcy court’s “more limited” jurisdiction as a result of its “limited power” under 28 U.S.C. § 157). In Section 157(d), Congress prohibited the bankruptcy court, absent the parties’ consent, from presiding over cases or proceedings that require consideration of both Title 11 and other federal law regulating organizations or activities affecting interstate commerce.

The allegations concerning Seery in Movants’ district court case—accusing him of insider trading, violations of the RICO statute (18 U.S.C. § 1961 et seq.), and violations of the antifraud provisions of the Investment Advisers Act of 1940—require precisely that. Even determining the “colorability” of those claims will require a close examination of both the proceedings that took place in this Court under Title 11 *and* the Investment Advisers Act, as well as the RICO statute. Under § 157(d), this Court lacks the authority to make such determinations. Only the district court has that power.

Thus, at least as it applies to Movants’ district court action, the Order (at least as far as Debtor and Seery seem to interpret it), exceeds this Court’s power under 28 U.S.C. § 157(d). Any determination of “colorability” regarding Movants’ causes of action should take place in the district court, not here.

Furthermore, a contrary conclusion would create unnecessary tension with the congressional aims of 28 U.S.C. § 959 (“Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property.”).

The district court, of course, may refer Movants’ action to this Court under Miscellaneous Order No. 33, as authorized by § 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, codified at 28 U.S.C. § 157(a). But withdrawal of that reference would still be mandatory for any determination of “colorability” as previously noted or for any other matter likewise within the scope of § 157(d).

To the extent the Order requires otherwise¹¹—and on its face it would seem to—Movants respectfully submit that it is in error.

IV.

CONCLUSION

Movants ask this Court to modify the provisions of the Order that assert exclusive jurisdiction over any and all causes of action against Seery related to his role as an officer of the Debtor. This Court’s jurisdiction does not reach all such cases. More specifically, it does not reach Movants’ district court action or cancel out that court’s jurisdiction under 28 U.S.C. § 1334.

As a result, the Order is overreaching and should be modified. And Movants respectfully submit that this Motion should be granted.

¹¹ To the extent that Seery would seek to assert some kind of immunity, that is an affirmative defense that he may assert in the district court as well.

Dated: April 23, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Plaintiffs

EXHIBIT 1

At all relevant times, HCM was headed by CEO and potential party James P. Seery (“Seery”). Seery negotiated a settlement with the several Harbourvest² entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for \$22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value (“NAV”) of those interests. Upon information and belief, the NAV of HCLOF’s assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM’s internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

² “Harbourvest” refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 Global Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.

2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.

3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.

4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.

5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.

6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the “Harbourvest interests”).

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the “HCM Bankruptcy” and the Court is the “Bankruptcy Court”).

The Harbourvest Settlement with Highland Capital Management in Bankruptcy

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around \$15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost \$15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than \$7.5 million). Harbourvest claimed that it had lost over \$100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over \$300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some \$52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities³)—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of \$15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

³ Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing \$45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around \$31,500,000 from the allowed claims.

33. As part of the consideration for the \$45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating \$22.5 million of the net value of the \$45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., \$31.5 million—was realized, because \$22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true “settlement” for Harbourvest's legal claims was closer to \$9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for \$9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for \$22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of \$41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over \$34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the “net asset value” of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks⁴ meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was \$22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

⁴ The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over \$20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay \$22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as \$22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that “[Judge Jernigan] is laughing at you” and “we are coming after you” in response to the latter’s attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery’s plan to liquidate the funds.

54. HCM’s threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court’s sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION *Breaches of Fiduciary Duty*

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.⁵

⁵ See e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§ 206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). See also Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own”) (citing Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the “RIA Agreement”). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF’s attorney-in-fact for certain actions, such as “to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner.” RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets “in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will provided to the General Partner upon request.” RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM’s fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 (“Rule 10b5-1”) explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM’s own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.⁶

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

⁶ See Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) (“[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship.”); see also *SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) (“Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be ‘in the offer or sale of any’ security or ‘in connection with the purchase or sale of any security.’”).

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Harbourvest's 49.98% interest in HCLOF was worth around \$22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of \$24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over \$25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the “Company Agreement”).

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for \$22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of \$22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for \$22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of \$20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a \$22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the illicit purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to 18 U.S.C. § 1961(1)(B) and (D).

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted through the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of \$72,969,492 as of November 30, 2020. Harbourvest's share of that would have been \$36,484,746.

124. The HCLOF net asset value had reached \$86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was \$22.5 million, when it was actually closer to \$43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM’s motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser’s Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios’ securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing “equitization” of CSS Medical’s debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly \$30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one’s conduct of an enterprise to include “fraud in connection with a [bankruptcy case]”. The Advisers’ Act antifraud provisions require full transparency and accountability to an advisers’ investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a “scheme or artifice ... for obtaining money or property by means of false ... pretenses, [or] representations[.]”

132. Accordingly, because Defendants’ conduct violated the wire fraud and mail fraud laws, and the Advisers’ Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, 18 U.S.C. § 1964.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys’ fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff’s contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as \$22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

- a. Actual damages;
- b. Disgorgement;
- c. Treble damages;
- d. Exemplary and punitive damages;
- e. Attorneys' fees and costs as allowed by common law, statute or contract;
- f. A constructive trust to avoid dissipation of assets;
- g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Plaintiffs

EXHIBIT 2

derivative of, that order exceeds the bankruptcy court's powers and is unenforceable. Alternatively, Plaintiffs submit that filing *this Motion* satisfies the prerequisites provided in the bankruptcy court's order. Either of these reasons provides sufficient grounds to grant this Motion.

The proposed First Amended Complaint is attached as Exhibit 1.

II.

BACKGROUND

On June 23, 2020, counsel for HCM filed a motion in HC's bankruptcy proceedings asking the bankruptcy court to defer to the "business judgment" of the board's compensation committee and approve the terms of its appointment of Seery as chief executive officer and chief restructuring officer at HCM, retroactive to March.¹ Counsel also asked the bankruptcy court to declare that it had exclusive jurisdiction over any claims asserted against Seery in this role.

On July 16, 2020, the bankruptcy court granted that motion and stated as follows:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. ***The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.***²

¹ Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative *Nunc Pro Tunc* to March 15, 2020 [Doc. 774]. This motion is attached as Exhibit 2.

² Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative *Nunc Pro Tunc* to March 15, 2020 [Doc 854]. A related order dated January 9, 2020, contains a similar provision with regard to Seery's role as an "Independent Director." Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course [Doc 339]. These orders are attached, respectively, as Exhibits 3 and 4.

On March 22, 2021, the bankruptcy court entered an order confirming HCM's reorganization plan.³ That order purports to extend the prohibitions on suits against Seery, and it also prohibits certain actions against HCM and its affiliates. By its own terms, however, that order is not effective due to a pending appeal.

On April 12, 2021, Plaintiffs filed their Original Complaint in this action, alleging that HCM and related entities are liable as a result of insider trading and other violations of the antifraud provisions of the Investment Company Act of 1940, among other causes of action. The Original Complaint does not name Seery as a defendant. But the action is based on Seery's misrepresentations, omissions, and other breaches of duty committed in his role as HCM's CEO, which are sufficient to demonstrate his willful misconduct or gross negligence, though Plaintiffs submit that mere negligence and breach of fiduciary duty also form sufficient bases for his personal liability.

III.

ARGUMENT

This Court should grant leave to amend because the liberal policies behind Rule 15 require it and because leave is not prohibited by the bankruptcy court's order.

A. Rule 15(a) Allows Plaintiffs' Amendment As a Matter of Course

Rule 15(a) instructs the Court to "freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15(a). The Fifth Circuit, in *Martin's Herend Imports, Inc. v. Diamond & Gem Trading United States Co.*, 195 F.3d 765 (5th Cir. 1999), interpreted the rule as "evin[ing] a bias in favor of granting leave to amend." *Id.* at 770. Thus the Court must possess a "substantial reason"

³ Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) And (II) Granting Related Relief [Doc. 1943].

to deny a request for leave to amend. *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002); *Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985); cf. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (explaining that leave should be granted “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.”).

Moreover, one amendment, filed within 21 days of service of the pleading it seeks to amend or before a responsive pleading is filed, is allowed “as a matter of course.” Fed. R. Civ. P. 15(a)(1); *Zaidi v. Ehrlich*, 732 F.2d 1218, 1220 (5th Cir. 1984) (“When, as in this case, a plaintiff who has a right to amend nevertheless petitions the court for leave to amend, the court should grant the petition.”); *Galustian v. Peter*, 591 F.3d 724, 729-30 (4th Cir. 2010) (holding that district court abused its discretion in denying timely motion to amend adding defendant because “[t]he plaintiff’s right to amend once is absolute”); *Rogers v. Girard Tr. Co.*, 159 F.2d 239, 241 (6th Cir. 1947) (holding that complaint may be amended as matter of course where defendant has filed no responsive pleading, and leave of district court is not necessary, but it is error to deny leave when asked); *Bancoult v. McNamara*, 214 F.R.D. 5, 7-8 (D.D.C. 2003) (holding that plaintiff’s filing of a motion for leave to amend does not nullify plaintiff’s absolute right to amend once before responsive pleadings, even if the amendment would be futile).

Here, Plaintiffs did not name Seery as a defendant in the Original Complaint out of an abundance of caution in light of the bankruptcy court’s order of July 16, 2020 [Doc. 854]. Instead, Plaintiffs are seeking leave in this Motion to do so. Because the proposed amendment is their first, and because it comes within 21 days of service of the Original Complaint, as well as before any

responsive pleadings, Plaintiffs respectfully submit that they are entitled to leave and their proposed First Amended Complaint should be allowed.

B. The Bankruptcy Court’s Order Should Not Prohibit Plaintiffs’ Amendment

Plaintiffs submit that the bankruptcy court order of July 16, 2020, does not prohibit the proposed amendment for two independent reasons.

1. The Bankruptcy Court’s Order Exceeds Its Jurisdiction

a. The Bankruptcy Court Cannot Strip This Court of Jurisdiction

Because the bankruptcy court’s jurisdiction derives from and is dependent upon the jurisdiction of this Court, its order declaring that it has “sole jurisdiction” is overreaching.

Congress provided for and limited the jurisdiction of bankruptcy courts in 28 U.S.C. § 1334 and 28 U.S.C. § 157. As a result, bankruptcy court jurisdiction derives from and is limited by statute. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995) (“The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute.”); *Williams v. SeaBreeze Fin., LLC (In re 7303 Holdings, Inc.)*, Nos. 08-36698, 10-03079, 2010 Bankr. LEXIS 2938 at *7 (Bankr. S.D. Tex. Aug. 26, 2010) (“A bankruptcy court’s jurisdiction is derivative of the district court’s jurisdiction. The bankruptcy court does not have jurisdiction unless the district court could exercise authority over the matter”). The plain provisions of § 1334 grant *to the district courts* “original jurisdiction” over all bankruptcy cases and related civil proceedings. 28 U.S.C. § 1334(a)-(b). What Congress giveth, the bankruptcy courts cannot taketh away.

b. The Barton Doctrine Does Not Apply

The bankruptcy court’s overreach seems to stem from a misapplication of the *Barton* doctrine. That doctrine protects receivers and trustees who are appointed by the bankruptcy court. *Randazzo v. Babin*, No. 15-4943, 2016 U.S. Dist. LEXIS 110465, at *3 (E.D. La. Aug. 18, 2016)

(“While the *Barton* case involved a receiver in state court, the United States Court of Appeals for the Fifth Circuit has extended this principle, now known as the *Barton* doctrine, to lawsuits against bankruptcy trustees for acts committed in their official capacities.”). The doctrine does not apply to executives of a debtor, like Seery, who are not receivers or trustees, and who are stretching the truth to claim that they were “appointed” by the bankruptcy court after asking it merely to approve their appointment in deference to their discretion under the business judgment rule.⁴

c. The Order Exceeds the Constitutional Limits of the Bankruptcy Court’s Jurisdiction

Plainly the bankruptcy court does not have “*sole jurisdiction*” over all causes of action that might be brought against Seery related to his role as HCM’s CEO. But more to the point, the bankruptcy court does not even have *concurrent jurisdiction* over *all* such claims. The separation of powers doctrine does not allow that. *See Stern v. Marshall*, 564 U.S. 462, 499 (2011) (holding that Congress cannot bypass Article III and create jurisdiction in bankruptcy courts “simply because a proceeding may have some bearing on a bankruptcy case”); *id.* at 488 (quoting *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1856), for the proposition that “Congress cannot ‘withdraw from judicial [read Article III] cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty’” with the limited exception of matters involving certain public rights); *id.* at 494 (quoting the dissent’s quote of *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 584 (1985), for the proposition that “Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law,” and

⁴ Exhibit 2 at 14-15 (arguing that the bankruptcy court should not “interfere” with their “corporate decisions . . . as long as they are attributable to any rational business purpose”) (internal quotes omitted); *id.* at 5-7 (detailing the compensation committee’s “appointment” of Seery as CEO as well as chief restructuring officer).

then adding “tort” to the rule for purposes of the matter before it); *cf. In re Prescription Home Health Care*, 316 F.3d 542, 548 (5th Cir. 2002) (holding that trustee’s tax liability was not within the bankruptcy court’s related-to jurisdiction and rejecting “the theory that a bankruptcy court has jurisdiction to enjoin any activity that threatens the debtor’s reorganization prospects [because that] would permit the bankruptcy court to intervene in a wide variety of third-party disputes [such as] any action (however personal) against key corporate employees, if they were willing to state that their morale, concentration, or personal credit would be adversely affected by that action”). The bankruptcy court’s order asserting “sole jurisdiction” here is hardly even relevant since that court lacks the power to expand its jurisdiction or manufacture jurisdiction where none exists.

The proposed First Amended Complaint asserts common law and equitable contract and tort claims. For the reasons explained by the Supreme Court in *Stern*, such claims should not be deemed within the bankruptcy court’s jurisdiction.

d. The Order Exceeds the Bankruptcy Court’s Statutory Authorization

Not only are there constitutional issues with the scope of the bankruptcy court’s order, there is also the limitation of 28 U.S.C. § 157(d). *See TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 523 & n.40 (5th Cir. 2014) (noting bankruptcy court’s “more limited jurisdiction” as a result of its “limited power” under 28 U.S.C. § 157). In § 157(d), Congress prohibited the bankruptcy court, absent the parties’ consent, from presiding over cases or proceedings that require consideration of both Title 11 and other federal law regulating organizations or activities affecting interstate commerce.

The First Amended Complaint’s allegations against Seery—accusing him of insider trading, violations of the RICO statute (18 U.S.C. § 1961 et seq.), and violations of the antifraud provisions of the Investment Advisers Act of 1940—require precisely that. Even determining the

“colorability” of such claims will require a close examination of both the proceedings that took place in the bankruptcy court under Title 11 and the Investment Advisers Act as well as the RICO statute. The bankruptcy court lacks the authority to make such determinations. This Court has that power.

Thus, at least as it applies to the proposed First Amended Complaint, the bankruptcy court’s order exceeds its authority under 28 U.S.C. § 157(d), and any determination of “colorability” should take place in this Court, which Rule 12(b)(6) of the Federal Rules of Civil Procedure already provides for. To hold otherwise would create unnecessary tension with the congressional aims of 28 U.S.C. § 959 (“Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property.”).

2. The Prerequisites in the Bankruptcy Court’s Order Are Satisfied by This Motion and the Detailed Allegations in the Proposed First Amended Complaint

Alternatively, or in addition, should this Court read the bankruptcy court’s order as prohibiting the filing of actions against Seery even in *this* Court, Plaintiffs submit that this Motion seeking leave provides the mechanisms required by that order and therefore satisfies it.

The bankruptcy court’s order requires only that any contemplated action must first be submitted to that court for a preliminary determination of colorability. Because that court only has derivative jurisdiction as a result of this Court’s jurisdiction—and only over matters referred to it by this Court—Plaintiffs submit that filing a motion for leave here is the correct procedure for complying with that order. This Court may refer this Motion to the bankruptcy court under Miscellaneous Order No. 33, as authorized by § 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, codified at 28 U.S.C. § 157(a). Or it may instead decline to refer the Motion or withdraw the reference under 28 U.S.C. § 157(d), as Plaintiffs submit is appropriate for the

reasons addressed above. Regardless, this Motion presents the issue in a manner that allows the bankruptcy court to address it, should this Court decide that the bankruptcy court is authorized to do so. *Cf.* Confirmation Order [Doc. 1943] at 77, ¶ AA (“The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, ***only to the extent legally permissible*** and as provided for in Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.”) (emphasis added).

Plaintiffs therefore submit that, by filing this Motion in this Court, they have complied with the bankruptcy court’s order.

IV.

CONCLUSION

Plaintiffs are entitled to amend as a matter of course. The bankruptcy court lacks jurisdiction to prohibit the proposed amendment. In these circumstances, Plaintiffs respectfully submit that the interests of justice support the granting of leave to amend, and Rule 15(a) requires that this Motion be granted.

Dated: April 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Jonathan Bridges

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

I hereby certify that, on April 19, 2021, I conferred with Defendant HCM's counsel in the HCM bankruptcy proceedings regarding this Motion. I have not conferred with counsel for the other Defendants because they have not been served and I do not know who will represent them. HCM's counsel indicated that they are opposed to the relief sought in this Motion.

/s/ Jonathan Bridges

Jonathan Bridges

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **Tuesday, June 8, 2021 at 9:30 a.m. (Central Time)** (the “Hearing”) in the above captioned bankruptcy case (the “Bankruptcy Case”):

- Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Doc. 2248] (the “Motion”).

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

Dated: April 23, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application has been served electronically via the Court's CM/ECF system upon all parties appearing on the attached service list.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

In re Highland Capital Management, L.P.
Case No. 19-34054-sgj11
ECF Recipients:

- David G. Adams david.g.adams@usdoj.gov, southwestern.taxcivil@usdoj.gov;dolores.c.lopez@usdoj.gov
- Amy K. Anderson aanderson@joneswalker.com, lfields@joneswalker.com;amy-anderson-9331@ecf.pacerpro.com
- Zachery Z. Annable zannable@haywardfirm.com
- Bryan C. Assink bryan.assink@bondsellis.com
- Asif Attarwala asif.attarwala@lw.com
- Joseph E. Bain JBain@joneswalker.com, kvrana@joneswalker.com;joseph-bain-8368@ecf.pacerpro.com;msalinas@joneswalker.com
- Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov
- Sean M. Beach bankfilings@ycst.com, sbeach@ycst.com
- Paul Richard Bessette pbessette@KSLAW.com, ccisneros@kslaw.com;jworsham@kslaw.com;kbryan@kslaw.com;jcarvalho@kslaw.com;rmatsumura@kslaw.com
- John Y. Bonds john@bondsellis.com
- Larry R. Boyd lboyd@abernathy-law.com, ljameson@abernathy-law.com
- Jason S. Brookner jbrookner@grayreed.com, lwebb@grayreed.com;acarson@grayreed.com;cpaterson@grayreed.com
- Greta M. Brouphy gbrouphy@hellerdraper.com, dhepting@hellerdraper.com;vgamble@hellerdraper.com
- M. David Bryant dbryant@dykema.com, csmith@dykema.com
- Candice Marie Carson Candice.Carson@butlersnow.com
- Annmarie Antoniette Chiarello achiarello@winstead.com
- Shawn M. Christianson schristianson@buchalter.com, cmcintire@buchalter.com
- James Robertson Clarke robbie.clarke@bondsellis.com
- Matthew A. Clemente mclemente@sidley.com, matthew-clemente-8764@ecf.pacerpro.com;efilingnotice@sidley.com; ebromagen@sidley.com;alyssa.russell@sidley.com; dtwomey@sidley.com
- Megan F. Clontz mclontz@spencerfane.com, lvargas@spencerfane.com
- Andrew Clubok andrew.clubok@lw.com, andrew-clubok-9012@ecf.pacerpro.com,ny-courtmail@lw.com
- Leslie A. Collins lcollins@hellerdraper.com
- David Grant Crooks dcrooks@foxrothschild.com, etaylor@foxrothschild.com,jsagui@foxrothschild.com,plabov@foxrothschild.com,jmanfrey@foxrothschild.com
- Deborah Rose Deitsch-Perez deborah.deitschperez@stinson.com, patricia.tomasky@stinson.com;kinga.mccoyn@stinson.com
- Gregory V. Demo gdemo@pszjlaw.com, jo'neill@pszjlaw.com;ljones@pszjlaw.com;jfried@pszjlaw.com;ikharasch@pszjlaw.com;jmorris@pszjlaw.com;jpomerantz@pszjlaw.com;hwinograd@pszjlaw.com;kyee@pszjlaw.com;lsc@pszjlaw.com
- Casey William Doherty casey.doherty@dentons.com, dawn.brown@dentons.com;Melinda.sanchez@dentons.com;docket.general.lit.dal@dentons.com
- Douglas S. Draper ddraper@hellerdraper.com, dhepting@hellerdraper.com;vgamble@hellerdraper.com
- Lauren Kessler Drawhorn lauren.drawhorn@wickphillips.com, samantha.tandy@wickphillips.com
- Vickie L. Driver Vickie.Driver@crowedunlevy.com, crissie.stephenson@crowedunlevy.com;seth.sloan@crowedunlevy.com;elisa.weaver@crowedunlevy.com;ecf@crowedunlevy.com
- Jonathan T. Edwards jonathan.edwards@alston.com
- Jason Alexander Enright jenright@winstead.com
- Robert Joel Feinstein rfeinstein@pszjlaw.com
- Matthew Gold courts@argopartners.net
- Bojan Guzina bguzina@sidley.com
- Margaret Michelle Hartmann michelle.hartmann@bakermckenzie.com

000878

- Thomas G. Haskins thaskins@btlaw.com
- Melissa S. Hayward
MHayward@HaywardFirm.com,
mholmes@HaywardFirm.com
- Michael Scott Held mhheld@jw.com,
lcrumble@jw.com
- Gregory Getty Hesse ghesse@HuntonAK.com,
astowe@HuntonAK.com;tcanada@HuntonAK.com;c
reeves@HuntonAK.com
- Juliana Hoffman jhoffman@sidley.com,
txefilingnotice@sidley.com;julianna-hoffman-
8287@ecf.pacerpro.com
- A. Lee Hogewood lee.hogewood@klgates.com,
haley.fields@klgates.com;matthew.houston@klgat
es.com;mary-
beth.pearson@klgates.com;litigation.docketing@kl
gates.com;Emily.mather@klgates.com;Artoush.vars
hosaz@klgates.com
- Warren Horn whorn@hellerdraper.com,
dhepting@hellerdraper.com;vgamble@hellerdraper
.com
- John J. Kane jkane@krcl.com,
ecf@krcl.com;jkane@ecf.courtdrive.com
- Jason Patrick Kathman
jkathman@spencerfane.com,
gpronske@spencerfane.com;mclontz@spencerfane
.com;lvargas@spencerfane.com
- Edwin Paul Keiffer pkeiffer@romclaw.com,
bwallace@romclaw.com
- Jeffrey Kurtzman
kurtzman@kurtzmansteady.com
- Phillip L. Lamberson plamberson@winstead.com
- Lisa L. Lambert lisa.l.lambert@usdoj.gov
- Michael Justin Lang mlang@cwl.law,
nvazquez@cwl.law;aohlinger@cwl.law;jgonzales@
cwl.law;vpatterson@cwl.law
- Paul M. Lopez bankruptcy@abernathy-law.com
- Faheem A. Mahmooth
mahmooth.faheem@pbgc.gov, efile@pbgc.gov
- Ryan E. Manns
ryan.manns@nortonrosefulbright.com
- Brent Ryan McIlwain brent.mcilwain@hklaw.com,
robert.jones@hklaw.com;brian.smith@hklaw.com
- Thomas M. Melsheimer
tmelsheimer@winston.com, tom-melsheimer-
7823@ecf.pacerpro.com
- Paige Holden Montgomery
pmontgomery@sidley.com,
txefilingnotice@sidley.com;paige-montgomery-
7756@ecf.pacerpro.com;crognes@sidley.com;ebro
magen@sidley.com;efilingnotice@sidley.com
- J. Seth Moore smoore@ctstlaw.com,
jsteele@ctstlaw.com
- John A. Morris jmorris@pszjlaw.com
- Edmon L. Morton emorton@ycst.com
- Holland N. O'Neil honeil@foley.com,
jcharrison@foley.com;acordero@foley.com;holly-
holland-oneil-3540@ecf.pacerpro.com
- Rakhee V. Patel rpatel@winstead.com,
dgalindo@winstead.com;achiarello@winstead.com
- Charles Martin Persons cpersons@sidley.com
- Louis M. Phillips louis.phillips@kellyhart.com,
june.alcantara-davis@kellyhart.com
- Mark A. Platt mplatt@fbtlaw.com,
aortiz@fbtlaw.com
- Jeffrey Nathan Pomerantz
jpomerantz@pszjlaw.com
- Kimberly A. Posin kim.posin@lw.com,
colleen.rico@lw.com
- Jeff P. Prostok jprostok@forsheyprostok.com,
lbreedlove@forsheyprostok.com;calendar@forshey
prostok.com;calendar_0573@ecf.courtdrive.com;jp
rostok@ecf.courtdrive.com
- Linda D. Reece lreece@pbfc.com
- Penny Packard Reid preid@sidley.com,
txefilingnotice@sidley.com;penny-reid-
4098@ecf.pacerpro.com;ncade@sidley.com
- Suzanne K. Rosen srosen@forsheyprostok.com,
lbreedlove@forsheyprostok.com;calendar@forshey
prostok.com;srosen@ecf.courtdrive.com;calendar_
0573@ecf.courtdrive.com
- Davor Rukavina drukavina@munsch.com
- Amanda Melanie Rush asrush@jonesday.com
- Alyssa Russell alyssa.russell@sidley.com
- Douglas J. Schneller
douglas.schneller@rimonlaw.com
- Michelle E. Shriro mshriro@singerlevick.com,
scotton@singerlevick.com;tguillory@singerlevick.co
m
- Nicole Skolnekovich nskolnekovich@hunton.com,
plozano@huntonak.com;astowe@huntonak.com;cr
eeves@huntonak.com
- Jared M. Slade jared.slade@alston.com
- Frances Anne Smith
frances.smith@judithwross.com,
michael.coulombe@judithwross.com

- Eric A. Soderlund
eric.soderlund@judithwross.com
- Martin A. Sosland
martin.sosland@butlersnow.com,
ecf.notices@butlersnow.com,velvet.johnson@butle
rsnow.com
- Laurie A. Spindler Laurie.Spindler@lgbs.com,
Dora.Casiano-
Perez@lgbs.com;dallas.bankruptcy@lgbs.com
- Jonathan D. Sundheimer jsundhimer@btlaw.com
- Kesha Tanabe kesha@tanabelaw.com
- Clay M. Taylor clay.taylor@bondsellis.com,
krista.hillman@bondsellis.com
- Chad D. Timmons bankruptcy@abernathy-
law.com
- Dennis M. Twomey dtwomey@sidley.com
- Basil A. Umari BUmari@dykema.com,
pelliott@dykema.com
- United States Trustee
ustpregion06.da.ecf@usdoj.gov
- Artoush Varshosaz
artoush.varshosaz@klgates.com,
Julie.garrett@klgates.com
- Julian Preston Vasek jvasek@munsch.com
- Donna K. Webb donna.webb@usdoj.gov,
brian.stoltz@usdoj.gov;CaseView.ECF@usdoj.gov;br
ooke.lewis@usdoj.gov
- Jaclyn C. Weissgerber bankfilings@ycst.com,
jweissgerber@ycst.com
- Elizabeth Weller
dallas.bankruptcy@publicans.com, dora.casiano-
perez@lgbs.com;Melissa.palo@lgbs.com
- Daniel P. Winikka danw@lfdslaw.com,
craigs@lfdslaw.com,dawnw@lfdslaw.com,ivys@lfd
slaw.com
- Hayley R. Winograd hwinograd@pszjlaw.com
- Megan Young-John myoung-
john@porterhedges.com

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Judith Elkin (TX Bar No. 06522200)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-SGJ-11
	§	
Debtor.	§	
	§	

**DEBTOR’S OBJECTION TO MOTION FOR MODIFICATION OF ORDER
AUTHORIZING RETENTION OF JAMES P. SEERY, JR. DUE TO LACK OF
SUBJECT MATTER JURISDICTION**

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

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor”), files this objection (the “Objection”) to the *Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2242] (the “Motion”) filed by Charitable DAF Fund, L.P. (“DAF”) and CLO Holdco, Ltd. (“CLOH” and with DAF, the “Movants”). In support of the Objection, the Debtor respectfully states as follows:

INTRODUCTION

1. Movants blatantly disregarded this Court’s prior January 9, 2020² and July 16, 2020³ orders (together, the “Governance Orders”) and attempted to add James P. Seery, Jr. to their baseless lawsuit (the “CLOH Lawsuit”) ⁴ filed in the United States District Court for the Northern District of Texas (the “District Court”) which should have been filed in this Court in the first instance.⁵ The District Court denied Movants’ request and Movants – and their counsel – are now subject to the Debtor’s motion seeking to hold them in contempt for such brazen and disrespectful conduct.⁶ Belatedly, Movants – who are controlled by James Dondero and have been actively involved in this case since its inception – argue for the first time that this Court did not have jurisdiction to enter the Governance Orders. Ignoring that these Governance Orders are final, not subject to appeal, and in the case of the January 9 Order was approved by Mr. Dondero, Movants

² *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* entered January 9, 2020 [Docket No. 339] (the “January 9 Order”).

³ *Order Approving Debtor’s Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* entered July 16, 2020 [Docket No. 854] (the “July 16 Order”).

⁴ *Charitable DAF Fund, L.P. and CLO Holdco, Ltd. v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd. and Highland CLO Fund, Ltd.*, Case No. 3-21-cv-00842-B.

⁵ The Debtor will be filing a *Motion for an Order to Enforce the Order of Reference* (the “Motion to Enforce Reference”) in the District Court asking the District Court to enforce the reference and send the CLOH Lawsuit to this Court.

⁶ *Debtor’s Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* (the “Contempt Motion”) [Docket No. 2235, as re-docketed, 2247].

ask this Court to allow them to sue Mr. Seery outside this Court without first demonstrating to this Court that the claims are colorable and asserted in good faith.

2. Movants position appears to be that since the Governance Orders have a provision that provides for exclusive jurisdiction to hear the underlying matter if this Court determines the claim is colorable, then all the provisions of the Governance Orders should be stricken. As noted below, Movants position is not only incorrect, but is premature at best given that this Court has not yet ruled on whether the claims in the CLOH Lawsuit are colorable. Even if this Court were to rule that such claims are colorable, the Court clearly has jurisdiction to hear the claims asserted by Movants in the CLOH Lawsuit under the jurisdiction provisions of title 28 and applicable Fifth Circuit law.

3. As a preliminary matter, nothing in the Motion explains or justifies Movants' refusal to comply with the Governance Orders, seek the requisite determination from this Court that the CLOH Lawsuit claims are colorable, and then raise the jurisdiction issue with the Court if the claims were determined to be colorable. As Movants take issue with the Court's jurisdiction to have included one word ("sole") in one sentence of the Governance Orders, such a process would have been compliant with the Governance Orders and significantly more cost-effective for all parties than the procedure chosen by Movants. Movants argument in this regard is premature as there has yet to be a determination of whether the claims Movants seek to assert against Mr. Seery in the CLOH Lawsuit are colorable. Until such determination is made, the issue of this Court's jurisdiction to hear such claims is not ripe for review.

4. Notwithstanding that the Motion is premature, this Court should deny the Motion on the merits as well. First, Fifth Circuit law is clear that a party may not collaterally attack a court order, even if, as the Movants contend, the Court lacked jurisdiction to enter the order in the first

place. Second, even if the Court could revisit its jurisdiction at this late stage, the Court clearly had jurisdiction to enter the Governance Orders. The subject matter of the Governance Orders – the retention and terms of retention of Court-appointed fiduciaries, the establishment of operating protocols for the Debtor’s businesses and assets, and the approval of protections and procedures designed to prevent frivolous litigation – is within the statutory jurisdiction vested in this Court. Under established Fifth Circuit law, this Court is vested with authority to determine whether a claim against a Court-appointed officer is colorable and such authority is also consistent with the Barton Doctrine.

5. Lastly, the Court clearly would have subject matter jurisdiction to adjudicate the underlying claims in the CLOH Lawsuit. The CLOH Lawsuit is a transparent attempt to collaterally attack and relitigate the Court’s approval of the Debtor’ settlement with one of its largest creditors, HarbourVest, a settlement Movants objected to and which Mr. Dondero (through a trust he controls and of which he is the beneficiary) has appealed. Any claims against Mr. Seery would directly impact the administration of the estate and creditor recoveries, and trigger indemnification claims thereby vesting this Court with jurisdiction under settled Fifth Circuit authority.

BACKGROUND FACTS

6. Movants are controlled by Mr. Dondero, the Debtor’s founder, and are “Related Entities,” as discussed below. CLOH is an entity wholly-owned and controlled by the DAF. Until at least mid-January 2021, Grant Scott, Mr. Dondero’s life-long friend and college roommate, was the general partner and sole director of the DAF and the sole trustee of CLOH.

7. On December 4, 2019, CLOH filed a *Notice of Appearance and Request for Copies* [Docket No. 152] in this bankruptcy case, by and through its counsel Kane Russell Coleman Logan

PC, in which it alleged it was a creditor of the Debtor and sought to be served with all pleadings filed in the case. Since filing the Notice of Appearance, CLOH has received notice of all pleadings filed in the case, objected to certain motions filed by the Debtor, and appeared before this Court multiple times.

8. On January 9, 2020, the Court entered the January 9 Order, approving a settlement pursuant to which, *inter alia*, the Debtor and the Official Committee of Unsecured Creditors (the “Committee”) agreed to certain operating protocols and corporate governance changes, including the appointment of an independent board of directors (the “Independent Board”) at Strand Advisors, Inc. (“Strand”), the Debtor’s general partner, and authorization for the Debtor to indemnify the Independent Board and purchase D&O insurance. The Independent Board consists of Mr. Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms (collectively, the “Independent Directors”). Mr. Dondero consented to the January 9 Order to avoid the appointment of a chapter 11 trustee.⁷ Movants were served with a copy of the Governance Settlement Motion⁸ and did not object to it.

9. Importantly, as relevant to this Motion, paragraph 10 of the January 9 Order provides as follows:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s

⁷ The January 9 Order also restricted certain actions that could be taken by Mr. Dondero and his “Related Entities,” as defined in the Section I.D. of the operating protocols, as amended (the “Protocols”) [Docket No. 466] approved by the Court in connection with the January 9 Order. These Related Entities, and various others owned and/or controlled by Mr. Dondero are referred to herein as the “Dondero-Related Entities.”

⁸ See *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Governance Settlement Motion”) and *Certificate of Service* [Docket No. 297], reflecting service of the Governance Settlement Motion on CLOH on December 27, 2019.

agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

January 9 Order ¶ 10.⁹

10. On July 16, 2020, this Court entered the July 16 Order which approved the terms and conditions upon which the Debtor was authorized to retain Mr. Seery as chief executive officer ("CEO"), chief restructuring officer ("CRO"), and foreign representative ("FR"), and with the titles of CEO and CRO, the "Executive"), as set forth in the Engagement Letter attached to the July 16 Order. Movants were served with a copy of the CEO/CRO Motion¹⁰ and did not object to it.

11. The July 16 Order contained indemnification provisions, D&O insurance coverage, and a gatekeeper provision similar to those contained in the January 9 Order. The July 16 Order contained the same two-step process as the January 9 Order which required potential litigants seeking to sue Mr. Seery in regard to actions taken in his capacity as Executive to first seek a determination from this Court that the alleged claim was colorable, and then, if it was, to litigate such claim in this Court.

12. As relevant to this Motion, paragraph 5 of the July 16 Order provides as follows:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court

⁹ Movants conveniently ignore the January 9 Order to distance themselves from Mr. Dondero's express agreement to its provisions. They presumably will argue that they are suing Mr. Seery in his capacity as CEO and not as an Independent Director, thereby implicating only the July 16 Order appointing Mr. Seery as CEO. However, Mr. Seery is also covered by the January 9 Order because it applies to the Independent Directors and *their agents*. As the CEO, Mr. Seery is clearly an *agent* of the Independent Board and enjoys the protections of both Orders.

¹⁰ See *Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 774] (the "CEO/CRO Motion") and *Certificate of Service* [Docket No. 779], reflecting service of the CEO/CRO Motion on CLOH on June 23, 2020.

to commence or pursue has been granted.

July 16 Order ¶ 5.

13. In entering the Governance Orders, this Court determined it had subject matter jurisdiction in connection therewith. No party appealed either the January 9 Order or the July 16 Order, and both Governance Orders are final orders. While the Dondero-Related Entities objected to the Court's jurisdiction to approve the gatekeeper provision contained in the Debtor's Plan,¹¹ at no time during the plan confirmation process did the Dondero-Related Entities argue that the Court did not have jurisdiction to approve either the January 9 Order or the July 16 Order, each of which was argued extensively in the context of the exculpation provision contained in the Plan.

14. On April 12, 2021, after obtaining new counsel,¹² Movants filed a complaint (the "Complaint") in the District Court commencing the CLOH Lawsuit. The Complaint is another collateral attack on an order of this Court, this time on an order approving a settlement between the Debtor and a significant creditor of the Debtor, HarbourVest¹³ (the "HarbourVest Settlement"). The HarbourVest Settlement was approved by this Court on January 21, 2020.¹⁴ In their Complaint, Movants assert claims against the Debtor for breach of fiduciary duty, breach of contract, negligence, violation of RICO, violations of federal securities laws and tortious interference, all in connection with the HarbourVest Settlement and arising out of the same facts

¹¹ *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as amended, the "Plan").

¹² Upon information and belief, Mr. Dondero fired Mr. Scott and his counsel, John Kane of Kane Russell, after Mr. Scott withdrew CLOH's objection to the HarbourVest Settlement (as defined below), and settled an adversary proceeding the Debtor commenced against certain Dondero-Related Entities. *See Notice of Settlement* filed at Docket No. 50 in Adversary Proceeding No. 21-03000.

¹³ "HarbourVest" collectively refers to the following entities: HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. HarbourVest asserted a claim in excess of \$300 million against the Debtor.

¹⁴ *See Order Approving Debtor's Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788].

that formed the basis of the HarbourVest Settlement.¹⁵

15. Throughout the Complaint, Movants threaten to name Mr. Seery as a defendant, and indeed, on April 19, 2021, just four days after filing the Complaint, counsel for Movants advised Debtor’s counsel that they “intend to move for leave today in the district court seeking permission to amend our complaint to add claims against Mr. Seery. They are the same causes of action. We believe we are entitled to amend as a matter of course.”¹⁶ Counsel asked whether they could “put your client down as unopposed?”¹⁷ In response, Debtor’s counsel informed Movants’ counsel of the gatekeeper provisions contained in the Governance Orders which clearly prohibited commencement of a lawsuit against Mr. Seery without the prior approval of this Court, provided copies, and told Movants’ counsel, among other things, that “[i]f you proceed to amend the complaint as you suggest [] without first obtaining Bankruptcy Court approval we reserve all rights to take appropriate action and seek appropriate relief from the Bankruptcy Court.”¹⁸ Later that evening, Movants’ counsel confirmed their intention to seek leave from the District Court to sue Mr. Seery and, on April 19, 2021, filed *Plaintiff’s Motion for Leave to File First Amended Complaint* (the “Motion for Leave”) seeking such relief – without serving or providing a courtesy copy to the Debtor.¹⁹

16. The Motion for Leave was a blatant and deliberate violation of the Governance Orders. On April 23, 2021, the Debtor filed the Contempt Motion. Later that evening, Movants filed this Motion seeking to “modify,” rather than comply with, the July 16 Order.

¹⁵ As indicated *supra* n.5, the Debtor will be filing a Motion to Enforce the Reference in regard to the CLOH Lawsuit.

¹⁶ See *Declaration of John A. Morris in Support of Debtor’s Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* (the “Morris Declaration”) [Docket No. 2237], Ex. 14 (e-mails between counsel for the Debtor and counsel for Movants). The Debtor hereby incorporates the Morris Declaration herein by reference.

¹⁷ *Id.*, Exs. 13 and 14.

¹⁸ *Id.*, Ex. 14.

¹⁹ *Id.*, Ex. 18. On April 20, 2021, the District Court denied the Motion for Leave without prejudice. *Id.*, Ex. 19.

**THE MOTION IS AN IMPERMISSIBLE COLLATERAL ATTACK ON PRIOR
ORDERS OF THIS COURT**

17. This Court should deny the Motion because it is an impermissible collateral attack on the Governance Orders. Movants cite no authority that would authorize the Court to revisit either of the Governance Orders. Movants sole argument is that this Court lacked subject matter jurisdiction to include the gatekeeper provision in the July 16 Order. As discussed below, the argument is as untimely as it is wrong.

18. Movants had actual notice of the proceedings resulting in the Governance Orders. Movants never objected to nor appealed from either of the Governance Orders. In fact, Mr. Dondero agreed to the January 9 Order to avoid the appointment of a chapter 11 trustee. The Governance Orders have been in place for from 9 months to over a year, are final orders of this Court, and are the law of this case.²⁰

19. The Fifth Circuit in *Republic Supply Co. v. Shoaf*²¹ made clear that if a party fails to object to or appeal from a final order - even one that grants relief that may be outside the court's jurisdiction - the order is *res judicata* against parties who had the opportunity to object to it, becomes the law of the case, and is not subject to collateral attack.

20. *Republic Supply* is directly on point and is dispositive. Shoaf had guaranteed a debt owed to Republic by his former company, Command. Command filed for bankruptcy and ultimately confirmed a plan which provided for certain payments to Republic, but also released any guarantors. Republic appeared at the confirmation hearing, but did not object to nor appeal

²⁰ *Miller v. Meinhard-Commercial Corp.*, 462 F.2d 358, 360 (5th Cir. 1972) (regardless of relief sought, it is a collateral attack if it must in some fashion overrule a previous judgment); *see also In re Moye*, 437 Fed. Appx. 338, 341 (5th Cir. 2011) (“Under the law-of-the-case doctrine, a court follows its prior final decisions in the case as the law of that case, except for a few narrow exceptions.”) (internal quotations omitted); *In re Provenza*, 316 B.R. 177, 220 (Bankr. E.D. La 2003) (“Under the law of the case doctrine, a court may not address issues that have been litigated and decided in earlier proceedings in the same case.”).

²¹ 815 F.2d 1046 (5th Cir. 1987).

from the confirmation order which included the release of Shoaf's guaranty. Republic later tried to enforce the guaranty against Shoaf. The Fifth Circuit determined that Republic was barred from bringing a claim that was specifically and expressly released by a confirmed reorganization plan because Republic had the opportunity to object to the release at confirmation but failed to do so. Consequently, the Fifth Circuit held that Republic was now collaterally attacking the release.

21. In ruling that Republic was bound by the confirmation order's release, the Fifth Circuit expressly addressed the argument that the bankruptcy court lacked jurisdiction to grant the third party release. *Id.* at 1051-1053 and n.6 ("Indeed, our opinion today assumes that the bankruptcy court did not have subject matter jurisdiction to release the guaranty in question here."). Nonetheless, in relying on *Stoll v. Gottlieb*, 305 U.S. 165 (1938), the Fifth Circuit determined that when a court renders a judgement, it implicitly determines it has jurisdiction to do so, and if a party who had the opportunity to challenge the court's jurisdiction failed to do so, that party is bound by the entered order. *Id.* at 1052. The Fifth Circuit (quoting from *Stoll*) stated:

a court by necessity has the authority to determine its own jurisdiction over the parties and subject matter, and does so either tacitly or expressly, by rendering a judgment. Consequently, to allow a party to collaterally attack a court's jurisdiction is to allow retrial of issues already decided. Therefore,

after a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of *res judicata* is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation.

Id. (citing *Stoll*, 305 U.S. at 172 (footnotes omitted)); *see also*, *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1939) (bondholders were bound by bankruptcy court order cancelling certain bond obligations which bondholders had the opportunity to object to but did not, notwithstanding that the bankruptcy court did not have jurisdiction to enter the order).

22. Movants had actual notice of the Governance Orders. Movants have been active participants in this case, aided by competent counsel, and clearly know how to file pleadings and object. In entering the Governance Orders, this Court expressly determined it had jurisdiction to grant the relief set forth therein. The gatekeeper provisions and the procedures for asserting claims against any of the Independent Directors (including the Executive) are clearly set forth in the Governance Orders. Movants never objected to the Governance Settlement Motion or the CEO/CRO Motion and never challenged the substance of the resulting Governance Orders or the jurisdiction of this Court to enter them. Therefore, they cannot now seek relief from this Court to “modify” the Governance Orders.

23. Movants’ collateral attack on the July 16 Order (and by implication, the January 9 Order) is prohibited by applicable Supreme Court and Fifth Circuit law, and the Motion should be denied.

THE BANKRUPTCY COURT HAD JURISDICTION TO ENTER THE JULY 16 ORDER AND ITS GATEKEEPER PROVISION

24. Even if this Court or the District Court could revisit the Governance Orders – which they cannot – this Court clearly had jurisdiction to enter the Governance Orders. Movants fail to address – let alone contest – the requirement that a party first must seek this Court’s approval before commencing a claim against Mr. Seery. As discussed below, both the Barton Doctrine and the jurisdiction granted to this Court under 28 U.S.C. § 157(b) support such jurisdiction. Rather, Movants focus on the “sole jurisdiction” sentence in an attempt to extricate themselves from compliance with the July 16 Order. However, even if the provision granting this Court exclusive jurisdiction to adjudicate any such claim that passed through the gate could theoretically raise jurisdictional concerns, none exist in this case because this Court has subject matter jurisdiction over the claims raised in the CLOH Lawsuit. In any event, the issue is premature until Movants

obtain a determination from this Court that the claims they seek to assert against Mr. Seery are colorable and a lawsuit may be commenced.

BANKRUPTCY COURTS ARE VESTED WITH JURISDICTION OVER MATTERS ARISING UNDER, ARISING IN OR RELATED TO A CHAPTER 11 CASE

25. The issue of bankruptcy court jurisdiction has resulted in uncountable numbers of pages of analyses by courts and scholars alike. Yet, the Fifth Circuit has crafted a comparatively clear standard for determining when bankruptcy courts have jurisdiction, especially as applied to the facts of this case.

26. In general, district courts have jurisdiction over bankruptcy cases and they may, in their discretion, refer those cases to the bankruptcy courts. 28 U.S.C. § 1334 (district court jurisdiction); 28 U.S.C. § 157 (bankruptcy court jurisdiction). The jurisdictional grant to the bankruptcy court is divided into “core” and “non-core” proceedings. Core proceedings arise under title 11 or arise in a case under title 11. 28 U.S.C. § 157(b). Non-core proceedings are those proceedings that are otherwise related to a bankruptcy case under title 11. 28 U.S.C. § 157(c)(1). Bankruptcy judges may enter all appropriate orders and judgments in core proceedings, but unless the parties consent to core treatment, a bankruptcy judge must submit proposed findings of fact and conclusions of law in non-core proceedings to the district court. 28 U.S.C. § 157(b) and (c); *EOP-Colonnade of Dallas Ltd. P'ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260, 266 (5th Cir. 2005).²²

27. The seminal Fifth Circuit case on bankruptcy court jurisdiction is *Wood v. Wood (In re Wood)*, 825 F.2d 90 (5th Cir. 1987). “For the purpose of determining whether a particular

²² In their Motion, Movants state: “Not only does the [Bankruptcy] Court lack ‘*sole jurisdiction*’ over all causes of action brought against Seery related to his role as [the Debtor’s] CEO, according to the plain language of 28 U.S.C. § 1334, this [Bankruptcy] Court does not even have *concurrent jurisdiction* over *all* such claims.” Motion at 6 (emphasis original). This statement is an incorrect reading of section 1334, and contrary to all current bankruptcy jurisprudence.

matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings ‘arising under’, ‘arising in a case under’, or ‘related to a case under’, title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least ‘related to’ the bankruptcy.” *Id.* at 93. A proceeding “relates to” a proceeding under title 11 even if it arises from post-petition conduct if “it affects the estate, not just the debtor.” *Id.*, at 94. In *Wood*, the Court expressly adopted the “conceivable impact on the estate” test. *Id.* at 93. The Fifth Circuit has been consistent in its application of this test in determining whether a matter falls within the bankruptcy court’s “related to” jurisdiction.

28. Since *Wood*, the Fifth Circuit has further elaborated on the “conceivable impact” test:

To determine whether a particular matter falls within general bankruptcy jurisdiction, we ask whether the outcome of that proceeding could have *any conceivable effect on the estate* being administered in bankruptcy. *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987). More specifically, *an action is related to bankruptcy if “the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.”* *In re Majestic Energy Corp.*, 835 F.2d 87, 90 (5th Cir. 1988) (quoting *Pacor Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

In re Stonebridge Techs., Inc., 430 F.3d at 266 (emphasis added).

THE BANKRUPTCY COURT HAD SUBJECT MATTER JURISDICTION TO REQUIRE THAT PARTIES FIRST SEEK BANKRUPTCY COURT APPROVAL BEFORE COMMENCING A LAWSUIT AGAINST THE INDEPENDENT DIRECTORS, THE EXECUTIVE OR THEIR RESPECTIVE AGENTS.

29. Both the Governance Settlement Motion and the CEO/CRO Motion were core proceedings under 28 U.S.C. § 157(b)(2)(A) in that they concerned the administration of the estate. The resulting Governance Orders established an independent corporate governance structure for the Debtor and, through the Protocols, corporate governance procedures as to how the Debtor would operate its various businesses and manage its assets. Nothing in the Governance Orders is

inconsistent with 28 U.S.C. § 1334(b) which simply provides that the district court shall have “original but not exclusive jurisdiction” over all civil proceedings “arising under,” “arising in or related to” a bankruptcy case. Under applicable Fifth Circuit law, both the Governance Orders, including the nearly identical gatekeeper provisions contained in those Orders, were clearly within this Court’s jurisdiction.

30. The requirement contained in paragraph 10 of the January 9 Order and paragraph 5 of the July 16 Order that any person seeking to assert a claim against the Independent Directors, their agents and advisors, and the Executive first seek authorization from this Court before asserting such claim was necessary to shield the protected parties from frivolous or endless and burdensome litigation.²³ There can be no credible dispute that frivolous or endless and burdensome litigation would have a “conceivable impact” on the Debtor’s estate, both financially and operationally. For example, claims brought against the Independent Directors or the Executive would trigger the Debtor’s indemnification obligations thereby depleting assets and diminishing recoveries to the Debtor’s creditors.²⁴

31. Determining that claims against court-approved estate fiduciaries are “colorable” is clearly within this Court’s jurisdiction as pursuit of such claims would have a significant effect on the administration of the Debtor’s estate, especially in light of the Debtor’s significant

²³ As the Court will recall, a substantial part of the two-day evidentiary confirmation hearing was devoted to testimony and argument regarding the Court’s authority to approve a gatekeeper provision as part of the Plan. The uncontroverted testimony persuaded the Court that the Dondero-Related Entities’ persistent, disruptive actions and litigation tactics necessitated the approval of the Plan gatekeeper provision and that it and the related exculpation provision were critical to the Plan’s success. Unfortunately, the last several months of the case have demonstrated just how important the gatekeeper provisions in the Governance Orders (and the Plan) were then – and are now.

²⁴ More fundamentally, there is substantial evidence in the record – none of which was ever objected to or rebutted – that the Independent Directors and the Executive would *never* have accepted their positions without the gatekeeper provisions precisely because of Mr. Dondero’s notorious history for frivolous, endless and burdensome litigation. *See Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943], ¶ 14. Stated another way, the gatekeeper provisions the Movants seek to retroactively excise were part of the *quid pro quo* that resulted in the entry of the Governance Orders.

indemnification obligations. *See, e.g., Stonebridge*, 430 F.3d at 266-67 (bankruptcy court had “related to” jurisdiction over a dispute between a landlord and a bank over both a letter of credit draw and claims for misrepresentation where in either case, the estate would be required to reimburse the bank for any liability it had to the landlord); *Collins v. Sidharthan (In re KSRP, Ltd.)*, 809 F.3d 263, 266-67 (5th Cir. 2015) (bankruptcy court had “related to” jurisdiction over lawsuit for breach of contract, tortious interference, and other state law claims against non-debtor third party because of potential indemnification claim against debtor, even though ultimately bankruptcy court determined the indemnification claim was invalid); *Refinery Holding Co., L.P. v. TRMI Holdings, Inc. (In re El Paso Refinery, L.P.)*, 302 F.3d 343, 349 (5th Cir. 2002) (bankruptcy court had “related to” jurisdiction over lawsuit by owner of refinery against Texaco, who was unrelated to the debtor but had previously owned the refinery, as to allocation of environmental liabilities because there was a chain of indemnification obligations beginning with Texaco and leading directly to the debtor which could have a conceivable effect on the estate); *Principal Life Ins. Co. v. JPMorgan Chase Bank, N.A. (In re Brook Mays Music Co.)*, 363 B.R. 801, (Bankr. N.D. Tex. 2007), report and recommendation adopted, 2011 Bankr. LEXIS 3252 (Bankr. N.D. Tex., Mar. 10, 2011) (bankruptcy court had “related to” jurisdiction over state law tort claims asserted by landlord against secured lender and other third parties because the third parties had contractual indemnification rights against the debtor).

32. The fact that this Court may not have jurisdiction to adjudicate a claim once it is determined to be colorable, does not prevent it from having jurisdiction to determine if the claim is colorable in the first instance.²⁵ *See Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015)

²⁵ *See, e.g., Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 546 B.R. 284 (Bankr. S.D.N.Y. 2016) (bankruptcy court acts as gatekeeper to determine whether claims of certain creditors against certain Madoff feeder funds are direct claims (claims which may be brought by the creditor) or derivative claims (claims which either can only be brought by the Madoff post-confirmation liquidating trust or have already been settled by the trust)); *In re*

(under Barton Doctrine, litigant must still seek authority from the bankruptcy court that appointed the trustee before filing litigation even if the bankruptcy court may not have jurisdiction to adjudicate the underlying claim). Movants also ignore cases from this District approving gatekeeper provisions that granted exclusive jurisdiction to hear matters challenging the actions of debtors' officers and directors arising from their conduct in the bankruptcy cases.²⁶

33. The Barton Doctrine also supports the gatekeeper provision which, by analogy, should be applied to the Executive, as well as to the Independent Directors. The Barton Doctrine is based on the Supreme Court case, *Barton v. Barbour*, 104 U.S. 126 (1881), dealing with receivers. As this Court has recognized, the Barton Doctrine:

provides that, as a general rule, before a suit may be brought against a trustee, leave of the appointing court (*i.e.*, the bankruptcy court) must be obtained. The *Barton* doctrine is **not** an immunity doctrine but—strange as this may sound—has been held to be a **jurisdictional** provision (in other words, a court will not have subject matter jurisdiction to adjudicate a suit against a trustee **unless and until** the bankruptcy court has granted leave for the lawsuit to be filed).

Baron v. Sherman (In re Ondova Ltd. Co.), 2017 Bankr. LEXIS 325, *29 (Bankr. N.D. Tex. February 1, 2017); report and recommendation adopted, *Baron v. Sherman (In re Ondova Co.)*,

Motors Liquidation Co., 541 B.R. 104 (Bankr. S.D.N.Y. 2015) (discussing bankruptcy court's gatekeeper function over GM ignition switch cases); *In re Motors Liquidation Co.*, 568 B.R. 217 (Bankr. S.D.N.Y. 2017) (same). The use of the gatekeeper structure in the *General Motors* cases is particularly apt. The causes of action arising from defective ignition switches are based on state tort law – both product liability and personal injury – and are causes of action unquestionably outside the jurisdiction of a bankruptcy court to hear on the merits. Nevertheless, the *General Motors* bankruptcy court acted as the gatekeeper post-confirmation to determine whether such litigation should proceed against the estate of the old debtor or the asset purchaser under the confirmed plan. See also *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233 (5th Cir. 1988) (bankruptcy court must determine that claim is colorable before authorizing a committee to sue in the stead of the debtor).

²⁶ See, e.g., *In re Pilgrim's Pride Corp.*, 2010 Bankr. LEXIS 72 (Bankr. N.D. Tex. Jan. 14, 2010) (bankruptcy court channeled to itself **exclusive** jurisdiction to hear claims against debtors' management (including their boards of directors and chief restructuring officer) and the professionals based upon their conduct in pursuit of their responsibilities during the chapter 11 cases.); see also *In re CHC Group, Ltd.* (Case No. 16-31854, Bankr. N.D. Tex.) *Debtors' Fourth Amended Joint Chapter 11 Plan of Reorganization* [D.I. 1671-1, attached to *Findings of Fact and Conclusions of Law, and Order Confirming the Debtors' Fourth Amended Joint Chapter 11 Plan of Reorganization*], Section 10.8(b) at 57 (court retained **exclusive** jurisdiction to hear claims against any "Protected Party," including any claims "in connection with or arising out of . . . the administration of this Plan or the property to be distributed under this Plan, . . . or the transactions in furtherance of the foregoing, . . .") (emphasis added).

2018 U.S. Dist. LEXIS 13439 (N.D. Tex. Jan. 26, 2018), *aff'd*, *In re Ondova Ltd.*, 2019 U.S. App. LEXIS 3493 (5th Cir. Tex. Feb. 4, 2019). The Barton Doctrine originated as a protection for federal receivers, but courts have expanded the concept to various court-appointed and court-approved fiduciaries and their agents in bankruptcy cases, including debtors in possession,²⁷ officers and directors of a debtor,²⁸ and the general partner of a debtor.²⁹ Similarly, given that the Independent Directors were appointed to avoid the appointment of a trustee, they should have similar protections from suit.³⁰

**THE BANKRUPTCY COURT HAS JURISDICTION TO ADJUDICATE CLAIMS
RAISED IN THE COMPLAINT**

34. Movants argue that this Court does not have authority to exert exclusive jurisdiction over *any* claims that pass through the gate. That argument, however, cannot be evaluated in a vacuum. Regardless of whether the argument has any merit as a general proposition, this Court clearly has jurisdiction over the potential claims Movants seek to assert against Mr. Seery arising out of the facts set forth in the Complaint.

35. The Complaint essentially is a collateral attack on the HarbourVest Settlement, alleging violations of RICO, the antifraud provisions of the Investment Advisers Act of 1940, and a variety of other state and federal claims. The Debtor will be filing its Motion to Enforce the

²⁷ *Helmer v. Pogue*, 212 U.S. Dist. LEXIS 151262 (N.D. Ala. Oct. 22, 2012) (applying Barton Doctrine to debtor in possession); *see also* 11 U.S.C §§ 1107(a) of the Bankruptcy Code, providing that a debtor in possession has all the rights and duties of a trustee and serves in the same fiduciary capacity.

²⁸ *See Carter v. Rodgers*, 220 F.3d 1249, 1252 and n.4 (11th Cir. 2000) (debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer for acts done in the actor's official capacity, and finding no distinction between a "bankruptcy-court-appointed officer" and officers who are "approved" by the court); *Hallock v. Key Fed. Sav. Bank (In re Silver Oak Homes)*, 167 B.R. 389 (Bankr. D. Md. 1994) (president of debtor).

²⁹ *Gordon v. Nick*, 1998 U.S. App. LEXIS 21519 (4th Cir. 1998) (managing partner of debtor).

³⁰ *Boullion v. McClanahan*, 639 F.2d 213, 214 (5th Cir. 1981) (discussing qualified immunity of trustees acting within the scope of their employment)

Reference in the District Court³¹ pursuant to which the Debtor will request that the District Court refer the CLOH Lawsuit to this Court for adjudication. The CLOH Lawsuit is a rehash of the litigation this Court presided over in connection with approval of the HarbourVest Settlement and attacks matters the Court adjudicated in approving the HarbourVest Settlement over Movants' filed and subsequently withdrawn objection. *See generally* Contempt Motion ¶¶6-38. The claims Movants want to assert against Mr. Seery are based on actions taken by Mr. Seery in his role as a court-appointed fiduciary and implicate his indemnification claims against the estate. Therefore, such claims will have a direct impact on the handling and administration of the estate and fall squarely within the subject matter jurisdiction of this Court under the Fifth Circuit authorities cited above.

36. Moreover, contrary to Movant's assertion, the CLOH Lawsuit is not subject to mandatory abstention pursuant to 28 U.S.C. § 157(d). Section 157(d) provides for mandatory withdrawal of the reference "if the court determines that resolution of the proceeding *requires consideration* of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d) (emphasis added). Movants argue that because the CLOH Lawsuit alleges causes of action arising under the Trust Advisers Act of 1940 and RICO, this Court will have to withdraw the reference. Even assuming Movants' federal law claims are not frivolous (which they are), Movants misinterpret 28 U.S.C. § 157(d).

37. While the Fifth Circuit has not opined on the meaning of "consideration" in interpreting section 157(d), courts within this Circuit apply the majority view and require

³¹ *See* Misc. Rule No. 33, United States District Court for the Northern District of Texas, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, August 4, 1984, which provides in pertinent part: "any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 . . . be and they hereby are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law." *See also* 28 U.S.C. § 157(a).

withdrawal of the reference only:

[W]hen “substantial and material consideration” of a federal statute other than the Bankruptcy Code is necessary to the resolution of a case or proceeding. Withdrawal is not mandatory in cases that require only the “straightforward application of a federal statute to a particular set of facts.” Rather, withdrawal is in order only when litigants raise “issues requiring significant interpretation of federal laws that Congress would have intended to [be] decided by a district judge rather than a bankruptcy judge.”

Southern Pac. Transp. v. Voluntary Purchasing Groups, 252 B.R. 373, 382 (E.D. Tex. 2000) (quoting *In re National Gypsum*, 14 B.R. 188, 192-93 (N.D. Tex. 1991); see also *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 347-48 (S.D. Tex. 2009) (adopting the “majority” view requiring “material and substantial consideration of non-Bankruptcy Code federal law” for withdrawal to be mandatory); *UPH Holdings, Inc. v. Sprint Nextel Corp.*, 2013 U.S. Dist. LEXIS 189349, at *4-7 (W.D. Tex. Dec. 10, 2013) (holding no mandatory withdrawal when, among other reasons, the bankruptcy court will be tasked with no more than application of federal communications law to a given set of facts.)

38. “Consideration” means “something more than the mere process of examining, thinking about, or taking into account.” *In re Vicars Ins. Agency, Inc.*, 96 F.3d 949, 953-54 (7th Cir. 1996) (internal quotations omitted). Mandatory withdrawal is only required when resolution of a proceeding requires interpretation of non-bankruptcy federal law meaning something “more than mere application of existing law to new facts.” *Id.*; see also *City of N.Y. v. Exxon Corp.*, 932 F.2d 1020, 1026 (2d Cir. 1991) (withdrawal is mandatory when case requires “significant interpretation, as opposed to simple application, of federal laws apart from the bankruptcy statutes”); *In re Johns-Manville Corp.*, 63 B.R. 600, 602 (S.D.N.Y. 1986) (“It is issues requiring significant *interpretation* of federal laws that Congress would have intended to have decided by a district judge rather than a bankruptcy judge.”) (emphasis original).

39. This narrow interpretation of section 157(d) is consistent with the legislative

history.³² In *Vicars*, the Seventh Circuit noted that permitting withdrawal when any non-bankruptcy federal question is implicated, even in a minor way, and a party requests withdrawal, would “encourage delaying tactics (perhaps further draining the resources of the debtor), forum shopping, and generally unnecessary litigation.” *Id*; see also *Manila Indus., Inc. v. Ondova Ltd. (In re Ondova Ltd.)*, 2009 U.S. Dist. LEXIS 102134, at *6 (N.D. Tex. Oct. 1, 2009) (quoting *In re G-I Holdings, Inc.*, 295 B.R. 211, 221 (D. N.J. 2003)).

40. Therefore, the mere pleading of a federal question is not a basis for mandatory withdrawal; mandatory withdrawal is only proper when a bankruptcy court would have to interpret and apply federal law on a novel and unsettled question. The claims alleged in the CLOH Lawsuit are not subject to mandatory abstention because none of the putative federal causes of action raised by Movants in the Complaint require “substantial and material consideration” of a non-bankruptcy federal statute or more than the cursory application of settled federal law.

41. Other than containing generic *dicta* on jurisdiction, none of the cases cited by Movants are on point. In *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512 (5th Cir. 2014), the Fifth Circuit held that **both** the bankruptcy court and the district court lacked jurisdiction to grant DIP financing liens on the shares of Vantage that were subject to a pre-bankruptcy ownership dispute because the shares were not property of the estate. Nothing in that case addressed the bankruptcy court’s jurisdiction to hear litigation against a court-approved officer and director with contractual indemnification rights against the debtor. Similarly, the issue in *In re Prescription Home Health Care*, 316 F.3d 542 (5th Cir. 2002), was whether the bankruptcy court could enjoin the IRS’s collection efforts against the debtor’s president and sole owner for trust fund taxes for which he was statutorily personally liable. The

³² *Vicars*, 96 F.3d at 953 (see citations to legislative history contained therein indicating that section 157(d) was not intended to be an “escape hatch” for litigants to take cases from the bankruptcy court)

Fifth Circuit analyzed the unique rights granted to taxing authorities in bankruptcy cases and concluded the bankruptcy court did not have jurisdiction to enter an injunction against the IRS.

42. The Motion requests relief relating to the specific Complaint filed in the CLOH Lawsuit. As discussed previously, the issue of whether this court would have jurisdiction over the CLOH Lawsuit is premature, as Movants have not obtained the prerequisite determination that the claims asserted in the CLOH Lawsuit are colorable. Notwithstanding this defect, based on the rulings of the Fifth Circuit setting forth the “conceivable impact on the estate” test and determining that indemnification obligations meet that test, and given that any liability of Mr. Seery based on the causes of action alleged in CLOH Lawsuit would be the ultimate responsibility of the Debtor, this Court would clearly have at least “related to” jurisdiction over the Complaint.

43. This, in and of itself, is sufficient to defeat the Motion. However, as discussed above (and as will be analyzed more fully in the Motion to Enforce Reference), this Court also has “arising under” jurisdiction over the CLOH Lawsuit because it involves core proceedings.³³

CONCLUSION

For the reasons set forth herein, Fifth Circuit law clearly establishes this Court had jurisdiction to enter the Governance Orders and, if the causes of action asserted in the Complaint are colorable, this Court has jurisdiction to adjudicate the CLOH Lawsuit. Therefore, the Debtor respectfully requests that the Court deny the Motion.

³³ The CLOH Lawsuit is a challenge to a settlement of claims approved by the Court pursuant to sections 105 and 363 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules. As such, the settlement was unique to the bankruptcy process, included the allowance of contested claims, and was a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (M) and (N). The CLOH Lawsuit is also a collateral attack on the order approving the HarbourVest Settlement, and a court always has jurisdiction to enforce its own orders. *Galaz v. Katona (In re Galaz)*, 841 F.3d 316, 322 (5th Cir. 2016) (A bankruptcy court maintains “jurisdiction to interpret and enforce its own prior orders.”) (citing *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009)).

Dated: May 14, 2021.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Judith Elkin (TX Bar No. 06522200)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jelkin@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

WHEREFORE, the Committee respectfully requests that the Court deny the Motion.

Dated: May 14, 2021
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Juliana L. Hoffman

Penny P. Reid

Paige Holden Montgomery

Juliana L. Hoffman

2021 McKinney Avenue

Suite 2000

Dallas, Texas 74201

Telephone: (214) 981-3300

Facsimile: (214) 981-3400

-and-

Matthew A. Clemente (admitted *pro hac vice*)

Dennis M. Twomey (admitted *pro hac vice*)

Alyssa Russell (admitted *pro hac vice*)

One South Dearborn Street

Chicago, Illinois 60603

Telephone: (312) 853-7000

Facsimile: (312) 853-7036

COUNSEL FOR THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

**REPLY IN SUPPORT OF MOTION FOR MODIFICATION OF ORDERS REGARDING
GOVERNANCE OF THE DEBTOR AND RETENTION OF JAMES P. SEERY, JR.**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti
Texas Bar No. 24058096
Jonathan Bridges
Texas Bar No. 24028835
JPMorgan Chase Tower
2200 Ross Avenue – Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: mas@sbaitilaw.com
jeb@sbaitilaw.com

COUNSEL FOR MOVANTS

I. INTRODUCTION

The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Movants”) respectfully submit this Reply in support of their Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., Due to Lack of Subject Matter Jurisdiction (the “Motion”).

Movants’ motion raises a simple question: Can this Court strip the district court of jurisdiction by issuing an order declaring that it has “sole jurisdiction” over all lawsuits naming James Seery that are in any way related to his role post-petition role with the Debtor?

Movants have provided several reasons why the answer is “no.” In short, this Court lacks that power: (1) because 28 U.S.C. § 1334 explicitly vests the district court with original jurisdiction, (2) because asserting exclusive jurisdiction here is prohibited by the Constitution and the Supreme Court’s decision in *Stern v. Marshall*, 564 U.S. 462, 499 (2011), and (3) because any alternative interpretation of law would create considerable tension with the plain language of 28 U.S.C. § 959 and run directly counter to the mandatory withdrawal-of-the-reference provision in 28 U.S.C. § 157(d).

The Debtor and those who join its arguments here respond largely with surliness, rhetoric, and procedural niceties. The Motion is “blatant,” “brazen,” and “disrespectful,” they say without support. It is too late (due to finality), and too soon (due to ripeness), they argue simultaneously. These arguments are wrongheaded for the reasons explained below. But more importantly, they are irrelevant. They are irrelevant because they do not alter—indeed they do not even challenge the fact—that this Court lacks the power to divest the district court of original jurisdiction. It is that simple.

Movants intend to assert claims against Seery, including claims that arise under the Investment Advisers Act of 1940 (the “Adviser’s Act”) and the RICO statute. Because the district

court has original jurisdiction over the proposed claims, this Court’s Order of July 16, 2020 (“Order”),¹ which purports to assert “sole jurisdiction” over such matters, should be modified.

The Debtor does not contest that this Court lacks the power to deprive the district court of jurisdiction. It argues only that this Court also has jurisdiction, asserting that § 157(d)’s mandatory withdrawal-of-the-reference provision is inapplicable. Again, this is wrong and beside the point. The Order is erroneous not because it asserts concurrent jurisdiction but because it purports to divest the district court of jurisdiction. This is error regardless of whether this Court also has concurrent jurisdiction. Thus, the Debtor’s § 157(d) argument is unavailing.

But the argument is also wrong. The proposed claims against Seery under the Adviser’s Act and RICO plainly fall within § 157(d) because those claims require consideration of both bankruptcy law and federal laws “regulating organizations or activities affecting interstate commerce.” Thus, withdrawal of the reference is mandatory, and this Court lacks over the power to decide those claims.

Moreover, this Court recognized and addressed that very problem in its March 22, 2021, order confirming the Debtor’s reorganization plan (“Confirmation Order”).² There, this Court made an important edit to its previous language asserting “sole and exclusive jurisdiction” over claims against Seery, noting that such jurisdiction extends “only to the extent legally permissible.”³

¹ Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Doc 854]. As noted in the opening brief, a related but ultimately inapplicable order dated January 9, 2020, contains a similar provision with regard to Seery’s role as an “Independent Director.” Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, ¶ 5 [Doc. 339].

² Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) And (II) Granting Related Relief [Doc. 1943].

³ *Id.* at 77, ¶ AA (“The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, *only to the extent legally permissible* and as provided for in

Movants, here, ask for nothing more. This Court’s assertion of exclusive jurisdiction is, of course, limited to the extent it is legally permissible. The Order should be modified to acknowledge that limitation. For these reasons, Movants’ Motion should be granted.

II. ARGUMENT

Preliminarily, Movants note that the Debtor responded to their 10-page Motion with 21 pages of briefing, choking the record with irrelevant history, ad hominem attacks, and characterizations. Yet nowhere does the Response address the arguments presented in Movants’ Motion, save for the aforementioned one concerning § 157(d). There is no response of any kind to these three arguments from the Motion: (1) that this Court lacks the power to strip the district court of jurisdiction, (2) that asserting exclusive jurisdiction here is prohibited by the Constitution and the Supreme Court’s decision in *Stern v. Marshall*, 564 U.S. 462 (2011), and (3) that the contrary position advanced by the Debtor creates considerable tension with the plain language of 28 U.S.C. § 959. Neither does the Debtor’s brief address the edited language in the Confirmation Order, which expressly recognizes legal limits to this Court’s jurisdiction over future litigation. Movants submit that the Debtor’s failure to respond to these arguments constitutes a waiver and an abandonment both here and on appeal.⁴

With regard to the arguments that do appear in the Response, Movants submit that only the two pages devoted to 28 U.S.C. § 157(d) are even relevant to the issue before the Court. The remainder is red herring after red herring. Movants address each issue below:

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.”) (emphasis added).

⁴ See *Kellam v. Metrocare Servs.*, 560 F. App’x 360 (5th Cir. 2014) (“Generally, the failure to respond to arguments constitutes abandonment or waiver of the issue.”) (citations omitted); *Magee v. Life Ins. Co. of N. Am.*, 261 F. Supp. 2d 738, 748 n.10 (S.D. Tex. 2003) (observing that the “failure to brief an argument in the district court waives that argument in that court”).

A. THIS COURT LACKS THE POWER TO STRIP THE DISTRICT COURT OF JURISDICTION

It is unsurprising the Debtor's Response fails to argue this Court can strip the district court of jurisdiction. It is a first principle of bankruptcy law that bankruptcy courts derive their jurisdiction from the district court in which they are situated and not the other way around.

The Debtor's Response likewise raises no challenge to Movants' argument that the *Barton* doctrine is inapplicable. Although it does contend that the Order's gatekeeper provisions are analogous to/consistent with the *Barton* doctrine, it does not state that the *Barton* doctrine applies.

The reason is readily apparent. The Debtor cannot claim that this Court "appointed" Seery to the positions he holds as an executive of the Debtor, at least not in the classic sense of an appointment. The Debtor asked this Court to defer to its own "corporate decisions" with regard to Seery's appointment and argued that this Court should not "interfere." *See* Motion at 7 n.10. Because court "appointment" is a prerequisite to application of the *Barton* doctrine, that doctrine simply does not apply. The Debtor's passing references by analogy do not state otherwise.

Because the Debtor does not contend that this Court has the power to strip the district court of jurisdiction, and because the district court indisputably has original jurisdiction over Movants' action, the assertion of "sole jurisdiction" in the Order cannot and does not prohibit jurisdiction in the district court. Establishing this was the primary objective of Movants' Motion. And on that issue, the Motion is aptly considered unopposed.

B. THE CONSTITUTION PROHIBITS THE ORDER'S JURISDICTIONAL OVERREACH

The Debtor's Response does not mention the separation of powers doctrine or the Supreme Court's landmark decision in *Stern v. Marshall*, 564 U.S. 462, 499 (2011). It argues only that the statutory prerequisites for related-to jurisdiction are met. Because a statute cannot trump the Constitution, that argument misses its mark. Thus, this argument is essentially unopposed as well.

C. THE ORDER'S JURISDICTIONAL OVERREACH IS PROHIBITED BY STATUTE

As noted, the Debtor's Response does not mention and therefore waives any argument concerning 28 U.S.C. § 959 ("Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property.").

Regarding mandatory withdrawal of the reference under 28 U.S.C. § 157(d), the Debtor's Response does not contest Movants' position that the proposed claims in the district court case involve both bankruptcy law and other federal laws "regulating organizations or activities affecting interstate commerce." The Adviser's Act and the RICO statute are such laws, and Movants' proposed claims arise under them.

But the Debtor does argue that prerequisites of § 157(d) are not present here, hanging its hat on an awkward parsing of the term "consideration."

In whole, § 157(d) states,

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires *consideration* of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(Emphasis added). Thus, withdrawal of the reference under § 157(d) is mandatory when a matter "requires consideration" of other federal laws regulating interstate commerce. Because Movants' action in the district court plainly involves such laws, Debtor's entire argument against withdrawal of the reference turns on whether those laws must be "considered."

It is remarkable that the Debtor suggests these statutes need not be considered. The briefing here and in the district court already puts at issue significant, hotly contested issues regarding the interplay of bankruptcy law and the Adviser's Act, including

1. Whether the Order constitutes a waiver of unwaivable fiduciary duties by purporting to immunize Seery against claims for negligence and breach of fiduciary duty;
2. Whether the heightened fiduciary obligations imposed by the Adviser's Act were violated and whether those obligations elevate what otherwise might have been ordinary negligence to recklessness or gross negligence;
3. Whether the Order constitutes a material change in the relationship between Seery, as a Registered Investment Advisor, and his advisees, such that a failure to disclose that material change—to advisees or to the SEC—constitutes a breach of the Adviser's Act or its regulations, a breach of fiduciary duties, negligence, gross negligence, or recklessness; and
4. Whether the Adviser's Act anti-fraud provisions and other statutes were violated, which forms the predicate for civil RICO liability, among other significant legal issues.

None of the cases the Debtor cites even remotely suggests that resolving these kinds of difficult, contested issues does not require “consideration” of these laws. The Debtor's bald assertion that applying these complex federal laws will be “straightforward” and will not involve “significant interpretation” verges on ludicrous.

The principal case the Debtor relies on, the Seventh Circuit's opinion in *In re Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954 (7th Cir. 1996), merely holds that the need for consideration of non-bankruptcy federal law must be more than “speculative” or “hypothetical.” Plainly no speculation or hypothesis is needed here. For example, the presiding court necessarily will have to decide what exculpatory effect, if any, the Order can have on Seery's duties under the Adviser's Act. No Article III court, to Movants' knowledge, has decided any such thing.

Indeed, the closest authority appears to be the Fifth Circuit's decision in *In re Pac. Lumber Co.*, 584 F.3d 229, 251-52 (5th Cir. 2009). That case prohibits bankruptcy courts from entering prospective, non-consensual, non-debtor exculpatory orders, such as the one at issue here. Whether that decision is controlling here is likely to be a hotly contested issue.

The Debtor's other Article III court authority, the Second Circuit's opinion in *City of N.Y. v. Exxon Corp.*, 932 F.2d 1020, 1026 (2d Cir. 1991), actually holds against the Debtor's position. In that case, the court *affirmed* mandatory withdrawal of the reference under § 157(d) because the bankruptcy court's "yet to be made" determinations were "likely to require further interpretation of CERCLA." *Id.* Specifically, the court reasoned that determining which costs would be "recoverable" under the statute necessarily involved more than "simple application" of federal law.

That standard is easily met here. Most obviously, determining which of Seery's duties under the Adviser's Act⁵ can be waived or deemed unenforceable due to the exculpatory provisions of the Order is a "yet to be made" decision "likely to require" interpretation of the Adviser's Act and related regulations. That withdrawal of the reference under § 157(d) necessitates a showing of something more—some unusual complexity or the absence of settled law—is simply not supported by the Debtor's authority. And the Debtor's recitation of what it would like to be the rule—that "mandatory withdrawal is only proper when a bankruptcy court would have to interpret and apply federal law on a novel and unsettled question" (Response at 19)—is entirely made up.

Because the proposed claims against Seery do indeed require consideration of non-bankruptcy, federal laws affecting interstate commerce, withdrawal of the reference is mandatory under § 157(d). This Court's lack of jurisdiction over the proposed claims makes it all the more obvious that the district court's jurisdiction has not been divested. The Order should be modified to acknowledge as much.⁶

⁵ See Seery Testimony, Trans. of Hearing at 65-66 [Doc. 571] ("We owe a duty under the Advisor's Act to the funds and to the investors in those funds. . . . And what's important in the Advisor's Act, and it's an interesting part of U.S. law. At least my understanding, it's been confirmed by outside counsel, is if the manager, which would be Highland, has an interest, it's actually required to subordinate that interest to the interest of the investors in the funds it managed.").

⁶ The Debtor's insistence that the Order not be modified is a bit perplexing. To Movants' knowledge, the Debtor raised no fuss about the addition this Court made to the similar provisions of the Confirmation

D. THE DEBTOR’S REMAINING ARGUMENTS ARE RED HERRINGS

Movants respectfully submit that the remainder of the Debtor’s brief is devoted to arguments that are not relevant to the relief sought here for the reasons described below.

1. This Motion Is Not Too Late

The Debtor argues that this Motion comes too late due to “finality” or the doctrine of “law of the case.” This is both wrong and irrelevant.

It is odd, to say the least, that Debtor thinks this Court has jurisdiction, and the district court lacks it, due to Movant CLO Holdco’s failure to appeal the Order last July. Importantly, there is no allegation that the other Movant, the DAF, had notice and failed to appeal. (*See Resp.* at 4-5.)

Nor is there any legal or factual support for the bald assertion that the Order has final and preclusive effect. The Debtor’s lone authority for its *res judicata*/preclusion argument, *Republic Supply v. Shoaf*, 815 F.2d 1046, 1049-50 (5th Cir. 1987), merely “held that confirmation of a clear and ‘unambiguous plan’ of reorganization that ‘expressly released’ a third-party guarantor has a *res judicata* effect on a subsequent action against the guarantor who is also a creditor.” *In re Applewood Chair Co.*, 203 F.3d 914, 918 (5th Cir. 2000) (quoting *Shoaf*).

Here, the Order does not confirm a clear and unambiguous plan of reorganization. There is no express release of Movants’ claims under the Adviser’s Act or the RICO statute. Neither are Movants’ rights as advisees or Seery’s obligations as a Registered Investment Advisor even mentioned. Moreover, the *Shoaf* opinion is an outlier—one that has been questioned, cautioned, and distinguished repeatedly by the Fifth Circuit and elsewhere. That the Debtor opted not to inform this Court of that history is telling.

Order. Merely adding the phrase “to the extent legally permissible,” as this Court did in that order, would remove the jurisdictional overreach and resolve the dispute.

In *In re Applewood Chair Co.*, 203 F.3d 914 (5th Cir. 2000), the court addressed a very similar motion—one asking for reconsideration of the scope of exculpatory language in a confirmation order. Although confirmation had not been appealed and had therefore become “final,” the Fifth Circuit held that it was nonetheless within the court’s jurisdiction to review and modify that order. *Id.* at 918-19. As to the Debtor’s authority—*Shoaf*—the Fifth Circuit expressly declined to extend it, explaining that “[t]he issue stated in *Shoaf* illustrates the limited nature of its holding.” The court also explained that *Shoaf* was “inapposite” because in the case before it, unlike in *Shoaf*, the order at issue contained “no provision specifically releasing” the claim sought to be precluded. *Id.*

The *Applewood* court also explained what kind of specificity is required in order for the *res judicata* effect of *Shoaf* to apply: the claim at issue must be “enumerated” in and its discharge must be “approved” by the underlying order. *Id.* at 919 (“No specific discharge or release of the [allegedly precluded claim] was enumerated or approved by the bankruptcy court in this matter.” “The lack of a specific discharge distinguishes this situation from that in *Shoaf* and thus, does not warrant the application of its holding.”). Plainly the Order fails to enumerate Movants’ proposed claims against Seery—let alone do so in a confirmation order. *Shoaf* is therefore inapposite.

The Debtor’s footnote argument regarding law of the case fares no better. It wholly depends on the *res judicata* effect of the Order. Because the authority discussed above unequivocally rejects the Debtor’s *res judicata* argument, law of the case is likewise unavailing.

2. This Motion Is Not Too Early

Ironically, the Debtor not only argues that Movants’ Motion is too late, it also argues the Motion is too early, asserting that it will not be ripe until this Court determines whether the proposed claims against Seery are colorable. But this argument is foreclosed by the Debtor’s

failure to contest Movants' very first argument. Because this Court lacks the power to strip the district court of jurisdiction, it cannot prevent the district court from deciding the issue of colorability—whether on a Rule 12(b)(6) motion or otherwise.

Importantly, the district court may refer the issue to this Court for a report and recommendation. Indeed, while this Motion was pending, the Debtor filed a motion to enforce the reference in the district court.

That motion—and the Debtor's resort to it—illustrates the main thrust of Movants' arguments here: It is up to the district court to say what matters are referred to this Court and which it will decide itself. It is not within the power of bankruptcy courts to reverse that process.

3. The Related-to/Core Jurisdictional Arguments Are Beside the Point

The Debtor devotes considerable effort to arguing that the general jurisdictional standards of 28 U.S.C. § 157(b) are met. The core premise of that argument is wrong. The district court action does not attempt to undo or reverse the Harbourvest settlement. It simply seeks damages resulting from breaches of duty and violations of law that occurred in connection with that settlement. Thus, there is no basis for claiming that the district court action is a core proceeding.

But even that is quite beside the point. Withdrawal of the reference is mandatory in both core and non-core proceedings.

More to the point, meeting the jurisdictional prerequisites of § 157(b) does not mean this Court has the power to divest the district court of jurisdiction. The district court has jurisdiction. Thus, this Court should modify the Order, because otherwise it appears to say the district court does not. That this Court lacks jurisdiction under § 157(d) merely makes the point stronger.

III. CONCLUSION

For all these reasons, Movants submit that their Motion should be granted.

Dated: May 21, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Jonathan Bridges

Jonathan Bridges

Texas Bar No. 24028835

Counsel for Movants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application has been served electronically via the Court's CM/ECF system upon all parties.

/s/ Jonathan Bridges

Jonathan Bridges

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 4**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional Debtors <i>Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

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9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 5 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

KELLY HART PITRE

Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

SBAITI & COMPANY PLLC

MAZIN A. SBAITI
TEXAS BAR NO. 24058096
JONATHAN BRIDGES
TEXAS BAR NO. 24028835
JPMORGAN CHASE TOWER
2200 ROSS AVENUE – SUITE 4900W
DALLAS, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: MAS@SBAITILAW.COM
JEB@SBAITILAW.COM

COUNSEL FOR PLAINTIFFS

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

COUNSEL FOR MARK PATRICK

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

In re:

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

Debtor

§
§
§
§
§
§

Case No. 19-34054-sgj11

Chapter 11

RESPONDENT MARK PATRICK AND PLAINTIFFS EXHIBIT AND WITNESS LIST

Mark Patrick (“Patrick”) and CLO Holdco, Ltd. (“CLO Holdco”) and Charitable DAF Fund, L.P. (“DAF,” collectively with CLO Holdco, the “Plaintiffs”),¹ submit the following witness and exhibit list with respect to the *Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* (Dkt. No. 2255) (the “Show Cause Order”) set for hearing at Tuesday, June 8, 2021 at 9:30 a.m. (Central Time) (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses Patrick and Plaintiffs may call to testify:

1. Mark Patrick;
2. Grant Scott (by deposition testimony);
3. Any witness identified by or called by any other party;
4. Any witness needed for authentication of documents; and
5. Any witness for impeachment or rebuttal.

B. Exhibits Patrick and Plaintiffs may introduce:

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
1.	DAF/ CLO Holdco Structure Chart		
2.	Charitable Giving Summary Presentation		
3.	CLO Holdco, Ltd. - Written Shareholder Resolution of Shareholder of the Company made on March 31, 2021		

¹ CLO HOLDCO, LTD. and Highland Dallas Foundation, Inc. have filed a *Motion to Withdraw the Reference* [Adversary No. 20-03195, Doc. No. 24], and nothing herein shall be deemed a waiver of their right to a trial by jury on all claims asserted in the Adversary Proceeding nor consent to the entry of final orders in the Adversary Proceeding by the Bankruptcy Court.

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
4.	CLO Holdco, Ltd. - Written Shareholder Resolutions of the Sole Shareholder of the Company made on April 2, 2021		
5.	Charitable DAF Holdco, Ltd - Written Resolution of the Sole Director of the Company Dated March 25, 2021		
6.	Charitable DAF Holdco, Ltd - Share Transfer Form Dated March 24, 2021		
7.	Charitable DAF GP, LLC - Assignment and Assumption of Membership Interest Agreement Dated March 24, 2021		
8.	Charitable DAF Holdco, Ltd - Written Shareholder Resolution of the Management Shareholder of the Company Made on March 25, 2021		
9.	Register of Members for Charitable DAF Holdco, Ltd. Dated March 25, 2021		
10.	Register of Directors for Charitable DAF Holdco, Ltd. Dated March 25, 2021		
11.	CLO Holdco, Ltd - Written Shareholder Resolution of the Sole Shareholder of the Company Dated March 24, 2021		
12.	Register of Members for Charitable DAF Holdco, Ltd. Dated May 19, 2021		
13.	Charitable DAF HoldCo, Ltd. Register of Members holding participating shares Dated May 19, 2021		
14.	Charitable DAF HoldCo, Ltd. Register of Members holding management shares Dated May 19, 2021		
15.	Charitable DAF Fund, LP Register of Members Dated May 19, 2021		
16.	CLO HoldCo, Ltd. Register of Members Dated May 19, 2021		
17.	Liberty CLO HoldCo, Ltd. Register of Members Dated May 19, 2021		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
18.	Liberty Sub, Ltd. Register of Members Dated May 21, 2021		
19.	HCT HoldCo 2, Ltd. Dated May 21, 2021		
20.	MGM Studios HoldCo, Ltd. Register of Members Dated May 21, 2021		
21.	Amended and Restated Limited Liability Company Agreement of Charitable DAF GP, LLC Dated January 1, 2012		
22.	Certificate of Formation Charitable DAF, GP, LLC Dated October 25, 2011		
23.	Certificate of Incorporation of Charitable DAF Holdco, Ltd. Dated October 27, 2011		
24.	Certificate of Incorporation of CLO Holdco, Ltd. Dated December 13, 2010		
25.	Certificate of Registration of Exempted Limited Partnership for Charitable DAF Fund, LP Dated October 28, 2011		
26.	Amended and Restated Exempted Limited Partnership Agreement of Charitable DAF Fund LP Dated November 7, 2011		
27.	Memorandum and Articles of Association of CLO Holdco, Ltd. Dated December 13, 2010		
28.	Amended and Restated Memorandum and Articles of Association of Charitable DAF Holdco, Ltd.		
29.	Register of Members owning Management Shares – Charitable DAF HoldCo, Ltd. dated May 19, 2021		
30.	Register of Members owning Participating Shares – Charitable DAF HoldCo, Ltd. dated May 19, 2021		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
31.	Original Complaint filed in the United States District Court for the Northern District of Texas in the action captioned Charitable DAF Fund, L.P. v. Highland Capital Management, L.P., Case No. 21-cv-00842 (the “DAF Action”)		
32.	Motion for Leave to File First Amended Complaint filed by CLO Holdco Ltd, Charitable DAF Fund LP (and exhibits thereto) in DAF Action		
33.	Amended Proposed Order in DAF Action		
34.	Email Correspondence Re: CLO Holdco Transition Dated March 23, 2021 from Mark Patrick to Rhett Miller		
35.	Email Correspondence Re: documents effectuating transfer from Grant Scott to Mark Patrick Dated March 24, 2021		
36.	Email Correspondence Re: Approvals of director for CLO Holdco and related DAF entities Dated March 25, 2021 to Frank Waterhouse from Mark Patrick, with Grant Scott Copied		
37.	Email Correspondence Re: Grant Scott Trustee Fees and Resignation Dated April 1, 2021 to Chris Rice from Mark Patrick		
38.	Email Correspondence Re: accounts and director transition Dated April 5, 2021 from Mark Patrick to Grant Scott		
39.	Email Correspondence Re: Transition of Accounts Dated April 29, 2021 From Chris Rice to Mark Patrick		
40.	Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP, LLC		
41.	Second Amended and Restated Investment Advisory Agreement, Dated January 1, 2017 between Highland Capital Management, L.P. and Charitable DAF Fund, L.P., and Charitable DAG GP, LLC		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
42.	November 30, 2020 Termination Letter Investment Advisory Agreement		
43.	November 30, 2020 Termination Letter Service Agreement		
44.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto Including but not limited to: <hr/> Notice of Hearing Doc. No. 2249 <hr/> Amended Notice of Hearing Doc No. 2252 <hr/> Order to Show Cause Doc. No. 2255 <hr/> Declarations in Support and Exhibits thereto Doc. Nos. 2351, 2355, 2377		
45.	All exhibits necessary for impeachment and/or rebuttal purposes		
46.	All exhibits identified by or offered by any other party at the Hearing		

Respectfully submitted,

KELLY HART PITRE

/s/ Louis M. Phillips

Louis M. Phillips (#10505)

One American Place

301 Main Street, Suite 1600

Baton Rouge, LA 70801-1916

Telephone: (225) 381-9643

Facsimile: (225) 336-9763

Email: louis.phillips@kellyhart.com

Amelia L. Hurt (LA #36817, TX #24092553)

400 Poydras Street, Suite 1812

New Orleans, LA 70130

Telephone: (504) 522-1812

Facsimile: (504) 522-1813

Email: amelia.hurt@kellyhart.com

and

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

ATTORNEYS FOR MARK PATRICK

SBAITI & COMPANY PLLC

/s/ MAZIN A. SBAITI

MAZIN A. SBAITI
TEXAS BAR NO. 24058096
JONATHAN BRIDGES
TEXAS BAR NO. 24028835
JPMORGAN CHASE TOWER
2200 ROSS AVENUE – SUITE 4900W
DALLAS, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: MAS@SBAITILAW.COM
JEB@SBAITILAW.COM

COUNSEL FOR PLAINTIFFS

DAF/CLO Holdco Structure Chart

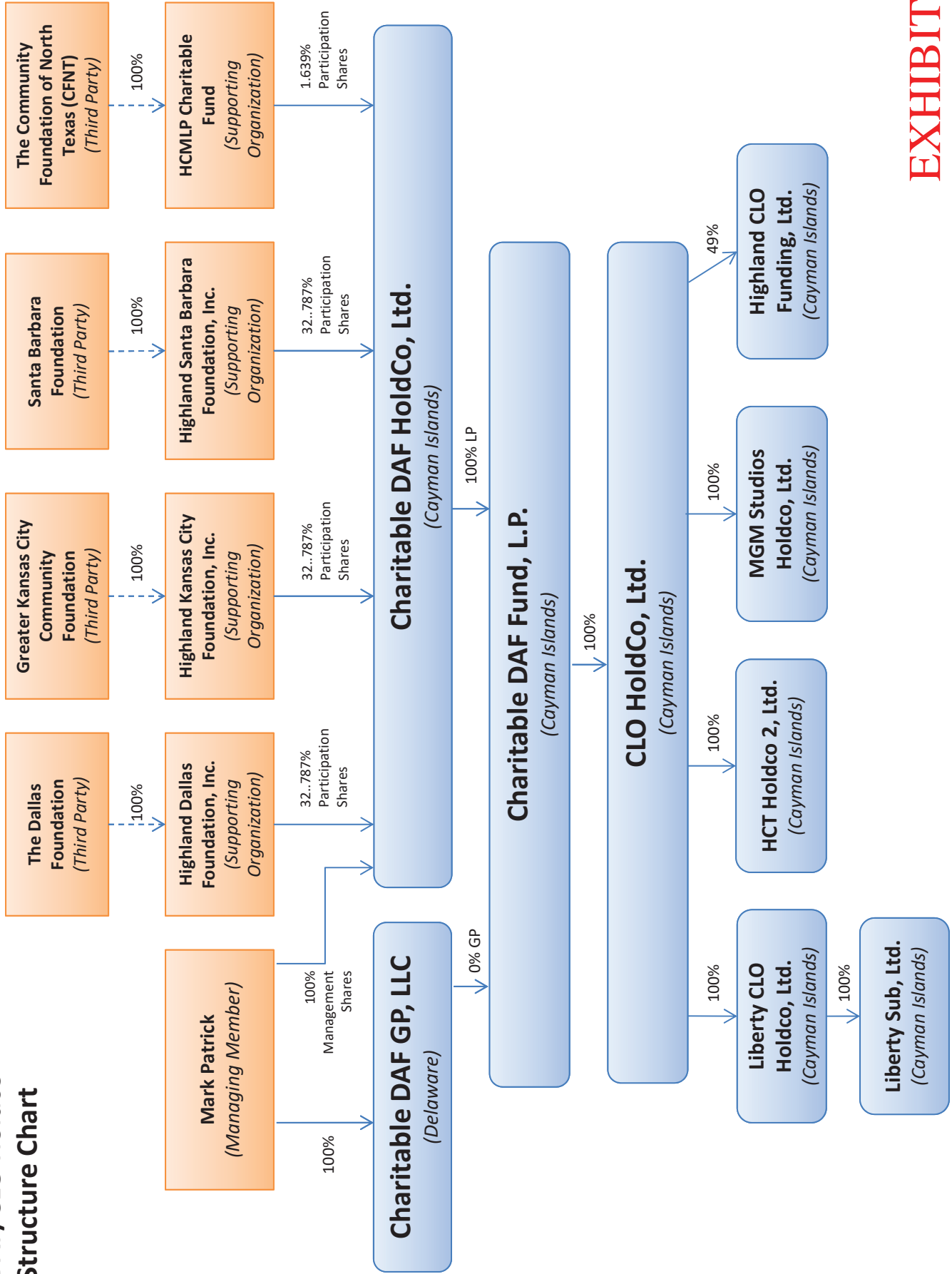


EXHIBIT 1

000924

Case 19-34054-sgj11 Doc 2411-2 Filed 06/05/21 Entered 06/05/21 16:38:48 Page 1 of 17

Charitable Giving Overview

GRANT SUMMARY : 2012-2020

EXHIBIT 2

000925

Highlights

The following provides an overview of philanthropic activities across the group of charitable entities that operate as supporting organizations to community foundation: the Highland Dallas Foundation, Inc., the Highland Santa Barbara Foundation, Inc., and the Highland Kansas City Foundation, Inc. (together the "Supporting Organizations" or "we").

Each of the entities within the Supporting Organizations has its own independent board, which provides oversight for the organization's grantmaking activity.

Data represents activity between January 1, 2012, and December 31, 2020 unless otherwise noted.

\$42M+	Since 2012, the Supporting Organizations have committed over \$42 million to nonprofit organizations operating across a range of issue areas.
\$32M+	We have funded over \$32 million of our total commitments; remaining commitments are comprised of future scheduled installments of multiyear grants.
\$3.7M	Average annual grant payments total \$3.7 million.
275+	The Supporting Organizations have made donations to more than 275 individual organizations.
2029	Through our multiyear grants we have over \$10 million in funds committed through 2029.

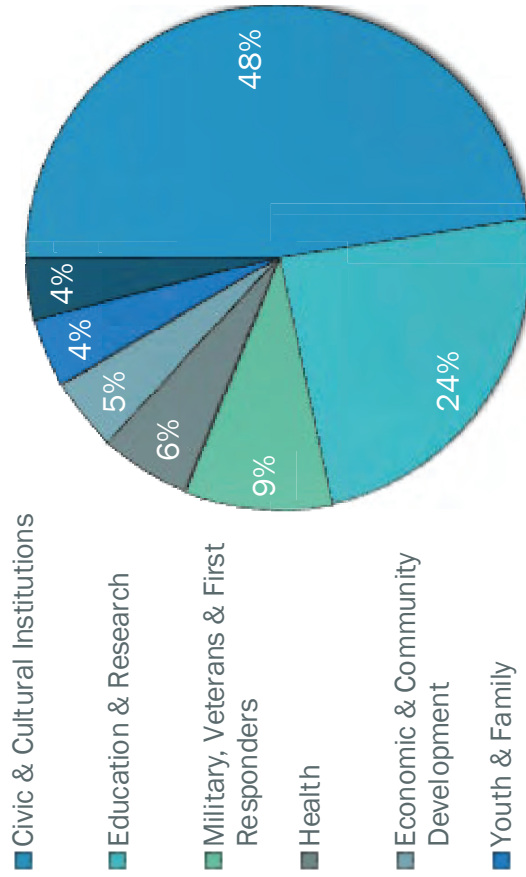
000926

GRANTS OVERVIEW

Total committed: \$42.7 million¹

- The Supporting Organizations have committed **\$42,688,403** in grants to nonprofits across a range of issue areas, with a focus on:
- civic and cultural institutions in the Dallas-Ft. Worth area;
 - education;
 - support for military, veterans, and first responders;
 - health and medical research;
 - economic and community development initiatives; and
 - youth and family.

GRANT COMMITMENTS BY ISSUE AREA²



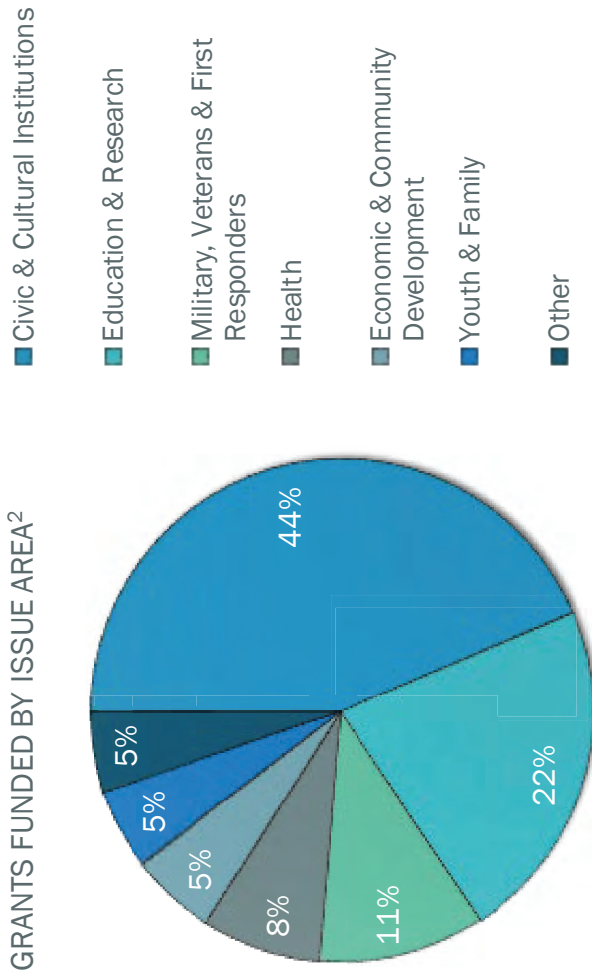
1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount committed in grants since 2012 (inclusive of funded and unfunded commitments). Unfunded commitments represent installment payments for multiyear grants to be paid at future dates following a schedule included in the grant agreement. Issue areas defined by HCP. Grants categorized by purpose and/or use of funds. "Other" category inclusive of grants related to the following issue areas: Animals & Environments; Arts, Culture & Humanities; Faith-Based Causes; and Global Affairs.

GRANTS OVERVIEW

Total funded: \$32.5 million¹

The Supporting Organizations have funded **\$32,548,403** in grants, representing payments made directly to nonprofit organizations that are improving lives and addressing pressing issues in our local community—and beyond.

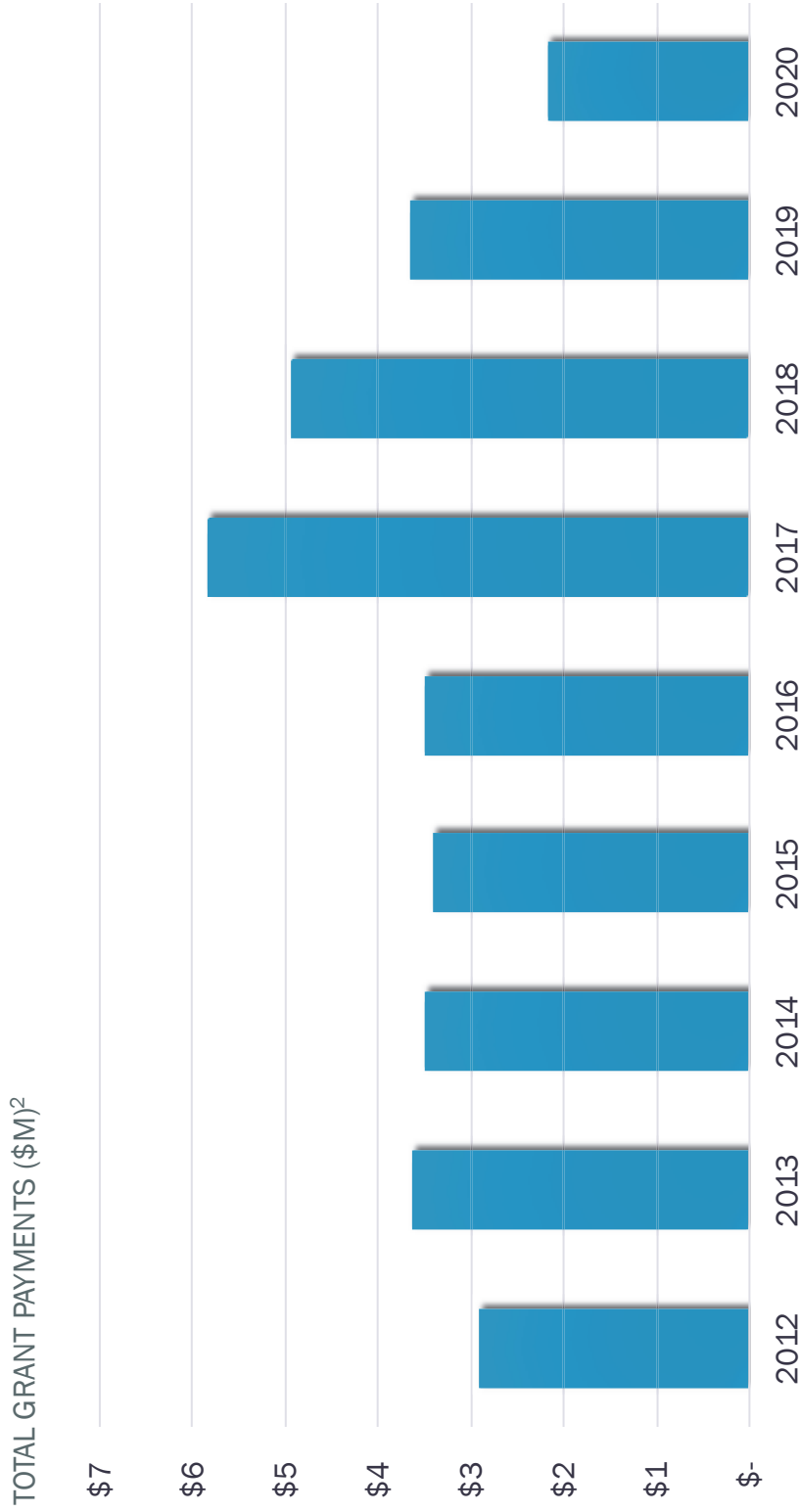
GRANTS FUNDED BY ISSUE AREA²



1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount committed in grants since 2012 (inclusive of funded and unfunded commitments). Unfunded commitments represent installment payments for multiyear grants to be paid at future dates following a schedule included in the grant agreement. Issue areas defined by HCP. Grants categorized by purpose and/or use of funds. "Other" category inclusive of grants related to the following issue areas: Animals & Environments; Arts, Culture & Humanities; Faith-Based Causes; and Global Affairs.

GRANTS OVERVIEW

Average annual funding: \$3.7 million¹



1. As of 12/31/2020. Figures rounded to the nearest hundred thousand. 2. Represents amount paid in grants and/or grant installments during each calendar year. Not inclusive of grants committed but not funded.

000929

GRANTS OVERVIEW

Highlights of grants' impact

Supporting 4,000 military and law enforcement members

Grants to the Center for BrainHealth helped provide training and other programming to members of the military, veterans, and local law enforcement that aims to improve the cognitive health—all at no cost.

Providing a path to safety for 11,000 victims of family violence

Grants to The Family Place helped the organization serve more than 11,000 clients in 2019, including providing more than 62,000 days of Emergency Shelter.

Supporting and defending 8,000 abused children

Grants to the Dallas Children's Advocacy Center helped the organization serve over 8,000 children who have been abused each year,

Enabling 1.2M visitors to make memorable experiences with wildlife

Grants funding the construction of the new hippo exhibit and providing support for the organization's membership program helped the Dallas Zoo draw a record-breaking 1.2 million visitors in 2017.

Providing educational opportunities for 600 low-income students in southeast Dallas

Grants to expand the Cristo Rey Dallas campus in Pleasant Grove enable the school to accommodate up to 600 students. 95% of CRD students are the first in their families to attend college, and with a 100% college acceptance rate, the expansion will help create an estimated 570 first-generation college students every four years.

000930

GRANT HIGHLIGHT

Dallas Zoo

About the Dallas Zoo

The Dallas Zoological Society (the "Zoo"), the largest zoological park in Texas, has become a staple in the Dallas community over its 130-year history. Home to over 430 different species, the Dallas Zoo engages and educates visitors, while seeking to create a better world for animals.

Promoting Visitor Engagement: Grant to Support Zoo Membership

The Supporting Organizations have supported the Zoo's membership program since 2014 through a series of multiyear grants that help the Dallas Zoo continue to reach new audiences. In the first full year of the grant, the Zoo welcomed a record 600,000 guests, and that number has steadily increased since. With our support, the Zoo continues to find new ways to deliver unforgettable experiences. As a result, it regularly ranks in the top-10 zoos in the U.S. by USA Today.

Increasing Community Access: Grant to Support Discounted Admission

The Supporting Organizations pursue grant opportunities that increase community access to local civic and cultural institutions. With this goal, we expanded our support of the Zoo in 2017 to include the annual sponsorship of the "Penguin Days" program. The grant enables the Zoo to reduce the price of general admission to \$7 on select days from December-February, making the Zoo more accessible to the North Texas Community and allowing families who might not otherwise visit the Zoo to do so in an affordable way.

Opening a New Exhibit: Grant to Support Construction of an Educational/Event Space at the Hippo Exhibit

The Zoo announced in early 2016 that it was planning to break ground on a new exhibit that would bring hippos to the Zoo for the first time in 16 years. The project also marked the first major exhibit opening at the Zoo since 2010. The Supporting Organizations contributed to this project through a grant that helped establish a 4,485-square-foot indoor/outdoor multipurpose event space, which engages visitors in interactive activities that further the Zoo's animal education mission. Currently, the space is a walkthrough exhibit highlighting conservation efforts of hippo habitats around the world. This exhibit helped increase attendance to a record-breaking 1.2 million visitors in 2017.



Issue Area: **Civic & Cultural Institutions**

000931

GRANT HIGHLIGHT

George W. Bush Presidential Center

About the George W. Bush Presidential Center

The George W. Bush Presidential Center (the “Bush Center”) is comprised of the George W. Bush Presidential Library and Museum, which houses the official records of the presidency of George W. Bush, and the George W. Bush Institute, an action-oriented, nonpartisan policy organization. Through these dual operations, the Bush Center works to both preserve history and shape the future. The Bush Center is uniquely equipped to promote leadership development, advance policy initiatives, and inspire action on a local, national, and global scale. Its work covers three major Impact Centers: Domestic Excellence; Global Leadership; and Engagement. Through these Impact Centers, the Bush Center is dedicated to solving some of today’s most pressing challenges.

Driving a Local Institution’s Ambitious Global Agenda: Grant Supporting the Construction of the Bush Center in Dallas

In 2008, the Bush Center officially selected Dallas as its permanent home, announcing plans to construct its building on the campus of SMU. The Supporting Organizations helped make the vision of the Bush Center’s Dallas home a reality, making a grant to help complete construction and design for the building. On May 1, 2013, the Bush Center opened its doors to the public. In its first five years after opening, the Bush Center welcomed over \$1.6 million visitors.

Securing a Legacy and Driving Engagement: Grant Supporting the Center’s Long-term Operations and Engagement Agenda

In 2018, the Bush Center launched an important fundraising initiative to ensure its mission endures for generations to come. With its “A Charge to Keep” capital campaign, the Bush Center aimed to raise funds that would sustain its operations beyond the lifetimes of President and Mrs. Bush.

The Supporting Organizations made a grant to help ensure the Bush Center can continue its important work well into the future. The grant specifically focused on the public speaker series, Engage at the Bush Center. The series brings newsmakers, thought leaders, and authors to the Bush Center for thought-provoking panel discussions and keynote conversations that allow guests to connect with the Bush Center in a meaningful way and dive deeper into many of today’s most pressing policy areas and issues.



Issue Area: **Civic & Cultural Institutions**

000932

GRANT HIGHLIGHT

Perot Museum

About the Perot Museum
The Perot Museum of Nature and Science (the “Perot”) promotes science and education in the North Texas community through hands-on exhibits, educator resources, unique films, and other special programming that engages audiences of all ages.

Helping Establish a World Class Museum in Downtown Dallas: Grant to Support Construction of the New Perot Museum:

With support from Dallas’ philanthropic community, the Perot Museum opened a new building in December 2012. With its bold architectural design, it quickly became a fixture in its new location in Dallas’ Victory Park. The project also sparked a renewed commitment to inspire minds and improve community achievement, giving rise to new initiatives that promote science learning.

The Supporting Organizations contributed to the project by issuing a challenge grant, which matched donations, inciting additional giving and helping complete the project’s capital campaign. Since then, we have contributed additional funding to support ongoing educational programming, special exhibitions, and community engagement initiatives.

Increasing Community Access: Grant to Support the Perot’s Traveling Exhibition Programs

In 2014, the Supporting Organizations began issuing a series of grants to support the traveling exhibitions program. The initial exhibition, the “The World’s Largest Dinosaurs” exhibition, educated audiences on the gigantic sauropods that once roamed the earth, drawing nearly 200,000 visitors to the museum. Since then, our grants have made possible the many captivating exhibitions that have been hosted by the Perot, covering a range of subject areas. With two special exhibitions held each year, the grants enable the museum to deliver new experiences that give visitors a reason to keep coming back and serve as a complement to the museum’s 11 permanent exhibit halls. The program draws exhibitions from around the globe to the Perot, providing the North Texas community with access to world-class educational experiences. All the special exhibition grants include funding that allows the Perot to make all traveling exhibitions bilingual (with programming in both English and Spanish). These exhibits have helped increase community access to the North Texas Hispanic population.



Issue Area: **Civic & Cultural Institutions**

000933

GRANT HIGHLIGHT

Cristo Rey Dallas

About Cristo Rey Dallas

Cristo Rey Dallas College Prep (“CRD”) is a private, independent Catholic high school located in the Pleasant Grove area of Southeast Dallas. The Cristo Rey Network’s formula for success is a proven, revolutionary model of college preparatory high school curriculum accessible to those of limited financial resources. It integrates rigorous college preparatory academics with professional work experience through the Corporate Work Study Program—a key component of the fiscal sustainability of the Cristo Rey model. Through the Work Study Program, students work in a professional setting five days per month to earn the majority of their tuition. The 144 job partners include some of Dallas’s most prominent companies.



The Cristo Rey model is proven, with 100% of graduates gaining acceptance to a two- or four-year college and 90% matriculating. For students in Pleasant Grove—where only 4% of the population graduated from college—CRD offers access and opportunity that can change their trajectory.

Building Space for Innovation: Grant to Support CRD Campus Expansion and Renovations

The 30th school in the nationwide Cristo Rey network, CRD opened in August 2015, operating out of an old elementary school and aging gymnasium. They quickly outgrew the space and had to begin turning away prospective students. In 2019, CRD launched a \$15 million capital campaign to expand the campus, adding new academic and athletic buildings and conducting much needed renovations on the existing buildings.

The Supporting Organizations issued the campaign’s lead grant, helping build a new 37,000 sq. ft. Innovation Center, which boasts spaces for fine arts and counseling. The campaign also created a new cafeteria and gymnasium, as well as a new soccer field – something the school never had before. The new buildings opened in time for the 2020 school year.

The Supporting Organizations also helped provide space for CRD students off campus in a centrally located office building near Downtown Dallas. The space gave students a place to study and complete work study programs that were moved to Work From Home due to the pandemic.



Issue Area: **Education & Research**

000934

GRANT HIGHLIGHT

Education Is Freedom

About Education Is Freedom

Education Is Freedom (“EIF”) is committed to transforming students’ lives through education. With a focus on college planning, the organization provides underserved students in the North Texas community with a range of resources to ensure every student has the opportunity to pursue a college education.

EIF’s higher education advisors work onsite at public high schools across the region, helping students and their families navigate the college process. In 20XX, EIF helped high school seniors complete 21,000 college applications and receive over \$132 million in scholarships.

In addition to their college planning initiatives, EIF operates a number of supplementary programs to enhance access to postsecondary education and promote workforce readiness.

Developing a Skilled and Educated Workforce: Grant Supporting the Mayor’s Intern Fellows Program

In 2008, EIF worked with the Mayor’s Office to create the Mayor’s Intern Fellows Program (“MIFP”), an initiative to provide workforce readiness. The program provides Dallas high school students with internship opportunities at local companies, nonprofits, and government entities. Through the eight-week, paid internship, students gain real-world experience and insight into the professional opportunities available to them. Not only does the program prepare students for future careers, but it also connects local businesses with the future workforce, promoting collaboration to strengthen the pipeline of talent.

The Supporting Organizations have issued grants to EIF to support the MIFP. The grants have helped EIF put on the program’s annual Job Fair. Held in the spring, the Job Fair provides an opportunity for students to interview with prospective employers in the hopes of securing an internship for the summer. Education Is Freedom conducts extensive training with the students throughout the program, offering workshops and coaching on everything from interview preparation to professional etiquette.

In 2018, over 2,400 students from 52 high schools applied for the program. Of those applicants, 1,050 were selected to attend the Job Fair. At the 2018 Job Fair, over 200 employers from across the Dallas-Fort Worth region interviewed internship candidates, ultimately offering positions to 395 students for the summer. In addition to the Job Fair, our grants have funded internships at various nonprofit partners, covering the cost for organizations that might not otherwise be able to hire paid interns.



Issue Area: **Education & Research**

000935

GRANT HIGHLIGHT

SMU Tower Center

About the SMU Tower Scholars Program

The Southern Methodist University (“SMU”) Tower Scholars Program provides top undergraduate students with an opportunity to integrate public policy and international affairs into their studies through a dedicated curriculum of academic coursework and real-world experiences. Students in the program receive a minor in public policy and international affairs, offered through SMU’s John Goodwin Tower Center for Political Studies (the “Tower Center”).

“*The Tower Scholar Program’s resources and curriculum allow me to not only learn public policy principles through lectures, but also gain tactile experience with practicums and classes taught by policy practitioners. Without this program, I would have been unable to experience and explore my interest in public policy.*”

- Tower Scholar, Class of 2020

Investing in the Next Generation of Policymakers: Grant to Endow the Tower Scholars Undergraduate Program at SMU

In 2014, the Supporting Organizations worked with the Tower Center to create a dedicated undergraduate program that carries out the center’s mission of bridging the gap between the scholarship and practice of politics and striving to inspire ethical public service. The grant established an endowment that provides long-term funding for the Tower Scholars Program.

A hallmark of the program is its interdisciplinary focus. Over 75% of the Tower Scholars either earned or are pursuing more than one major—and that is in addition to the minor they earn in the program. Outside the classroom, each student is involved in multiple on-campus organizations, many in leadership positions.

The Supporting Organizations’ grant makes possible the unique academic experiences—from meeting with global leaders, to working on real policy issues for major corporations—offered to the Tower Scholars. The program accepts 10 students each year, and recently welcomed its eighth cohort.



Issue Area: **Education & Research**

000936

GRANT HIGHLIGHT

Center for BrainHealth

About the Center for BrainHealth

The Center for BrainHealth (“CBH”), part of The University of Texas at Dallas, is a research institute committed to enhancing, protecting and restoring brain health across the lifespan. CBH is composed of independent labs that are responsible for more than 60 fully funded research projects that investigate brain health, injury, and disease. Many of the center’s programs use functional and structural neuroimaging techniques to better understand the neurobiology supporting cognition and emotion in health and disease. Areas of research include addiction, aging, Alzheimer’s disease, autism, multiple sclerosis, social cognition, and traumatic brain injuries.

Applying Innovative Research to Improve the Lives of Post-9/11 Veterans and First Responders: Grant Supporting the Warriors Program Through the Brain Performance Institute

In 2015, CBH broke ground on new building dedicated to translating leading-edge science to scalable solutions for the public at large. Through construction of the Brain Performance Institute, CBH sought to extend the reach and applications of its research, providing solutions to the public to maximize brain performance in health, injury, and disease.

The Supporting Organizations made a grant to help fund the construction of the Brain Performance Institute and expand CBH’s Warrior Initiative, which that focused on translating research into cognitive therapies for former military personnel. The Warrior Initiative was established to provide high performance brain training to current and former military service men and women and their families.

The goal of the Warrior Initiative program is to arm veteran and active-duty service members with the necessary tools to achieve successful, enriching and fulfilling lives by proactively optimizing brain performance, building resilience in cognitive brain function, and reversing losses in cognitive capacity. The program was expanded in 2016 to support first responders, specifically focusing on local law enforcement.

The grant help create a space in the Brain Performance Institute building specifically for veterans, first responders, and their families, where these groups are able to come together in a safe, relaxing environment and get to know other members of service before and after training sessions.



Issue Area: **Military, Veterans & First Responders**

000937

GRANT HIGHLIGHT

Friends of the Dallas Police

About Friends of the Dallas Police

The Friends of Dallas Police was founded in 1982 to recognize the commitment that the employees of the Dallas Police Department make to better the city and its residents' quality of life. The organization's mission is to raise and provide funds to be used to host a major awards banquet each year honoring Dallas Police Department personnel for outstanding performance in the line of duty. Over the years, approximately 4,400 awards have been presented to officers and civilian staff, and more than \$43,000 in educational scholarships have been awarded to their children.

Helping Show Appreciation and Recognition to Local Law Enforcement: Grant Supporting the Annual Awards Program

The Supporting Organizations have provided grants to help the Friends of the Dallas Police show appreciation to the men and women of the Dallas Police Department who risk their lives every day to make Dallas a safer city. Our grants have helped fund the annual awards event hosted by the Friends of the Dallas Police, which honors and recognizes outstanding employees throughout the Dallas Police Department.

Through our grants, the Supporting Organizations have facilitated the production of the annual awards program, enabled sworn and non-sworn employees and their spouses to attend the event, and provided educational sponsorships for children of police officers.

The Supporting Organizations have also drawn on its philanthropic network to provide gifts to award recipients and their families, including tickets to visit organizations like the Dallas Zoo, George W. Bush Presidential Center, and Perot Museum.



Issue Area: **Military, Veterans & First Responders**

000938

GRANT HIGHLIGHT

Snowball Express

About Snowball Express

Snowball Express (now part of the Gary Sinise Foundation) serves the children of fallen military heroes. By providing events and other experiences in a stress-free environment, the organization is creating a community to learn, grow, and make lasting memories with new friends.

The organization hosts an annual five-day experience for 1,750+ children of the fallen and their surviving parent or guardian. As a therapeutic retreat with a blend of fun and inspiring programs, these families can lean on their peers for support. The organization also hosts community-driven events for these families all year long. From baseball games, to arts and educational opportunities, to camping trips, the events strengthen the local networks of Gold Star families, helping children and surviving spouses to build bonds with the only people who can truly understand their loss: each other.

Supporting Families of Fallen Service Members: Grant to Support Programming for Gold Star Children

In 2014, Myles Eckert, the nine-year-old son of U.S. Army Sergeant was killed in Iraq on active duty, gave a \$20 bill that he found to a veteran in a pay-it-forward act of kindness towards our military. Myles's story was shared widely online, and the gift quickly received national attention.

In honor of Myles Eckert's gift, the Supporting Organizations issued a challenge grant to Snowball Express to support the organization's programming for children that have lost one or both parents during active service.

The grant inspired significant giving from individuals and organizations around the world, enabling Snowball Express to expand its services for Gold Star children and their families.

Snowball Express used the proceeds from the challenge grant to provide services to over 8,000 Gold Star children in 2014—almost 6,000 more than the year before and a new record for the organization.



Issue Area: **Military, Veterans & First Responders**

000939

GRANT HIGHLIGHT

Dallas Children’s Advocacy Center

About Dallas Children’s Advocacy Center

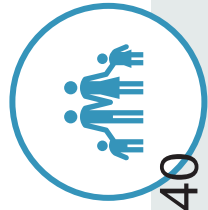
Dallas Children’s Advocacy Center (“DCAC”) is the only agency of its kind in Dallas County, working in agreement with public and private agencies to investigate, prosecute, and provide healing services for child abuse cases in Dallas County. DCAC reduces the re-victimization of the child, removes barriers to investigation and treatment, and enhances criminal prosecution with its distinctive multidisciplinary approach to these complex and severe cases.

Fostering Crucial Collaboration: Grant to Support DCAC’s Operations and Strengthen Collaboration Among Agencies Involved in Child Abuse Cases

The Supporting Organizations have been a longtime partner of the Dallas Children’s Advocacy Center (“DCAC”), issuing annual grants that provide funding for a range of operating costs. The grants help DCAC serve over 8,000 children (and their non-offending family members) each year who were sexually abused, severely physically abused, or who had witnessed a violent crime. DCAC’s average client is a 9-year-old girl, sexually abused by someone she knows and trusts.

The grants also support DCAC in its efforts to foster crucial collaboration across government agencies and other organizations involved in child abuse cases. The DCAC building houses the Child Abuse Unit of the Dallas Police Department, six units of CPS, and a Dallas County Assistant District Attorney. Having all of these professionals under one roof drives collaboration and communication in the very sensitive cases that DCAC coordinates.

Not only have the Supporting Organizations been a long-time financial supporter of DCAC, we have also provided support in other ways, leveraging connections with our network of nonprofit partners. Most recently, we worked with the Dallas Zoo to provide animal encounter demonstrations during DCAC’s summer camps, which serve as a way to deliver ongoing support to—and help build a community for—children who have experienced trauma.



Issue Area: **Youth & Family**

000940

GRANT HIGHLIGHT

The Family Place

About The Family Place

The Family Place was founded in 1978 and has grown to become the largest family violence prevention agency in North Texas, providing shelter and assistance to victims across the region along with counseling and education. Since its founding, the organization has served over 839,000 clients through counseling, shelter, and hotline responses.

In 2019, The Family Place served nearly 12,000 clients, providing over 62,000 days of emergency shelter, over 36,000 days of transitional housing, and over 18,000 hours of counseling to non-residential clients, and over 8,000 hours of counseling to batterers. All services are in Spanish and in English.

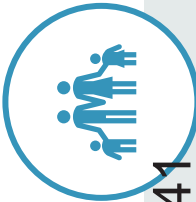
Providing Support for Victims of Family Violence Across North Texas

The Family Place empowers victims of family violence by providing safe housing, counseling, and skills that create independence while building community engagement and advocating for social change to stop family violence.

While The Family Place supports clients in several different ways, its Residential Services, which provide safe shelter for families affected by violence, are one of crucial components of its work. These services include the Emergency Shelter Services, which provide immediate shelter for families escaping abuse, and the Supportive Living Program, which provides long-term housing for families as they rebuild their lives. Not only does the organization provide necessities like food, clothing, and transportation, but it also offers childcare, legal services, counseling, and case management.

As The Family Place expanded, its Residential Services were constrained by the capacity of its emergency shelters, and at many times the organization had to house clients in hotels and other temporary housing in order to meet demand.

In 2016, the Supporting Organizations issued a challenge grant to help The Family Place build a new shelter facility to expand its Residential Services. The new facility provides space and support services for over 2,000 victims per year. It also includes onsite Medical and Dental Clinics and even an Animal Kennel so families can bring their beloved pets with them to safety. The shelter has been operating at full capacity since October 2017. With the new facility, The Family Place now has three emergency shelters, providing 177 shelter beds each night, and three counseling centers.



Issue Area: **Youth & Family**

000941

CLO HOLDCO, LTD.
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON March 31 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Mark E. Patrick be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Grant James Scott be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Mark E. Patrick as a Director of the Company and the appointment of Grant James Scott as a Director of the Company.

BY



Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

EXHIBIT 3

PATRICK_000001
000942

CLO HOLDCO, LTD.
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON April 2 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Mark E. Patrick as a Director of the Company and the appointment of Grant James Scott as a Director of the Company.

BY 
Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED March 25 2021

1. SHARE TRANSFER

1.1 IT IS NOTED that the Director has received a duly executed share transfer form relating to the transfer by Grant James Scott of 100 Management Shares to Mark E. Patrick.

1.2 IT IS RESOLVED that:

(a) the following share transfer (the "Transfer") be and is hereby ratified, confirmed and approved:

TRANSFEROR	TRANSFeree	NO OF SHARES	DATE OF TRANSFER
Grant James Scott	Mark E. Patrick	100 Management Shares	24 March 2021

(b) the Company's registered office provider be instructed to update the Register of Members of the Company to reflect the Transfer.

2. GENERAL AUTHORISATION

2.1 IT IS RESOLVED that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "Attorney" or "Authorised Signatory" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 IT IS RESOLVED that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

These written resolutions are signed by the sole Director of the Company.

A handwritten signature in cursive script, appearing to read "Mark Patrick", is written over a horizontal line.

Mark E. Patrick

CHARITABLE DAF HOLDCO, LTD

(the "Company")

SHARE TRANSFER FORM

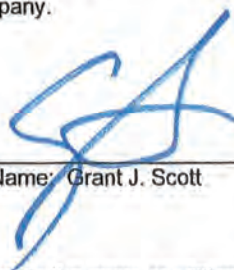
Dated 24 March 2021

I, **Grant James Scott** (the "Transferor"), for good and valuable consideration received by me from **Mark E. Patrick** (the "Transferee"), do hereby:

1. transfer to the Transferee 100 Management Shares (the "**Shares**") for the par value of \$0.01 each standing in my name in the register of members of the Company to hold unto the Transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of execution of this Share Transfer Form; and
2. consent that my name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

SIGNED by TRANSFEROR:

)



Name: Grant J. Scott

And the Transferee does hereby agree to take the Shares subject to the same conditions.

SIGNED by TRANSFEE:

)



Name: Mark E. Patrick

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT (this "Agreement") is made and entered into as of the 21 day of March, 2021, by and between Grant J. Scott (the "Assignor") and Mark E. Patrick.

WHEREAS, Assignor is the legal and beneficial owner of one hundred percent (100%) of the limited liability company interest (the "Membership Interest") in Charitable DAF GP, LLC, a Delaware limited liability company (the "Company"), and Assignor desires to assign the Membership Interest to Assignee, upon the terms and conditions set forth herein; and

WHEREAS, Assignee desires to accept an assignment of the Membership Interest (such right, title and interest in and to the Membership Interest, together with, if any: (i) Assignor's capital account, (ii) the Assignor's rights in and to specific Company property, (iii) Assignor's rights to participate in the management of the Company, (iv) Assignor's rights to distributions, reimbursements or other payments (including any distributions of cash flow which have not been distributed), (v) rights to profits, losses and other allocations, and (vi) all other rights and benefits of Assignor in the Company with respect to the Membership Interest assigned hereby to Assignee being herein sometimes collectively referred to as the "Assigned Interest").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment and Assumption of Assigned Interest. Assignor does hereby unconditionally and irrevocably assign, transfer, set over and deliver unto the Assignee, its successors and assigns, the Assigned Interest, including, but not limited to the profits, losses, capital and cash flow, if any, allocable to the Assigned Interest, free and clear of any and all liens, security interests, encumbrances, claims, rights of another, rights of first refusal, covenants, conditions, reservations and any and all other restrictions. Assignee does hereby accept the Assigned Interest and agrees to be bound by and assume all obligations under the limited liability company agreement of the Company.
2. Substitute Member. Assignor hereby acknowledges that Assignee is hereby admitted as a substitute member of the Company with respect to the Membership Interest from and after the date hereof as a result of this Agreement.
3. Effective Date. This Agreement is effective as of the date first above mentioned.
4. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, PDF or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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

EXHIBIT 7

PATRICK 000006
000947

ASSIGNOR:



Name: **Grant J. Scott**

ASSIGNEE:



Name: **Mark E. Patrick**

[Signature Page for Assignment of Membership Interest Agreement]

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE MANAGEMENT
SHAREHOLDER OF THE COMPANY
MADE ON March 25 2021

The undersigned, being the sole holder of Management Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Grant James Scott as a Director of the Company and the appointment of Mark E. Patrick as a Director of the Company.

BY



Mark E. Patrick



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			

Date printed: 25 March, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 263805
 Client No.: KY059904

REGISTER OF DIRECTORS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	04 Nov 2011	04 Nov 2011
Grant James Scott Highland Capital Management, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	04 Nov 2011	25 Mar 2021
Mark E. Patrick Highland Capital Management, L.P.; 13455 Noel Rd, Suite 800; Dallas; TX 75240; USA.	Director	25 Mar 2021	

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Date printed: 25 March, 2021

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EXHIBIT 10
 000952

CLO HOLDCO, LTD.
(THE "COMPANY")

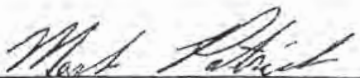
WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON March 24 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. **REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR**

1.1 **IT IS RESOLVED** by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Grant James Scott as a Director of the Company and the appointment of Mark E. Patrick as a Director of the Company.

BY 
Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

EXHIBIT 11

PATRICK_000012
000953



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			

Date printed: 19 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 12
 000954



Registration No.: **263805**
 Date of Incorporation: **27 October 2011**
 Client No.: **KY059904**

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

		dated 07 Nov 2011.					
Mark E. Patrick	25 Mar 2021	Transfer	100.00	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021	No Cert	100	100.00
						Nii	Nii
							7 Nov 2011

Notes:

Date printed: 19 May, 2021
 [2 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 53083
 Date of Incorporation: 28 October 2011
 Client No.: KY059900

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF FUND, LP

Share Class: **General Partner**
 Nominal Value: **USD 0.00**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF GP, LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St New Castle 19801 Wilmington DE USA	25 Oct 2011	New Partner	1.00	25 Oct 2011 : Initial Exempted Limited Partnership Agreement dated 25 Oct 2011	No Cert			
						Nil	1.00	

Notes:



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			

Date printed: 19 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 14
 000957



Registration No.: **263805**
 Date of Incorporation: **27 October 2011**
 Client No.: **KY059904**

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

		dated 07 Nov 2011.					
Mark E. Patrick	25 Mar 2021	Transfer	100.00	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021	No Cert	100	100.00
						Nii	Nii
							7 Nov 2011

Notes:

Date printed: 19 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: **53083**
 Date of Incorporation: **28 October 2011**
 Client No.: **KY059900**

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF FUND, LP

Share Class: **General Partner**
 Nominal Value: **USD 0.00**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF GP, LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St New Castle 19801 Wilmington DE USA	25 Oct 2011	New Partner	1.00	25 Oct 2011 : Initial Exempted Limited Partnership Agreement dated 25 Oct 2011	No Cert	Nil	1.00	

Notes:



Registration No.: 249232
 Date of Incorporation: 13 December 2010
 Client No.: KY057017

REGISTER OF MEMBERS
 FOR:
CLO HOLDCO, LTD.

Share Class: **Ordinary**
 Nominal Value: **USD 1.00**
 Voting Rights: Yes
 Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	13 Dec 2010	Allotment	1.00	13 Dec 2010 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010				
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	17 Dec 2010	Transfer	1.00	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD				
						Nil	Nil	17 Dec 2010

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 249232
 Date of Incorporation: 13 December 2010
 Client No.: KY057017

REGISTER OF MEMBERS
 FOR:
CLO HOLDCO, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF FUND, LP Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert	Nil		7 Nov 2011
CHARITABLE DAF HOLDCO, LTD Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert	100	1.00	
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011		Nil		7 Nov 2011



Registration No.: 249232
Date of Incorporation: 13 December 2010
Client No.: KY057017

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Notes:



Registration No.: **269389**
 Date of Incorporation: **6 June 2012**
 Client No.: **KY061847**

REGISTER OF MEMBERS
 FOR:
LIBERTY CLO HOLDCO, LTD.

Share Class: **Ordinary**
 Nominal Value: **USD 0.01**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	6 Jun 2012	Allotment	1.00	6 Jun 2012 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	26 Jun 2012 : Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 26 Jun 2012				
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	26 Jun 2012	Transfer	1.00	26 Jun 2012 : Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD. pursuant to resolutions dated 26 Jun 2012	No Cert			
						100	1.00	26 Jun 2012

Notes:

Date printed: 19 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 17

000963



Registration No.: 269389
Date of Incorporation: 6 June 2012
Client No.: KY061847

REGISTER OF MEMBERS
FOR:
LIBERTY CLO HOLDCO, LTD.

[Redacted area]

Date printed: 19 May, 2021

[2 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

000964



Registration No.: **335493**
 Date of Incorporation: **12 April 2018**
 Client No.: **KY085255**

REGISTER OF MEMBERS
 FOR:
LIBERTY SUB, LTD.

Share Class: **Ordinary**
 Nominal Value: **USD 0.01**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited 190 Eigin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	12 Apr 2018	Allotment	1.00	12 Apr 2018: Subscriber's share issued by operation of law on registration	No Cert.			
		Transfer	(1.00)	12 Apr 2018: Transfer of 1.0 Ordinary share(s) from WNL Limited to LIBERTY CLO HOLDCO, LTD. pursuant to resolutions dated 12 April 2018				
LIBERTY CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	12 Apr 2018	Transfer	1.00	12 Apr 2018: Transfer of 1.0 Ordinary share(s) from WNL Limited to LIBERTY CLO HOLDCO, LTD. pursuant to resolutions dated 12 April 2018	No Cert.			
						100	1.00	

Notes:

Date printed: 21 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 18
000965



Registration No.: 249848
 Date of Incorporation: 29 December 2010
 Client No.: KY058111

REGISTER OF MEMBERS
 FOR:
HCT HOLDCO 2, LTD.

Share Class: Ordinary
 Nominal Value: USD 1.00
 Voting Rights: Yes
 Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	29 Dec 2010	Allotment	1.00	29 Dec 2010: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010				
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	30 Dec 2010	Transfer	1.00	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010	No Cert			
		Transfer	(1.00)	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution				
						Nil	Nil	30 Dec 2010

Date printed: 21 May, 2021

[1 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 19

000966



Registration No.: **249848**
 Date of Incorporation: **29 December 2010**
 Client No.: **KY058111**

REGISTER OF MEMBERS
 FOR:
HCT HOLDCO 2, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	24 Oct 2011	Transfer	1.00	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution Agreement	No Cert	Nil	Nil	24 Oct 2011
				Agreement				
						100	1.00	

Notes:



Registration No.: 293607
 Date of Incorporation: 12 November 2014
 Client No.: KY073541

REGISTER OF MEMBERS
 FOR:
MGM STUDIOS HOLDCO, LTD.

Share Class: Ordinary
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited 190 Elgin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	12 Nov 2014	Allotment	1.00	12 Nov 2014: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD, pursuant to resolutions dated 12 Nov 2014				
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	12 Nov 2014	Transfer	1.00	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD, pursuant to resolutions dated 12 Nov 2014	No Cert			
						100	1.00	
Notes:								

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Date printed: 21 May, 2021

[1 / 1]

EXHIBIT 20
 000968

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
CHARITABLE DAF GP, LLC**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Charitable DAF GP, LLC (the "Company"), dated to be effective as of January 1, 2012, by Grant J. Scott, the new managing member (the "Managing Member"), James D. Dondero, the former Managing Member, and any persons admitted to the Company pursuant hereto (collectively with the Managing Member, the "Members").

WHEREAS, the Company was formed by filing a Certificate of Formation with the Secretary of State of the State of Delaware on October 25, 2011, pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §§18-101, et seq., as amended from time to time (the "Act"), and has entered into this Agreement;

WHEREAS, the former Managing Member entered into that certain Limited Liability Company Agreement dated October 25, 2011 (the "Original Agreement");

WHEREAS, the Company now desires to amend and restate the Original Agreement in its entirety pursuant to the terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Name and Address. The name of the Company is "Charitable DAF GP, LLC." Its principal office is located at 4140 Park Lake Avenue, Suite 600, Raleigh, North Carolina 27612, or at such other location as the Managing Member in the future may designate.

2. Purposes of the Company. The Company is organized for the purpose of engaging in any lawful act or activity for which limited liability companies may be organized under the Act. In connection with the foregoing, the Company serves as the general partner of (or in a similar capacity with respect to) Charitable DAF Fund, LP and/or any other private investment partnerships pursuant to the limited partnership agreement in effect from time to time among the Company and the limited partners of each private investment partnership. The Company shall have no economic interest in the assets, profits or losses of Charitable DAF Fund, LP or the right to receive distributions from Charitable DAF Fund, LP except as may be required by law.

3. Registered Office; Registered Agent. The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The registered office or agent of the Company may be changed from time to time by the Managing Member in its sole discretion.

EXHIBIT 21

000969

4. Member. The name and address of the Managing Member is as follows:

<u>Name</u>	<u>Address</u>
Grant J. Scott, <i>Managing Member</i>	4140 Park Lake Avenue, Suite 600 Raleigh, North Carolina 27612

5. Management of the Company and Officers. The business and affairs of the Company shall be managed by the Managing Member, who shall have the exclusive power and authority, on behalf of the Company, to take any action of any kind not inconsistent with the provisions of this Agreement and to do anything and everything it deems necessary or appropriate to carry on the business and purposes of the Company. The Managing Member will be the “manager” (within the meaning of the Act) of the Company. Except as authorized by the Managing Member, those persons, if any, admitted to the Company after the date hereof shall be non-managing Members and shall have no right to participate in the management or control of the business of the Company. The Managing Member may, from time to time, designate one or more persons to be officers of the Company (each, an “Officer” and collectively, the “Officers”). Each Officer shall hold office for the term for which such Officer is designated and until his or her successor shall be duly designated and shall qualify or until his or her death, resignation or removal (with or without cause) by the Managing Member or as otherwise provided for in this Agreement. If an Officer is employed by the Company or any of its affiliates, such designation as an Officer shall terminate automatically upon termination of his or her employment with the Company and/or such affiliates. Any Officer so designated shall have such authority and perform such duties as the Managing Member is permitted to perform under this Agreement and may, from time to time, delegate to such person. The Managing Member may assign titles to particular Officers, and unless the Managing Member decides otherwise, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office. Any person may hold any number of offices. No Officer need be a manager, a Member, a Delaware resident or a United States citizen. Designation of such a person as an Officer of the Company shall not of itself create any contract rights in such person.

6. Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the determination of the Managing Member or upon the effective date of a decree of judicial dissolution under the Act.

7. Initial Capital Contributions; Percentage Interests. The Managing Member has made a capital contribution to the Company in the amount set forth in the books and records of the Company. The capital account (the “Capital Account”) of each Member shall be in an amount equal to such Member’s initial capital contribution, adjusted from time to time for additional contributions, withdrawals, allocations of appreciation and depreciation and other appropriate items.

8. Additional Contributions. No Member shall have any obligation to make additional capital contributions to the Company.

9. Allocations; Tax Matters. The Managing Member intends that the Company be treated as a disregarded entity for U.S. federal income tax purposes and not be treated as an association taxable as a corporation for Federal tax purposes. If applicable, the Company shall maintain the Capital Accounts for each Member in accordance with the principles of Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder. The Company’s income, gains, deductions, and losses shall be allocated to the Members’ Capital Accounts as shall be determined by the Managing Member. If

applicable, allocations for Federal income tax purposes shall be made to the Members in a similar manner. If applicable, the Managing Member is hereby designated as the "Tax Matters Partner" of the Company for purposes of Section 6231(a)(7) of the Code.

10. Withdrawals.

(a) Without the written consent of the Managing Member, no Member may withdraw capital from the Company.

(b) Without the written consent of the Managing Member, no Member may voluntarily withdraw as a Member of the Company.

(c) The Managing Member may terminate the interest of any Member, at any time by written notice.

11. Payments to Withdrawing Members. A withdrawn Member, or the legal representative of a Member that has died or become disabled, shall in all events be entitled to be paid as soon as reasonably practicable after the date of such withdrawal, death or disability the balance in his Capital Account (less any amount owing to the Company by such Member and unless otherwise agreed to with the Managing Member). Unless otherwise consented to by the Managing Member, a withdrawn Member shall not be entitled to any further allocation of any other net income in which the Member would otherwise thereafter have shared.

12. Transfer. A Member may not sell, assign, pledge, transfer or otherwise dispose of all or any part of his or her interest in the Company without the consent of the Managing Member, and any purported sale, assignment, pledge, transfer or other disposition of all or any part of a Member's interest in the Company without the Managing Member's consent shall be null and void.

13. Admission of Additional or Substitute Members. The Company may admit substitute or additional members at the Managing Member's discretion.

14. Liability of the Members. The Members shall not have any liability for the obligations or liabilities of the Company except to the extent expressly provided in the Act.

15. Exculpation and Indemnification. To the fullest extent permitted by applicable law, a Covered Person (defined below), shall be entitled to exculpation and indemnification from the Company and its Members for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such a Covered Person in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, unless such action or inaction was made in bad faith or constitutes fraud, willful misconduct or gross negligence; *provided, however*, that any indemnity under this Section 16 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

"Covered Person" means the Members (including the Managing Member), any affiliate of the Members, any representatives or agents of the Members, any Officer of the Company or their respective affiliates.

16. Fiscal Year. The fiscal year of the Company shall end on December 31.

17. Benefits of Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or of any Member.

18. Headings. The titles of Sections of this Agreement are for convenience of reference only and shall not define or limit any of the provisions of this Agreement.

19. Counterparts. This Agreement may be executed by the parties hereto in counterparts, each of which shall be considered an original, and all of which shall together constitute one and the same instrument.

20. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles of such State.

21. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.

22. Amendments. The terms and provisions of this Agreement may be modified or amended at any time and from time to time by the Managing Member in its sole discretion.

[Signatures on Following Page]

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

New Managing Member:

Dated: March 21, 2012



GRANT J. SCOTT

Former Managing Member:

Dated: March 21, 2012



JAMES D. DONDERO

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "CHARITABLE DAF GP, LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF OCTOBER, A.D. 2011, AT 11:23 O'CLOCK A.M.

5056341 8100

111131792

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9113377

DATE: 10-25-11

EXHIBIT 22

PATRICK 000036
000974

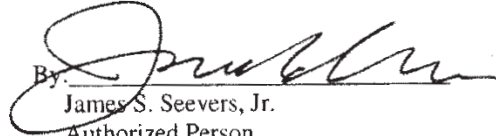
State of Delaware
Secretary of State
Division of Corporations
Delivered 11:26 AM 10/25/2011
FILED 11:23 AM 10/25/2011
SRV 111131792 - 5056341 FILE

CERTIFICATE OF FORMATION
OF
CHARITABLE DAF GP, LLC

The undersigned hereby executes this Certificate of Formation of Charitable DAF GP, LLC (the "**Company**"), for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the Company is **Charitable DAF GP, LLC**.
2. The address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. Its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned, an authorized person of the Company, has caused this Certificate of Formation to be duly executed as of the 24th day of October, 2011.

By: 
James S. Seevers, Jr.
Authorized Person

WK -263805

Certificate Of Incorporation

I. FLOSSIEBELL M. MARAGH Assistant Registrar of Companies of the Cayman Islands
DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by

Charitable DAF HoldCo, Ltd

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 27th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 27th day of October Two Thousand Eleven



[Signature]
Assistant Registrar of Companies,
Cayman Islands.

EXHIBIT 23

000976

WK-249232

Certificate Of Incorporation

I, V. DAPHENE WHITELOCKE Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by

CLO HoldCo, Ltd.

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 13th day of December Two Thousand Ten

Given under my hand and Seal at George Town in the Island of Grand Cayman this 13th day of December Two Thousand Ten



[Signature]
Assistant Registrar of Companies,
Cayman Islands.

EXHIBIT 24

000977

WK-53083

Certificate of Registration of Exempted Limited Partnership

I, **JOY A. RANKINE** Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 1991 that all the requisitions of the said Law in respect of registration were complied with by

Charitable DAF Fund, LP

an Exempted Limited Partnership registered in the Cayman Islands on the 28th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 28th day of October Two Thousand Eleven



Assistant Registrar of Exempted Limited Partnership
Cayman Islands.

DATED NOVEMBER 7, 2011

**AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

WARNING

**THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS
DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE
IMPOSITION OF CAYMAN ISLANDS STAMP DUTY**

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**AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the “**Agreement**”) is made on November 7, 2011

BETWEEN

- (1) Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as general partner (the “**General Partner**”); and
- (2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted Company having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as limited partner (the “**Limited Partner**”); and
- (3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a “**Person**”) admitted as a limited partner or general partner (collectively, the “**Partners**”) of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement; and
- (4) Walkers Nominees Limited having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9005, Cayman Islands as the initial limited partner (the “**Initial Limited Partner**”) solely for the purposes of withdrawing as such.

WHEREAS, Charitable DAF Fund, LP (the “**Partnership**”) was formed and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the “**Law**”), and since its formation has been governed by the Initial Limited Partnership Agreement of the Partnership, dated October 25, 2011 (the “**Initial Agreement**”); and

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”) and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein; and

WHEREAS, the parties hereto wish to amend and restate the Initial Agreement in its entirety and enter into this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

**ARTICLE I
GENERAL PROVISIONS; COMPENSATION AND EXPENSES**

- 1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Law.
- 1.2 Name. The business of the Partnership shall be carried on under the name of Charitable DAF Fund, LP.
- 1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments. At least initially, a majority of the Partnership's assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company ("**CLO HoldCo**"), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.
- 1.4 Registered Office. The registered office of the Partnership is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands.
- 1.5 Partners. The name and addresses of the Partners are as follows:

Name	Address
Charitable DAF GP, LLC	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands
Charitable DAF HoldCo Ltd (Limited Partner)	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands

- 1.6 Powers.
- (a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and

obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

- (b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.
- 1.7 Term. The Partnership was established on October 25, 2011 and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof.
- 1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.
- 1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.
- 1.10 Liability of Partners.
- (a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.
- (b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1.
- 1.11 Limitation on Assignability of Partners' Interests.
- (a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

- (b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

- (a) General Partner. The term “**General Partner**” shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.
- (b) Indirect Charitable Owners. The term “**Indirect Charitable Owner**” shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.
- (c) Limited Partner. The term “**Limited Partner**” shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).
- (d) Partner. The term “**Partner**” shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo’s operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

- 1.15 Withdrawal of Initial Limited Partner. The Initial Limited Partner hereby withdraws as a limited partner immediately following the admission of the Limited Partners and thereafter shall have no further rights, liabilities or obligations under or in respect of this Agreement in its capacity as Initial Limited Partner.

ARTICLE II POWERS

- 2.1 Partnership Powers. The Partnership shall have the following powers:

- (a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

- (b) To possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;
- (c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;
- (d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;
- (e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;
- (f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and
- (g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

- (a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a “**Covered Person**” and collectively, “**Covered Persons**”) shall be subject to the provisions of this Section.
- (b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the

business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

- (c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.
- (d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the “**Indemnitees**”), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person’s responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee’s conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee’s conduct constituted willful misconduct or gross negligence.
- (e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.
- (f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may

otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

- (g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.
- (h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**
- (i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA. Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**
- (j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

- (k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

**ARTICLE III
CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES**

3.1 Capital Contributions.

- (a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

- (a) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.
- (b) Since the General Partner's capital account and contributions shall be the minimum required by Law, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.
- (c) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.
- (d) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.
- (e) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

**ARTICLE IV
LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL
WITHDRAWALS FROM CAPITAL ACCOUNT**

- 4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

- (a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3).
- (b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership.

- 4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may terminate all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

**ARTICLE V
DURATION OF PARTNERSHIP**

- 5.1 Termination. The Partnership shall be required to be wound up and dissolved upon:

- (a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

- (b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or
- (c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint.

- 5.2 Winding Up. Upon the Partnership being required to be wound up and dissolved, the General Partner shall proceed with the liquidation and distribution of the assets of the Partnership, and upon completion of the winding up of the Partnership, shall have the authority to and shall execute and file a dissolution notice and such other documents required to effect the dissolution and termination of the Partnership in accordance with the Law. Before the distribution of all the assets of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. The winding up of the Partnership and payment of creditors shall be effected in accordance with the Law.

ARTICLE VI MISCELLANEOUS

- 6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.
- 6.2 Right to Hire.
- (a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership.
 - (b) Each of the Partners consents that the General Partner, the Investment Manager or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others,

including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner, the Investment Manager and any affiliate or employee of such General Partner or Investment Manager, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Limited Partnership Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and (iii) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that in the aggregate, they shall have been signed by all of the Partners. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require. The term “gross negligence” and its cognates shall be interpreted in accordance with the laws of the State of Delaware.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement. This power of attorney is intended to secure an interest in property and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect

amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the Investment Manager or the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; *provided, that* in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; *provided further, that* the General Partner shall give notice to the Limited Partners of any such amendment.

- 6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.
- 6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the addresses set forth beneath his signature to this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of each such notice sent simultaneously to the General Partner and the Investment Manager at Nextbank Tower, 13455 Noel Road, 8th Floor, Dallas, Texas 75240; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or (iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim (“**Dispute**”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“**Arbitration Rules**”). In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the

Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act (“FAA”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

- (2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.
- (4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The

total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.


- 6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.
- 6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.
- 6.13 No Third Party Rights. Except for rights expressly granted hereunder to the Covered Persons, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.
- 6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

**SIGNATURE PAGE FOR AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: 
James D. Dondero
Managing Member

Witnessed By: 

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: _____

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name:
Title:

Witnessed by: _____

**SIGNATURE PAGE FOR AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: Candi L. Riggs
Candi L. Riggs

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name: Rod Palmer
Title:

Witnessed by: Gracie O'Leary

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
MEMORANDUM AND ARTICLES OF ASSOCIATION
OF
CLO HOLDCO, LTD.



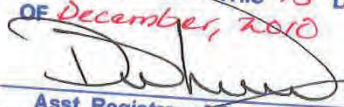
Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: VC/CM/99957

EXHIBIT 27

PATRICK 000008
001000

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION

REGISTERED AND FILED
AS NO. 249232 THIS 13th DAY
OF December, 2010

Asst. Registrar of Companies
Cayman Islands

OF

CLO HOLDCO, LTD.

1. The name of the company is CLO HoldCo, Ltd. (the "Company").
2. The registered office of the Company will be situated at the offices of **Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands** or at such other location as the Directors may from time to time determine.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "Law").
4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.
5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.
6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.
7. The capital of the Company is **US\$50,000.00** divided into **50,000** shares of a nominal or par value of **US\$1.00 each** provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.
8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.



The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

**NAME, ADDRESS AND DESCRIPTION
OF SUBSCRIBER**

**NUMBER OF SHARES TAKEN BY
SUBSCRIBER**

Walkers Nominees Limited, 87 Mary
Street, George Town, Grand Cayman
KY1-9001, Cayman Islands

ONE SHARE

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George Town,
Grand Cayman KY1-9001,
Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY

SIG. 

V. Daphene Whitelocke
Assistant Registrar

Date: 13th December, 2010



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COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
CLO HOLDCO, LTD.

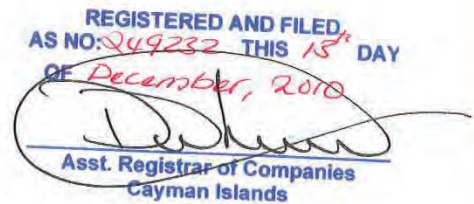


TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to CLO HoldCo, Ltd. (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time;

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company;

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof;

"**Law**" means the Companies Law (as amended) of the Cayman Islands;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time;

"**Office**" means the registered office of the Company as required by the Law;

"**Ordinary Resolution**" means a resolution:

- (a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and



where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed;

"paid up" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up;

"Person" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires;

"Register" means the register of Members of the Company required to be kept pursuant to the Law;

"Seal" means the common seal of the Company (if adopted) including any facsimile thereof;

"Secretary" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company;

"Share" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share;

"Shareholder" or **"Member"** means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber;

"Share Premium Account" means the share premium account established in accordance with these Articles and the Law;

"signed" means bearing a signature or representation of a signature affixed by mechanical means; and

"Special Resolution" means a special resolution of the Company passed in accordance with the Law, being a resolution:

- (a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

2. In these Articles, save where the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;

- (b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;
 - (c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
 - (d) reference to a dollar or dollars (or \$) and to a cent or cents is reference to dollars and cents of the United States of America;
 - (e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;
 - (f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and
 - (g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.
3. Subject to the last two preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

- 4. The business of the Company may be commenced at any time after incorporation.
- 5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.
- 6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.
- 7. The Directors shall keep, or cause to be kept, the Register at such place as the Directors may from time to time determine and, in the absence of any such determination, the Register shall be kept at the Office.

SHARES

- 8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:
 - (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and
 - (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors.
10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.
11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.
13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or

par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.
17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.
18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.
21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.
22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.
23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share,

becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.
25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of partly paid Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.
28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.
29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.
30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.
31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.
32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.
33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the

amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.
35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.
36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.
37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only Person recognised by the Company as having any title to the Share.
39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.
40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.
42. The Company may by Ordinary Resolution:

- (a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;
 - (b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;
 - (c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and
 - (d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.
43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION AND PURCHASE OF SHARES

44. Subject to the Law, the Company may:
- (a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may, before the issue of such Shares, determine;
 - (b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder; and
 - (c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law, including out of its capital, profits or the proceeds of a fresh issue of Shares.
45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.
46. The redemption or purchase of any Share shall not be deemed to give rise to the redemption or purchase of any other Share.
47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

GENERAL MEETINGS

48. The Directors may, whenever they think fit, convene a general meeting of the Company.
49. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later

than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

50. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

51. At least seven days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.
52. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

53. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, the appointment and removal of Directors and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.
54. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.
55. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.
56. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

57. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.
58. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.
59. The chairman may with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
60. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason, upon notice in writing to Shareholders. A postponement may be for a stated period of any length or indefinitely as the Directors may determine.
61. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
62. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
63. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
64. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

65. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.
66. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

67. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.
68. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.
69. On a poll votes may be given either personally or by proxy.
70. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.
71. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.
72. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.
73. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
74. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

75. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

76. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.
77. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.
78. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

79. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.
80. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.
81. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.
82. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR OR PROXY

83. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be an officer of the Company. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.
84. Any Director may appoint any Person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

85. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.
86. The Directors may from time to time appoint any natural person or corporation, whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their

number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

87. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.
88. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
89. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "Attorney" or "Authorised Signatory", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.
90. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article .
91. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.
92. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
93. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

94. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

95. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.
96. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.
97. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

98. The office of Director shall be vacated, if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors;
 - (b) dies or is found to be or becomes of unsound mind;
 - (c) resigns his office by notice in writing to the Company;
 - (d) is removed from office by Ordinary Resolution;
 - (e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or
 - (f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

99. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
100. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication

equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

101. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.
102. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.
103. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.
104. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.
105. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:
 - (a) all appointments of officers made by the Directors;
 - (b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
 - (c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.
106. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

107. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.
108. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.
109. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.
110. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.
111. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.
112. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

113. Subject to any rights and restrictions for the time being attached to any Shares, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.
114. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.
115. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

116. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.
117. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.
118. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.
119. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.
120. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

121. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.
122. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
123. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.
124. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.
125. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

126. Subject to the Law, the Directors may, with the authority of an Ordinary Resolution:
 - (a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

- (b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:
 - (i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or
 - (ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;
- (c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;
- (d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:
 - (i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or
 - (ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,and any such agreement made under this authority being effective and binding on all those Shareholders; and
- (e) generally do all acts and things required to give effect to the resolution.

SHARE PREMIUM ACCOUNT

- 127. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share .
- 128. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

- 129. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the

purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

130. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
131. Any notice or other document, if served by:
- (a) post, shall be deemed to have been served five days after the time when the letter containing the same is posted;
 - (b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;
 - (c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or
 - (d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

132. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.
133. Notice of every general meeting of the Company shall be given to:
- (a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and
 - (b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

134. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and

secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

135. No Indemnified Person shall be liable:
- (a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or
 - (b) for any loss on account of defect of title to any property of the Company; or
 - (c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or
 - (d) for any loss incurred through any bank, broker or other similar Person; or
 - (e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or
 - (f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

136. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

137. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.
138. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in

trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

139. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

140. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.
141. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
142. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

143. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

DISCLOSURE

144. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial

authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

**NAME, ADDRESS AND DESCRIPTION
OF SUBSCRIBER**

Walkers Nominees Limited, 87 Mary
Street, George Town, Grand Cayman
KY1-9001, Cayman Islands

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory for and on behalf of Walkers
Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald

Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George
Town, Grand Cayman KY1-
9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY

SIG.


V. Daphne Whiteflocke
Assistant Registrar

Date: 13th December 2010

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001027

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
AMENDED AND RESTATED
MEMORANDUM AND ARTICLES OF ASSOCIATION
OF
CHARITABLE DAF HOLDCO, LTD
(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)



190 Elgin Avenue, George Town
Grand Cayman KY1-9001, Cayman Islands
T +1 345 949 0100 F +1 345 949 7886 www.walkersglobal.com

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EXHIBIT 28

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001028

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
AMENDED AND RESTATED
MEMORANDUM OF ASSOCIATION
OF
CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").
2. The registered office of the Company will be situated at the offices of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").
4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.
5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.
6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.
7. The capital of the Company is US\$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US\$0.01 each 100 Management Shares of a nominal or par value of US\$0.01 each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.
8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.



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OF
CHARITABLE DAF HOLDCO, LTD
(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Management Share**" means a voting non-participating share in the capital of the Company of \$0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Law and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.



"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

- (a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of \$0.01 nominal or par value issued subject to and in accordance with the provisions of the Law and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "**Participating Shares**" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Restricted Person**" means any Person holding Participating Shares:

- (a) in breach of the law or requirements of any country or governmental authority;
- (b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the US Internal Revenue Code of 1986, as amended (the "**Code**") or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or
- (c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.



"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber.

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

- (a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;
- (b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;
- (c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
- (d) reference to a dollar or dollars or USD (or \$) and to a cent or cents is reference to dollars and cents of the United States of America;
- (e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;



- (f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case, and
 - (g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.
2. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.
4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.
5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.
6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may
- (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and
 - (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;
- and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.
8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions,



preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.
10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.
12. Any Management Shares held by Grant Scott will be automatically redeemed by the Company upon his death or upon the Company receiving written notice from two board certified physicians confirming that he is of unsound mind or otherwise incapacitated ("**Automatic Redemption**").
13. If at the time of an Automatic Redemption, Grant Scott is the sole Director of the Company, such office will be automatically vacated by Grant Scott.
14. Upon an Automatic Redemption, the Company shall issue 100 Management Shares to a successor management shareholder ("**Successor Management Shareholder**") designated by James Dondero ("**Designator**"), or, if he is unable or declines to act, by an individual or individuals designated by James Dondero ("**Successor Designator**"), in either case within 15 days of the Automatic Redemption. If the Designator is:
 - (a) deceased and has not named a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made in accordance with the provisions of the Designator's will, or if his will contains no such provisions, by the qualified personal representative of his estate (the "**Designator's Personal Representative**"); or
 - (b) otherwise incapacitated and has not previously designated a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made by the Designator's attorney-in-fact appointed for such purpose, under a valid, effective power of attorney instrument (the "**Designator's Attorney**").
15. Any designation of a Successor Management Shareholder must be notified to the Company in writing and signed by either the Designator, the Successor Designator, the Designator's Personal Representative, or the Designator's Attorney, as appropriate, and accompanied by a consent to become a Shareholder signed by the Successor Management Shareholder ("**Issue Notice**"). The issue of the 100 Management Shares to the Successor Management Shareholder shall take effect upon receipt by the Company of the Issue Notice and the Register will be updated accordingly.



16. The Designator may name a Successor Designator (including an individual, or a series of individuals) at any time pursuant to a written notice delivered to the Company during his lifetime or by a provision in his will. Each Successor Designator upon succeeding and replacing the Designator or a prior Successor Designator, may in the same manner as set out above, designate an individual, or a series of individuals, to succeed him as Successor Designator. In the event of a conflict between such instruments, the one bearing the latest date shall control. A Successor Designator will assume such office upon consenting to so act.
17. The Successor Management Shareholder may not be a "disqualified person" (as that term is defined in Section 4946 of the United States Internal Revenue Code of 1986, as amended), other than a foundation manager, with respect to Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., or Highland Kansas City Foundation, Inc.
18. In connection with the appointment of the Successor Management Shareholder, the Company and its registered office service provider will be entitled to rely on the advice of counsel confirming that the designation of the Successor Management Shareholder has been made in accordance with the procedures set out in these Articles.

PARTICIPATING SHARES

19. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

20. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.
21. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.



CERTIFICATES

22. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

23. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

TRANSFER OF SHARES

24. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.
25. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.
26. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.
27. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.
28. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

29. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.
30. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person



could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

31. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

32. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.
33. The Company may by Ordinary Resolution:
- (a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;
 - (b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;
 - (c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and
 - (d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.
34. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

35. Subject to the Law, the Company may:
- (a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;
 - (b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;
 - (c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and
 - (d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.



36. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.
37. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.
38. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

39. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.
40. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.
41. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:
 - (a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;
 - (b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.
42. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

43. The Directors may, whenever they think fit, convene a general meeting of the Company.
44. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.
45. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the



objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

46. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

47. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.
48. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.
50. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.
51. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.
52. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.



53. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.
54. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.
55. The chairman may adjourn a meeting from time to time and from place to place either:
- (a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or
 - (b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:
 - (i) secure the orderly conduct or proceedings of the meeting; or
 - (ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
59. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

60. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of



- Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them.
61. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.
62. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.
63. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.
64. On a poll votes may be given either personally or by proxy.
65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.
66. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.
67. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.
68. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
69. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

70. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

71. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.



72. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.
73. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.
74. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.
75. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.
76. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.
77. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

78. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.
79. Any Director may appoint any Person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

80. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.



81. The Directors may from time to time appoint any natural person or corporation, whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.
82. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.
83. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
84. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "Attorney" or "Authorised Signatory", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.
85. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.
86. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.
87. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.



88. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

89. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

90. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.
91. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.
92. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

93. The office of Director shall be vacated, if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors;
 - (b) dies or is found to be or becomes of unsound mind;
 - (c) resigns his office by notice in writing to the Company;
 - (d) is removed from office by Ordinary Resolution;
 - (e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or



- (f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

94. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
95. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.
96. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.
97. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.
98. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.
99. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.



100. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:
- (a) all appointments of officers made by the Directors;
 - (b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
 - (c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.
101. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.
102. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.
103. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.
104. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.
105. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.
106. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.
107. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.



DIVIDENDS

108. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.
109. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.
110. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.
111. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.
112. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.
113. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.
114. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.
115. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

116. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.
117. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
118. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not



being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

119. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.
120. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

121. Subject to the Law and these Articles, the Directors may:
- (a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;
 - (b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:
 - (i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively; or
 - (ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;
 - (c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;
 - (d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:
 - (i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or
 - (ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares,



and any such agreement made under this authority being effective and binding on all those Shareholders, and

- (e) generally do all acts and things required to give effect to any of the actions contemplated by this Article

SHARE PREMIUM ACCOUNT

- 122. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.
- 123. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

- 124. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.
- 125. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
- 126. Any notice or other document, if served by:
 - (a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;
 - (b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;
 - (c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or
 - (d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.



127. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.
128. Notice of every general meeting of the Company shall be given to:
- (a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and
 - (b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

129. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

130. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.
131. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:
- (a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and
 - (b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.
132. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such



assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

133. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

134. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.
135. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
136. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

137. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

138. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.



DISCLOSURE

139. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

INDEMNITY

140. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or Gross Negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).
141. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.
142. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.
143. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.



144. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

DISPUTE RESOLUTION

145. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

- (i) any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;
- (ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;
- (iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and
- (iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration:

if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in these Articles and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

- (i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any



issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("FAA"), and resolved by the arbitrators, *provided, however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

- (ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law,
- (iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;
- (iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted;
- (v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a



reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

- (vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.





Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: **Participating**
 Nominal Value: **USD 0.01**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
The Highland Capital Management Partners Charitable Trust #2 Highland Capital Management, L.P. 13455 Noel Rd, Suite 800 Dallas TX 75240 USA	7 Nov 2011	Allotment	300.00	7 Nov 2011 : Allotment of 300.0 Participating share(s) for USD0.01 / share to The Highland Capital Management Partners Charitable Trust #2 pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Kansas City Foundation, Inc pursuant to resolutions dated 30 Nov 2011				
		New Certificate	200.00	30 Nov 2011 : New certificate No. 0 issued for remaining balance of 200.0 Participating share(s)	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Dallas Foundation, Inc				



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

<p>Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT 306 W. 7th St., Suite 1045 Fort Worth TX 76102 USA</p>	<p>13 Aug 2015</p>	<p>Allotment</p>	<p>5.00</p>	<p>13 Aug 2015 : Allotment of 5.0 Participating share(s) for USD0.01 / share to Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT pursuant to minutes/resolutions dated 12 Aug 2015</p>	<p>No Cert</p>	<p>100</p>	<p>100.00</p>								
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Notes:

EXHIBIT 12

EXHIBIT 31

001063

At all relevant times, HCM was headed by CEO and potential party James P. Seery (“Seery”). Seery negotiated a settlement with the several Harbourvest² entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for \$22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value (“NAV”) of those interests. Upon information and belief, the NAV of HCLOF’s assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM’s internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

² “Harbourvest” refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 Global Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.
2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.
3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.
4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.
5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.
6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the “Harbourvest interests”).

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the “HCM Bankruptcy” and the Court is the “Bankruptcy Court”).

The Harbourvest Settlement with Highland Capital Management in Bankruptcy

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around \$15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost \$15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than \$7.5 million). Harbourvest claimed that it had lost over \$100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over \$300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some \$52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities³)—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of \$15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

³ Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing \$45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around \$31,500,000 from the allowed claims.

33. As part of the consideration for the \$45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating \$22.5 million of the net value of the \$45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., \$31.5 million—was realized, because \$22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true “settlement” for Harbourvest's legal claims was closer to \$9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for \$9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for \$22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of \$41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over \$34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the “net asset value” of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks⁴ meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was \$22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

⁴ The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over \$20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay \$22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as \$22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that “[Judge Jernigan] is laughing at you” and “we are coming after you” in response to the latter’s attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery’s plan to liquidate the funds.

54. HCM’s threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court’s sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION *Breaches of Fiduciary Duty*

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.⁵

⁵ See e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§ 206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). See also Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own”) (citing Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the “RIA Agreement”). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF’s attorney-in-fact for certain actions, such as “to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner.” RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets “in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will be provided to the General Partner upon request.” RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM’s fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 (“Rule 10b5-1”) explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM’s own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.⁶

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

⁶ See Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) (“[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship.”); see also *SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) (“Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be ‘in the offer or sale of any’ security or ‘in connection with the purchase or sale of any security.’”).

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Harbourvest's 49.98% interest in HCLOF was worth around \$22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of \$24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over \$25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the “Company Agreement”).

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for \$22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of \$22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for \$22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of \$20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a \$22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the illicit purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to 18 U.S.C. § 1961(1)(B) and (D).

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted though the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of \$72,969,492 as of November 30, 2020. Harbourvest's share of that would have been \$36,484,746.

124. The HCLOF net asset value had reached \$86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was \$22.5 million, when it was actually closer to \$43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM’s motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser’s Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios’ securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing “equitization” of CSS Medical’s debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly \$30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one’s conduct of an enterprise to include “fraud in connection with a [bankruptcy case]”. The Advisers’ Act antifraud provisions require full transparency and accountability to an advisers’ investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a “scheme or artifice ... for obtaining money or property by means of false ... pretenses, [or] representations[.]”

132. Accordingly, because Defendants’ conduct violated the wire fraud and mail fraud laws, and the Advisers’ Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, 18 U.S.C. § 1964.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys’ fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff’s contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as \$22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

- a. Actual damages;
- b. Disgorgement;
- c. Treble damages;
- d. Exemplary and punitive damages;
- e. Attorneys' fees and costs as allowed by common law, statute or contract;
- f. A constructive trust to avoid dissipation of assets;
- g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Plaintiffs

From: Rhett Miller [rhett.miller@nexbank.com]
Sent: 3/23/2021 5:38:27 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patric]
CC: Michelle Johnson [michelle.johnson@nexbank.com]; Kevin Olding [kevin.olding@nexbank.com]; Blake Haas [Blake.Haas@nexbank.com]; Isaac J. Brown [isaac.brown@wickphillips.com]; Shawn Raver [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4f4ebee30fcd40028ad898ef79624586-Shawn Raver]
Subject: NexBank Loan to CLO Holdco, Ltd. - Potential Director Change

Mark:

I understand there may be a transition from Grant Scott being the Director of CLO Holdco, Ltd.

In order to process a waiver under our loan documents we will need to know: (1) the effective date of his resignation; (2) who will take his place as the new Director; and (3) a formal request from the Borrower for a waiver.

Let me know if you have any questions.

R



Rhett Miller
EVP & Chief Credit Officer
NexBank Capital, Inc.
2515 McKinney Avenue, Suite 1100
Dallas, TX 75201

o: 972-934-4705
c: 214-676-0366
rhett.miller@nexbank.com

EXHIBIT 34

001091

PATRICK_000915

From: Mark Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F754733CCFBC4B15B32F78F40FD4ABF5-MARK PATRIC]
Sent: 3/24/2021 8:23:35 PM
To: Grant Scott [gscott@scottlawgroupllc.com]
Subject: Re: Document Sign Request

Thank you Grant.

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From: Grant Scott <gscott@scottlawgroupllc.com>
Sent: Wednesday, March 24, 2021 3:02:33 PM
To: Mark Patrick <MPatrick@highgateconsultants.com>
Cc: Grant Scott <gscott@scottlawgroupllc.com>
Subject: FW: Document Sign Request

Mark,

I've signed the documents. Thank you for all your hard work. I'm sorry this will drag on for you for the next few months.

Please let me know what else you might need from me.

Regards,
Grant

From: Mark Patrick <MPatrick@highgateconsultants.com>
Sent: Wednesday, March 24, 2021 1:18:58 PM
To: Grant Scott <gscott@scottlawgroupllc.com>
Subject: Document Sign Request

Grant,

The process of fully institutionalizing the DAF will take much longer than I ever previously imagined (it may take months now), and therefore, I attach for your counter-signature next to mine, what is the only viable interim solution.

Mark

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EXHIBIT 35

001092

PATRICK_001109

From: Chris Rice [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=313621177B3D4075AD0E6653D0326F44-CHRIS RICE]
Sent: 3/25/2021 10:43:30 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patric]; Frank Waterhouse [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc6eb5ff9f3746ae83b52b7544607a70-Frank Water]
CC: Hayley Eliason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e65b657b43164d49981d54391777f521-Hayley Elia]; Will Mabry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7e647812dd3743f8917226d33650d622-Will Mabry]; gscott@scottlawgroupllc.com
Subject: RE: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

Mark –

Below, please find a revised total that we will send to NexPoint Advisors LP tomorrow.

Principal	\$350,000.00
Interest	\$460.85
Total	\$350,460.85

Thanks

Chris Rice | Manager – Fund Analysis
Skyview Group
crice@highgateconsultants.com
(m) 801-669-1297

From: Mark Patrick <MPatrick@highgateconsultants.com>
Sent: Thursday, March 25, 2021 4:39 PM
To: Frank Waterhouse <FWaterhouse@highgateconsultants.com>
Cc: Hayley Eliason <HEliason@highgateconsultants.com>; Will Mabry <WMabry@highgateconsultants.com>; Chris Rice <CRice@highgateconsultants.com>; gscott@scottlawgroupllc.com
Subject: Re: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

I approve this loan being repaid.

Grant - please execute as directed. (Thank you for your patience during this transition period)

Mark

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From: Frank Waterhouse <FWaterhouse@highgateconsultants.com>
Sent: Thursday, March 25, 2021 4:37:18 PM
To: Mark Patrick <MPatrick@highgateconsultants.com>
Cc: Hayley Eliason <HEliason@highgateconsultants.com>; Will Mabry <WMabry@highgateconsultants.com>; Chris Rice <CRice@highgateconsultants.com>; gscott@scottlawgroupllc.com <gscott@scottlawgroupllc.com>
Subject: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

EXHIBIT 36
001093

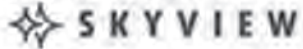
PATRICK_000520

Mark-

CLO Holdco took a loan of \$350k in July of last year from NexPoint Advisors. Given the cash situation has improved dramatically recent, we are asking for your approval for this loan to be repaid. If you approve, the team will work to make the payment. Please let me know if you have any other questions.

Regards

Frank Waterhouse
Chief Financial Officer



Skyview Group
fwaterhouse@skyview-group.com
214-550-4638

001094

PATRICK_000521

From: Chris Rice [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=313621177B3D4075AD0E6653D0326F44-CHRIS RICE]
Sent: 4/29/2021 3:31:19 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patrick]
CC: Frank Waterhouse [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc6eb5ff9f3746ae83b52b7544607a70-Frank Water]
Subject: RE: Update on the accounts
Attachments: RE: CLO Holdco LTD Accounts

We're still working with JPM and Jefferies to get everything transitioned over completely. Once that is done, we can focus on getting the account holders updated.

For NexBank, Trini said that compliance was going to request an individual form for each of the accounts (see attached). I just have not had the time to fill out the forms for all the accounts yet, but it is on my radar.

Chris Rice | Manager – Fund Analysis



CRice@Skyviewgroup.com
(m) 801-669-1297

From: Mark Patrick <MPatrick@skyviewgroup.com>
Sent: Thursday, April 29, 2021 10:27 AM
To: Chris Rice <CRice@skyviewgroup.com>
Cc: Frank Waterhouse <FWaterhouse@skyviewgroup.com>
Subject: Update on the accounts

How is that going and what is left to do?

Sent via the Samsung Galaxy S21 Ultra 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

EXHIBIT 37

001095

PATRICK_000970

From: Mark Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F754733CCFBC4B15B32F78F40FD4ABF5-MARK PATRIC]
Sent: 4/5/2021 4:04:26 PM
To: Grant Scott [gscott@scottlawgroupllc.com]
Subject: Nexbank accounts and director on HDF amd HKCF

Grant,

We are still in the process of changing the account access to myself. I hope this wont take longer than one week.

Further, in the near future Dallas Foundation will appoint a director to replace you on the board of HDF. The same is being done for Highland Kansas City Foundation. This may take 2-4 weeks.

During this interim period, we may make requests of you and are fine compensating you until a completed transition happened.

Please reach out to Chris Rice for wire payments for your services, although you should feel no obligation to be paid or not paid. The decision rests with you.

I appreciate your continued help during this transition.

Mark

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EXHIBIT 38

001096

PATRICK_001356

From: Grant Scott [gscott@scottlawgroupllc.com]
Sent: 4/1/2021 7:06:59 PM
To: Chris Rice [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=313621177b3d4075ad0e6653d0326f44-Chris Rice]
CC: Grant Scott [gscott@scottlawgroupllc.com]
Subject: RE: Wire Instructions

Hi,

Because of my reduced role going forward, which will completely terminate at some point, I think it's best to avoid any further trustee fees.

Okay?

Thanks,
G

From: Chris Rice <CRice@highgateconsultants.com>
Sent: Thursday, April 1, 2021 3:04 PM
To: Grant Scott <gscott@scottlawgroupllc.com>; 'Scott, Grant' <gscott@myersbigel.com>
Cc: Will Mabry <WMabry@highgateconsultants.com>
Subject: Wire Instructions

Grant –

When they moved the NexBank accounts around last month, the old wire templates got deleted, and I do not have your wire instructions on file.

Can you please provide me with your preferred wire instructions for delivery/receipt of the trustee fee?

Thanks

Chris Rice | Manager – Fund Analysis
Skyview Group
crice@highgateconsultants.com
(m) 801-669-1297

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EXHIBIT 39
001097

PATRICK_001090

SECOND AMENDED AND RESTATED SERVICE AGREEMENT

THIS SECOND AMENDED AND RESTATED SERVICE AGREEMENT (this “*Agreement*”) entered into to be effective from the 1st day of January, 2017 (the “*Effective Date*”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“*HCMLP*”), Charitable DAF Fund, L.P., a Cayman Islands exempted limited partnership (the “*Fund*”), Charitable DAF GP, LLC, a Delaware limited liability company (the “*General Partner*”), and any affiliate of the General Partner that becomes a party hereto. Each of the signatories hereto is individually a “*Party*” and collectively, the “*Parties*”.

RECITALS

A. HCMLP, the Fund and the General Partner entered into that certain Shared Services Agreement dated January 1, 2012 (the “*Original Agreement*”);

B. The Parties amended and restated the Original Agreement in its entirety on the terms as set forth in that certain Amended and Restated Agreement effective as of July 1, 2014 (the “*Existing Agreement*”);

C. The Parties desire to amend and restated the Existing Agreement in its entirety on the terms set forth herein;

C. Since the inception of the Fund, the Parties have intended that the Fund and the General Partner would incur reasonable arm’s-length fees in connection with the operation of the Fund and management and reporting activities with respect to Fund assets;

D. HCMLP has incurred and will continue to incur substantial expenses on behalf of the Fund and the General Partner in performing the Services (as defined below);

E. The Parties agree that it is in their mutual best interests for HCMLP to continue to provide the Services to the General Partner, the Fund and other Recipients (as defined below) and for HCMLP to be provided sufficient financial incentives to continue to provide the Services;

F. The General Partner and the Fund desire to provide HCMLP sufficient compensation for performing the Services and to reimburse HCMLP for expenses incurred on their behalf;

G. During the Term (as defined below), HCMLP will provide to the General Partner, on behalf of the Fund and/or its subsidiaries, certain services as more fully described herein, subject to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, and the Existing Agreement is hereby amended and restated in its entirety as follows:

ARTICLE I DEFINITIONS

“*Advisory Agreement*” means that certain Second Amended and Restated Investment Advisory Agreement, dated effect as of the Effective Date, by and among the Parties, as amended, restated, modified and supplemented from time to time.

“*Affiliate*” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “*control*” (including, with correlative meanings, the terms “*controlled by*” and “*under common control with*”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“*Agreement*” has the meaning set forth in the preamble.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“*Dispute*” has the meaning set forth in Section 7.14.

“*Effective Date*” has the meaning set forth in the preamble.

“*Enforcement Court*” has the meaning set forth in Section 7.14.

“*Existing Agreement*” has the meaning set forth in the recitals.

“*Fund*” has the meaning set forth in the preamble.

“*General Partner*” has the meaning set forth in the preamble.

“*Governmental Entity*” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“*HCMLP*” has the meaning set forth in the preamble.

“*Liabilities*” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“*Loss*” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term “*Loss*” will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“*Management Fee*” has the meaning set forth in the Advisory Agreement.

“*New Service*” has the meaning set forth in Section 2.03.

“*Original Agreement*” has the meaning set forth in the recitals. “*Party*” or “*Parties*” has the

meaning set forth in the preamble.

“**Person**” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“**Recipient**” means the General Partner, the Fund, and any of the Fund’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Services.

“**Service Provider**” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Services.

“**Service Standards**” has the meaning set forth in Section 4.01.

“**Services**” shall have the meaning set forth in Section 2.01.

“**Subsidiary**” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“**Tax**” or “**Taxes**” means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Services; and (ii) tax-related surcharges or fees that are related to the Services identified and authorized by applicable tariffs.

“**Term**” has the meaning set forth in Section 5.01.

ARTICLE II SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Services, each as requested by Recipient and as described more fully on Annex A attached hereto (the “**Services**”).

Section 2.02 Changes to the Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Service in order to reflect new procedures, processes or other methods of providing such Service, including modifying the applicable fees for such Service to reflect the then current fair market value of such service (a “**Change**”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “**Change Request**”).

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Service in any material respect or increase Recipient’s cost for such Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the

implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Services not otherwise specifically listed in Section 2.01 (a “*New Service*”). Any agreement between the Parties on the terms for a New Service must be in accordance with the provisions of Article III and Article IV hereof, will be deemed to be an amendment to this Agreement and such New Service will then be a “*Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III PAYMENT OF FEES; TAXES

Section 3.01 Management Fee. The Fund shall pay the Service Provider the Management Fee in accordance with the terms and subject to the conditions set forth in the Advisory Agreement.

Section 3.02 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Services provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Services as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Services, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 3.02 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE IV SERVICE PROVIDER RESPONSIBILITIES

Section 4.01 Service Provider General Obligations. Service Provider will provide the Services to Recipient, subject to the requirements under Sections 3.01 and 3.02 herein and subject to reimbursement of permitted expenses in accordance with the Investment Advisory Agreement entered into concurrently herewith, on a non-discriminatory basis and will provide the Services in the same manner as if it were providing such services on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 4.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records with respect to the Services in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Services, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 4.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE V TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 7.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
LIMITED WARRANTY

Section 6.01 Limited Warranty. Service Provider will perform the Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Services under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Services for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Service, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE VII
MISCELLANEOUS

Section 7.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or Recipient or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. No Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Services.

Section 7.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 7.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 7.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 7.05 Governing Law. Subject to Section 7.14, this Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 7.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 7.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 7.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 7.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 7.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Chief Legal Officer
Fax: (972) 628-4147

If to the General Partner or the Fund, addressed to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Fax: (919) 854-1401

Section 7.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 7.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 7.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 7.14 Jurisdiction; Venue; Waiver of Jury Trial. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“*Dispute*”) shall be submitted exclusively to the U.S. District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, and any appellate court thereof (“*Enforcement Court*”). Each Party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including administrative, arbitration, or litigation, other than the Enforcement Court. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) “or” is not exclusive; (vii) “including” and “includes” will be deemed to be followed by “but not limited to” and “but is not limited to, “respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: 6/21/17

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

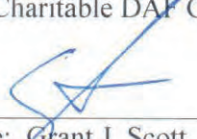
By: _____
Name: James Dondero
Title: President
Date:

CHARITABLE DAF GP, LLC

By:  _____
Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By:  _____
Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

Annex A

Services

Finance & Accounting

- Book keeping
- Cash management
- Cash forecasting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management
- Valuation

Tax

- Tax audit support
- Tax planning
- Tax prep and filing

Legal

- Document review and preparation

Trading

- Trade execution
- Risk management
- Trade settlement
- General operations

Facilities

Public Relations Support

Information Technology Infrastructure Support

SECOND AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTMENT ADVISORY AGREEMENT (this “*Agreement*”), dated to be effective from January 1, 2017 (the “*Effective Date*”) is entered into by and between **Charitable DAF Fund, L.P.**, a Cayman Islands exempted limited partnership (the “*Fund*”), **Charitable DAF GP, LLC**, a limited liability company organized under the laws of the State of Delaware (the “*General Partner*”), the general partner of the Fund, and **Highland Capital Management, L.P.**, a limited partnership organized under the laws of the State of Delaware (the “*Investment Advisor*”). Each of the signatories hereto is sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the Fund, the General Partner and the Investment Advisor entered into that certain Investment Advisory Agreement dated January 1, 2012 (the “*Original Agreement*”);

WHEREAS, the Parties amended and restated the Original Agreement in its entirety on the terms set forth in that certain Amended and Restated Investment Advisory Agreement dated July 1, 2014 (the “*Existing Agreement*”);

WHEREAS, the parties desire to amend and restate the Existing Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree, and the Existing Agreement is hereby amended and restated in its entirety, as follows:

1. Investment Advisory Services. Subject to Section 7, the Investment Advisor shall act as investment advisor to the Fund, the General Partner with respect to the Fund and its subsidiaries and shall provide investment advice with respect to the investment and reinvestment of the cash, Financial Instruments and other properties comprising the assets and liabilities of the Fund and its subsidiaries.

2. Custody. The Financial Instruments shall be held in the custody of Jefferies & Company, Inc. or one or more banks selected by the General Partner (each such bank, a “Custodian”). The General Partner will notify the Investment Advisor promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the General Partner. At no time shall the Investment Advisor have possession of or maintain custody over any of the Financial Instruments. The Investment Advisor shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

EXHIBIT 41

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3. Authority of the Investment Advisor. Subject to Section 7 of this Agreement, the Investment Advisor shall advise the General Partner on behalf of the Fund and/or its subsidiaries with respect to:

(a) investing, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "**Financial Instruments**"), and the sale of Financial Instruments short and covering such sales.

(b) engaging in such other lawful Financial Instruments transactions;

(c) research and analysis;

(d) purchasing Financial Instruments and holding them for investment;

(e) entering into contracts for or in connection with investments in Financial Instruments;

(f) investing in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;

(g) possessing, transferring, mortgaging, pledging or otherwise dealing in, and exercising all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Fund and/or its subsidiaries;

(h) lending, either with or without security, any Financial Instruments, funds or other properties of the Funds, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Fund;

(i) opening, maintaining and closing accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;

(j) opening, maintaining and closing accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combining purchase or sale orders on behalf of the Fund with orders for other accounts to which the Investment Advisor or any of its affiliates provides investment services (“*Other Accounts*”) and allocating the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts;

(l) entering into arrangements with brokers to open “average price” accounts wherein orders placed during a trading day are placed on behalf of the Fund and Other Accounts and are allocated among such accounts using an average price;

(m) organizing one or more corporations and other entities formed to hold record title, as nominee for the Fund and/or its subsidiaries (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Fund and/or its subsidiaries;

(n) causing the Fund and/or its subsidiaries to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Investment Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engaging personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants and investment bankers); and

(p) voting of Financial Instruments, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

4. Policies of the Fund. The activities engaged in by the Investment Advisor on behalf of the Fund and/or its subsidiaries shall be subject to the policies and control of the General Partner.

The Investment Advisor shall submit such periodic reports to the General Partner regarding the Investment Advisor's activities hereunder as the General Partner may reasonably request and a representative of the Investment Advisor shall be available to meet with the General Partner and/or any other representative of the Fund or its subsidiaries as reasonably requested by the General Partner.

In furtherance of the foregoing, the General Partner hereby appoints the Investment Advisor as the Fund's attorney-in-fact, with full power of authority to act in the Fund's name and on its behalf with respect to the Fund, as follows:

(a) to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner;

(b) to execute and combine purchase or sale orders on behalf of the Fund with orders for Other Accounts and allocate the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts; *provided, however*, that such purchase or sale orders shall be market rates;

(c) to direct the Custodian to deliver funds or the Financial Instruments, but only in the course of effecting trading and investment transactions for the Fund and subject to such restrictions as may be contained in the custody agreement between the Custodian and the Fund;

(d) to enter into contracts, provide certifications or take any other actions necessary to effect any of the foregoing transactions; and

(e) to select brokers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker-dealer's expertise in the relevant market or sector; the extent to which the broker-dealer makes market in the security or has an access to such market; the broker-dealer's skill in positioning the relevant market; the broker-dealer's facilities, reliability, promptness and financial stability; the broker-dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; and other factors deemed appropriate by the Investment Advisor.

5. Valuation of Financial Instruments. Financial Instruments will be valued in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided to the General Partner upon request.

6. Status of the Investment Advisor. The Investment Advisor shall, for all purposes, be an independent contractor and not an employee of the General Partner or the Fund or its subsidiaries, nor shall anything herein be construed as making the Fund or its subsidiaries or the General Partner, a partner, member or co-venturer with the Investment Advisor or any of its affiliates or clients. The Investment Advisor shall have no authority to act for, represent, bind or obligate the Fund or its subsidiaries or the General Partner except as specifically provided herein.

7. Investments. ALL ULTIMATE INVESTMENT DECISIONS WITH RESPECT TO THE FUND AND ITS SUBSIDIARIES SHALL AT ALL TIMES REST SOLELY WITH THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY, IT BEING EXPRESSLY UNDERSTOOD THAT THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY SHALL BE FREE TO ACCEPT AND OR REJECT ANY OF THE ADVICE RENDERED BY THE INVESTMENT MANAGER HEREUNDER FOR ANY REASON OR FOR NO REASON.

8. Reimbursement by the General Partner. The Investment Advisor may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the General Partner with respect to the Fund and/or its subsidiaries (any such appointee, a "*Sub-Advisor*"), including, but not limited to, any affiliate of the Investment Advisor, but payment for any such services shall be assumed by the Investment Advisor, and, therefore, neither the General Partner nor the Fund or any of its subsidiaries shall have any liability therefor; *provided, however*, that the Investment Advisor, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the General Partner with respect to the Fund and/or its subsidiaries hereunder, and the Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

9. Expenses.

(a) The Fund shall pay or reimburse the Investment Advisor and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Fund, any taxes imposed upon the Fund (including, but not limited to, collateralized debt obligations managed by the Investment Advisor or its affiliates), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Investment Advisor. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Investment Advisor's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Fund are paid by the Investment Advisor or by any Sub-Advisor, the Fund shall reimburse the Investment Advisor (or Sub-Advisors, as applicable) for such expenses so long as such expenses are at market rates.

10. Fees.

(a) The Fund shall pay the Investment Advisor a quarterly fee (the “**Management Fee**”) equal to 2.0% per annum (0.5% per quarter) of the Net Assets (as defined below) of the Fund, payable in advance at and calculated as of the first business day of each calendar quarter. For purposes of calculating the Management Fee, the Net Assets of the Fund will be determined before giving effect to any of the following amounts payable by the Fund generally or in respect of any Investment which are effective as of the date on which such determination is made: (i) any fee payable to the Investment Advisor as of the date on which such determination is made; (ii) any capital withdrawals or distributions payable by the Fund which are effective as of the date on which such determination is made; and (iii) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdback or other amounts specially allocated ending as of the date on which such determination is made. The Management Fee shall be prorated for partial periods and any applicable excess fees should be returned to the Fund by the Investment Advisor. Capital contributions made to the Fund after the commencement of a calendar quarter shall be subject to a prorated Management Fee based on the number of days remaining during such quarter.

(b) Subject to clauses (c) and (d) below, at the end of each Calculation Period (as defined below), an amount equal to 20% of the net capital appreciation of the Fund’s Investments (as defined below) after deducting the Management Fee shall be paid to the Investment Advisor (the “**Performance Fee**”); *provided, however*, that the net capital appreciation upon which the calculation of the Performance is based shall be reduced to the extent of any unrecovered balance remaining in the Loss Recovery Account (as defined below) maintained on the books and records of the Fund. The amount of the unrecovered balance remaining in the Loss Recovery Account at the time of calculating the Performance Fee shall be the amount existing immediately prior to its reduction pursuant to the second clause of the second sentence of clause (c) below.

(c) There shall be established on the books of the Fund a memorandum account (the “**Loss Recovery Account**”), the opening balance of which shall be zero. At the end of each Calculation Period, the balance in the Loss Recovery Account shall be adjusted as follows: first, if there has been, in the aggregate, net capital depreciation of the Fund’s Investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period (or with respect to the initial Calculation Period, since the Effective Date), an amount equal to such net capital depreciation shall be credited to the Loss Recovery Account, and, second, if there has been, in the aggregate, net capital appreciation of the Fund’s investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period, an amount equal to such net capital appreciation, before taking into account any Performance Fee to be paid to the Investment Advisor, shall be debited to and reduce any unrecovered balance in the Loss Recovery Account, but not below zero. Solely for purposes of this paragraph, in determining the Loss Recovery Account, net capital appreciation and net capital

depreciation for any applicable Calculation Period shall be calculated by taking into account the amount of the Management Fee paid for such period.

(d) In the event that all or a portion of the Fund's capital is distributed or withdrawn while there exists an unrecovered balance in the Loss Recovery Account, the unrecovered balance in the Loss Recovery Account shall be reduced as of the beginning of the next Calculation Period by an amount equal to the product obtained by multiplying the balance in such Loss Recovery Account by a fraction, the numerator of which is the amount distributed or withdrawn with respect to the immediately preceding distribution or withdrawal date, and the denominator of which is the total fair value of the Fund's Investment immediately prior to such distribution or withdrawal.

(e) For purposes of this Section 10, the net capital appreciation and net capital depreciation of the Fund's Investments for any given period will be calculation in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided upon the General Partner's request. As soon as reasonably practicable following the end of a Calculation Period, the Investment Advisor shall deliver, or cause to be delivered, to the General Partner a statement showing the calculation of the Performance Fee, if any, with respect to such Calculation Period. The Performance Fee, if any, shall be payable within three (3) business days of the General Partner's receipt of such statement.

(f) Payments due to the Investment Advisor shall be made by wire transfer to:

Bank Name: Compass Bank
ABA#: 113010547
FBO: Highland Capital Management, L.P. (Master Operating Account)
Acct#: 0025876342

(g) For purposes of this Section 10, the following terms have the definitions set forth below:

"Calculation Period" means the period commencing on the Effective Date (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period, and ending as of the close of business on the first to occur of the following: (i) the last day of a calendar year; (ii) the distribution or withdrawal of capital of the Fund (but only with respect to such distributed or withdrawn amount); (iii) the permitted transfer of all or any portion of a partner's interest in the Fund; and (iv) the final capital distribution of the Fund following its dissolution;

"Investments" means all investments, securities, cash, receivables, financial instruments, contracts and other assets, whether tangible or intangible, owned by the Fund;

“*Net Assets*” means, with respect to the Fund as of any date, the excess of the total fair value of all Investments over the total liabilities, debts and obligations of the Fund, in each case, calculated on an accrual basis in accordance with accounting principles generally accepted in the United States and the then current valuation policy of the Service Provider, a copy of which will be provided to the General Partner upon request; and

“*Services Agreement*” means that certain Second Amended and Restated Service Agreement, dated effective as of the Effective Date, by and among the Parties, as amended, restated, modified and supplemented from time to time.

11. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Investment Advisor, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including parties acting as agents for the execution of transactions) (each, a “*Covered Person*” and collectively, “*Covered Persons*”) shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the General Partner or the Fund or any of its subsidiaries or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the General Partner or the Fund, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the General Partner or the Fund, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the General Partner or the Fund or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on behalf of the General Partner or the Fund or any of its subsidiaries, (iii) any act or omission by the General Partner or the Fund or any of its subsidiaries, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the General Partner or the Fund or any of its subsidiaries selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the General Partner or the Fund or any of its subsidiaries or in furtherance of the business of the General Partner or the Fund or any of its subsidiaries in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the General Partner and the Fund and its subsidiaries shall indemnify and hold harmless Covered Persons (the “*Indemnified*”

Party”), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnified Party and arise out of or in connection with the business of the General Partner or the Fund or any of its subsidiaries, any investment made under or in connection with this Agreement, or the performance by the Indemnified Party of Covered Person’s responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnified Party in connection with the General Partner or the Fund or any of its subsidiaries, provided that an Indemnified Party shall not be entitled to indemnification hereunder to the extent the Indemnified Party’s conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Party’s conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnified Party in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the General Partner prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnified Party is not entitled to be indemnified hereunder.

(f) The right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnified Party’s successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Investment Advisor and each Indemnified Party will generally not be liable to the General Partner or the Fund for any act or omission (or alleged act or omission), absent bad faith, willful misconduct, fraud or gross negligence, and the General Partner and the Fund will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the General Partner, the Fund or its subsidiaries, absent bad faith, willful misconduct, fraud or gross negligence. As a result of these provisions, the General Partner, the Fund and its subsidiaries, as applicable (not the Investment

Advisor or any other Indemnified Party) will be responsible for any Losses resulting from trading errors and similar human errors, absent bad faith, willful misconduct, fraud or gross negligence or the ability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Investment Advisor and its affiliates on behalf of the Fund and/or its subsidiaries, the General Partner acknowledges that trading errors (and similar errors) will occur and that the General Partner will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Investment Advisor or its affiliates.

12. Activities of the Investment Advisor and Others. The Investment Advisor, and its affiliates may engage, simultaneously with their investment management activities on behalf of the Fund, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Fund. Notwithstanding the foregoing, the Investment Advisor and its affiliates shall devote as much time to provide advisory service to the General Partner with respect to the management of the Fund's assets as the Investment Advisor deems necessary and appropriate. In addition, the Investment Advisor or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, the investment advice provided by the Investment Advisor to the General Partner with respect to the Fund. The Investment Advisor may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from advice given to, or securities recommended or bought for, the Fund, even though their investment objectives may be the same or similar. The Investment Advisor may recommend transactions in securities and other assets in which the Investment Advisor has an interest, including securities or other assets issued by affiliates of the Investment Manager. Each of the General Partner and the Fund acknowledges that it has received, reviewed and had an opportunity with respect to (a) a copy of Part 2 of the Investment Advisor's Form ADV, and (b) the supplemental disclosures attached hereto as Exhibit A, each of which further describes conflicts of interest relating to the Investment Advisor, its affiliates and their respective advised accounts.

13. Term. This Agreement shall remain in effect through an initial term concluding December 31, 2017 and shall be automatically extended for additional one-year terms thereafter, except that it may be terminated by the Investment Advisor, on the one hand, or by the General Partner and the Fund, on the other hand, upon at least 90 days' prior written notice to the General Partner or the Investment Advisor, as the case may be, prior to General Partner's fiscal year-end.

14. Miscellaneous.

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Investment Advisor, to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Telephone Number: (972) 628-4100
Facsimile Number: (972) 628-4147

If to the General Partner or the Fund, to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Telephone Number: (919) 854-1407
Facsimile Number: (919) 854-1401

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Fund. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the General Partner, the Fund, the Investment Advisor, each Indemnified Party and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (*e.g.*, officers, partners and personnel of the Investment Advisor and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; provided; however, that the Investment Advisor may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(e) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed in that State.

(f) Jurisdiction; Venue; Waiver of Jury Trial. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“*Dispute*”) shall be submitted exclusively to the U.S. District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, and any appellate court thereof (“*Enforcement Court*”). Each Party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including administrative, arbitration, or litigation, other than the Enforcement Court. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Nothing in this Section 14(f) shall be construed to limit either party’s right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10, 11 and 14 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons’ firm or company may require in the context thereof.


(k) Arm's-Length Agreement. The General Partner and the Fund have approved this Agreement and reviewed the activities described in Section 12 and in the Investment Advisor's Form ADV and the risks related thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: 6/21/17

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____

Name: James Dondero

Title: President

Date:

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date: 6/21/2017

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date: 6/21/2017

EXHIBIT A

Supplemental Disclosures

Potential Conflicts of Interest

The scope of the activities of Highland Capital Management, L.P. (the “*Investment Adviser*”), its affiliates, and the funds and clients managed or advised by the Investment Adviser or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on Charitable DAF Fund, L.P. and its subsidiaries (collectively, the “*Fund*”) in the future that cannot be foreseen or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts. Additional conflicts are described in the Investment Adviser’s Form ADV. You are urged to review the Investment Adviser’s Form ADV in its entirety prior to investing in the Fund.¹

Highland Group & Highland Accounts. None of the Investment Adviser, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “*Highland Group*”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Adviser is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Adviser or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations and collateralized loan obligations that invest in leveraged loans (collectively, “*CDOs*”) and other vehicles managed by members of the Highland Group (collectively, “*Highland Accounts*”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Adviser may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Adviser has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the

¹ The Investment Adviser’s latest Form ADV filed and Part 2 Brochures can be accessed here: https://adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=110126

Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained by the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Adviser will devote to the Fund only as much time as the Investment Adviser deems necessary and appropriate to manage the Fund's business.

The Investment Adviser undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities. It is the policy of the Investment Adviser to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Adviser has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order for any accounts cannot be fully allocated under prevailing market conditions, the Investment Adviser may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Adviser will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the U.S. Investment Advisers Act of 1940, as amended. The Investment Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Fund fairly or equitably in the short-term or over time and there can be no assurance that the Fund will be able to participate in all investment opportunities that are suitable for it.

The Investment Adviser and/or its affiliates may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day for the Fund, the Highland Accounts or affiliates of the Investment Adviser are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Highland Group Trading. As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor's or issuer's securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor's or issuer's securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund's investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund's portfolio, the Investment Adviser may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Adviser in accordance with its fiduciary duties to its other clients, the Investment Adviser may take, or be required to take, actions which adversely affect the interests of the Fund.

The Highland Group has invested and may continue to invest in investments that would also be appropriate for the Fund. Such investments may be different from those made by the Fund. The Highland Group does not have any duty, in making or maintaining such investments, to act in a way that is favorable to the Fund or to offer any such opportunity to the Fund, subject to the Investment Adviser's internal allocation policy. The investment policies, fee arrangements and other circumstances applicable to such other accounts and investments may vary from those applicable to the Fund and its investments. The Highland Group may also provide advisory or other services for a customary fee with respect to investments made or held by the Fund, and neither the Fund nor its investors shall have any right to such fees. The Highland Group may also have ongoing relationships with, render services to or engage in transactions with other clients who make investments of a similar nature to those of the Fund, and with companies whose securities or properties are acquired by the Fund.

As further described below, in connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Adviser to effect a transaction for the Fund, and the Fund's investments may be constrained as a consequence of the Investment Adviser's inability to use such information for

advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Adviser will devote as much time to the Fund as the Investment Adviser deems appropriate to perform its duties in accordance with the Fund's advisory agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Adviser's other accounts.

Various Activities of the Investment Adviser and its Affiliates. The directors, officers, personnel, employees and agents of the Investment Adviser and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories or provide banking, agency, insurance and/or other services, and receive arm's length fees in connection with such services, for the Fund or its investments or other entities that operate in the same or a related line of business as the, for other clients managed by the Investment Adviser or its affiliates, or for any obligor or issuer in respect of the CDOs, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund. The Fund may compete with other Highland Accounts for capital and investment opportunities.

There is no limitation or restriction on the Investment Adviser or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Adviser and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Adviser's investment committee, the Investment Adviser or its affiliates have to other clients.

The Investment Adviser and its affiliates may participate in creditors or other committees with respect to the bankruptcy, restructuring or workout of an investment of the Fund or another account. In such circumstances, the Investment Adviser or its affiliates may take positions on behalf of themselves or another account that are adverse to the interests of the Fund.

The Investment Adviser and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CDOs, Highland Accounts and other investments purchased by the Fund. Such transactions shall be subject to fees that are intended to be no greater than arm's-length fees, and the Fund shall have no right to any such fees. There is no expectation for preferential access to transactions involving CDOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Adviser and/or its affiliates and the Fund shall not have any right to any such fees.

Investments in Highland Accounts Managed by the Investment Manager or its Affiliates. The Fund may invest a significant portion of its capital in Highland Accounts. The Investment Adviser or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Highland Accounts. If the Fund invests in Highland Accounts in secondary transactions, the Fund will indirectly pay the fees (senior and subordinated) of such Highland Accounts and any

carried interest. If the Fund provides all of the equity for a Highland Account, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Adviser or its affiliates will have conflicting division of loyalties and responsibilities regarding the Fund and a Highland Account, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of a Highland Account or to other interests of the Investment Adviser.

Multiple Levels of Fees. The Investment Adviser and the Highland Accounts are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if investors in the Fund were able to invest directly in the Highland Accounts or their respective underlying investments. Investors in the Fund should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a Highland Account may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (*e.g.*, break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees).

Cross Transactions and Principal Transactions. The Investment Adviser may effect client cross-transactions where the Investment Adviser causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Adviser may engage in a client cross-transaction involving the Fund any time that the Investment Adviser believes such transaction to be fair to the Fund and such other client.

The Investment Adviser may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Adviser and/or its affiliates, in each case in accordance with applicable law, which will include the Investment Adviser obtaining independent consent on behalf of the Fund prior to engaging in any such principal transaction between the Fund and the Investment Adviser or its affiliates.

The Investment Adviser may advise the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Adviser's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Adviser or its affiliates. In each such case, the Investment Adviser and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Fund and the other parties to such trade. Under certain circumstances, the Investment Adviser and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Adviser's valuation procedures to another client managed or advised by the Investment Adviser or such affiliates. In addition, the Investment Adviser may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Adviser may obtain independent consent

in writing on behalf of the Fund, which consent may be provided by the managing member of the General Partner or any other independent party on behalf of the Fund, if any such transaction requires the consent of the Fund under Section 206(3) of the U.S. Investment Advisers Act of 1940, as amended.

Material Non-Public Information. There are generally no ethical screens or information barriers among the Investment Adviser and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Adviser, any of its personnel or its affiliates were to receive material non-public information about a particular obligor or issuer, or have an interest in causing the Fund to acquire a particular security, the Investment Adviser may be prevented from advising the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Adviser. Notwithstanding the maintenance of certain internal controls relating to the management of material nonpublic information, it is possible that such controls could fail and result in the Investment Adviser, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material nonpublic information could have adverse effects on the Investment Adviser's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Adviser's ability to perform its portfolio management services to the Fund. In addition, while the Investment Adviser and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Adviser's ability to operate as an integrated platform could also be impaired, which would limit the Investment Adviser's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Conflicts Relating to Equity and Debt Ownership by the Fund and Affiliates. In certain circumstances, the Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Adviser to reconcile the conflicting interests in the Fund and such other accounts in a way that protects the Fund's interests. Additionally, the Investment Adviser or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Adviser in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Adviser's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Other Fees. The Investment Adviser and its affiliates are permitted to receive consulting fees, investment banking fees, advisory fees, breakup fees, director's fees, closing fees, transaction fees and similar fees in connection with actual or contemplated investments. Such fees will not reduce

or offset the Management Fee. Conflicts of interest may also arise due to the allocation of such fees to or among co-investors.

Soft Dollars. The Investment Adviser's authority to use "soft dollar" credits generated by the Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Adviser may give the Investment Adviser an incentive to select brokers or dealers for transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Adviser rather than giving exclusive consideration to the interests of the Fund.

November 30, 2020

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott

RE: Termination of Second Amended and Restated Investment Advisory Agreement, dated January 1, 2017, by and among Highland Capital Management, L.P. (“HCMLP”), Charitable DAF Fund, L.P., and Charitable DAF GP, LLC (the “Agreement”).

To Whom It May Concern:

As set forth in Section 13 of the Agreement, the Agreement is terminable at will upon at least 90 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective 90 days from the date hereof. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

November 30, 2020

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott

RE: Termination of Second Amended and Restated Service Agreement, dated January 1, 2017, by and among Highland Capital Management, L.P. (“HCMLP”), Charitable DAF Fund, L.P., and Charitable DAF GP, LLC (the “Agreement”).

To Whom It May Concern:

As set forth in Section 5.02 of the Agreement, the Agreement is terminable at will upon at least 60 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 5**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Debtor.

§ Chapter 11

§

§ Case No. 19-34054-sgj11

§

§

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

*Vol. 1
000001*

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*Vol. 2
000401*

000501

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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004704				
004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

Vol. 22

004874

004882

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:)
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹)
) Case No. 19-34054-sgj11
)
Debtor.)
)
)

**DEBTOR’S WITNESS AND EXHIBIT LIST WITH RESPECT
TO EVIDENTIARY HEARING TO BE HELD ON JUNE 8, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following witness and exhibit list with respect to the *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248], which the Court has

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

set for hearing at 9:30 a.m. (Central Time) on June 8, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James P. Seery, Jr.;
2. Grant Scott (by deposition designation);
3. Any witness identified by or called by any other party; and
4. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Transcript of January 9, 2020 Hearing		
2.	Transcript of July 14, 2020 Hearing		
3.	Transcript of February 2, 2021 Hearing		
4.	Transcript of February 14, 2021 Hearing		
5.	Debtor’s Motion for an Order to Enforce the Order of Reference [Docket 2351-4]		
6.	DAF/CLO Holdco Structure Chart (GScott000007) [Dondero June 1, 2021 Deposition Exhibit 1]		
7.	CLO Holdco, Ltd.’s Notice of Appearance and Request for Copies [Docket No. 152]		
8.	Certificate of Service [Docket No. 296]		
9.	Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures For Operations in the Ordinary Course [Docket No. 339]		
10.	Certificate of Service [Docket No. 345]		

Letter	Exhibit	Offered	Admitted
11.	Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 774]		
12.	Certificate of Service [Docket No. 779]		
13.	Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 854]		
14.	Redline of Fifth Amended Plan of Highland Capital Management, L.P. (AS MODIFIED) [Docket No. 1809]		
15.	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Docket No. 1943]		
16.	Transcript Designations from the January 21, 2021 Deposition of Grant Scott		
17.	Transcript Designations from the June 1, 2021 Deposition of Grant Scott		
18.	Amended and Restated Investment Advisory Agreement by and between Charitable DAF Fund, L.P., Charitable DAF GP, LLC, and HCMLP, effective July 1, 2014 (PATRICK_000923)		
19.	Amended and Restated Service Agreement by and among HCMLP, Charitable DAF Fund, L.P., and Charitable DAF GP, LLC, effective July 1, 2014 (PATRICK_000938)		
20.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
21.	All exhibits necessary for impeachment and/or rebuttal purposes		
22.	All exhibits identified by or offered by any other party at the Hearing		

Dated: June 5, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 1

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 9, 2020
) 9:30 a.m. Docket
Debtor.)
) DEBTOR'S MOTION TO COMPROMISE
) CONTROVERSY WITH OFFICIAL
) COMMITTEE OF UNSECURED
) CREDITORS [281]
)

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

APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtors: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtors: Melissa S. Hayward
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: Dennis M. Twomey
4 SIDLEY AUSTIN, LLP
5 One South Dearborn Street
6 Chicago, IL 60603
7 (312) 853-7539

8 For the Official Committee Penny P. Reid
9 of Unsecured Creditors: SIDLEY AUSTIN, LLP
10 2021 McKinney Avenue, Suite 2000
11 Dallas, TX 75201
12 (214) 981-3413

13 For the Issuer Group: James T. Bentley
14 (Telephonic) SCHULTE ROTH & ZABEL, LLP
15 919 Third Avenue
16 New York, NY 10022
17 (212) 756-2000

18 For the Issuer Group: James E. Bain
19 (Telephonic) JONES WALKER, LLP
20 811 Main Street, Suite 2900
21 Houston, TX 77002
22 (713) 437-1820

23 For Acis Capital Rakhee V. Patel
24 Management GP, LLC: Annmarie Antoinette Chiarello
25 WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
Dallas, TX 75201
(214) 745-5250

For Redeemer Committee of Terri L. Mascherin
the Highland Crusader JENNER& BLOCK, LLP
Fund: 353 N. Clark Street
(Telephonic) Chicago, IL 60654-3456
(312) 923-2799

For Redeemer Committee of Mark B. Hankin
the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
(Telephonic) New York, NY 10022-3098
(212) 891-1600

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee:

Lisa L. Lambert
Meredyth A. Kippes
OFFICE OF THE UNITED STATES
TRUSTEE
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-8967

6 For Jefferies, LLC:
(Telephonic)

Patrick C. Maxcy
DENTONS US, LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6361
(312) 876-8000

9 For Patrick Daugherty,
Pro Se:

Patrick Daugherty

10

11 Recorded by:

Hawaii S. Jeng
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2006

12

13

14

15 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

16

17

18

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 9, 2020 - 9:56 A.M.

2 THE COURT: All right. Let's roll to Highland now.
3 Let's get appearances from lawyers in the courtroom, please.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz; Pachulski Stang Ziehl & Jones. Happy New Year,
6 Your Honor.

7 THE COURT: Happy New Year.

8 MR. POMERANTZ: Here on behalf of the Debtor.

9 THE COURT: Okay. Thank you.

10 MS. HAYWARD: Good morning, Your Honor. Melissa
11 Hayward and Zachery Annable on behalf of the Debtor.

12 THE COURT: Good morning.

13 MS. LAMBERT: Lisa Lambert, and I think Ms. Kippes
14 will be joining me, representing William Neary, the United
15 States Trustee.

16 THE COURT: Thank you.

17 MS. CHIARELLO: Good morning, Your Honor. Annmarie
18 Chiarello and Rakhee Patel here on behalf of Acis Capital
19 Management, LP and Acis Capital Management GP, LLC.

20 THE COURT: Thank you.

21 MR. CLEMENTE: Good morning, Your Honor. Matthew
22 Clemente from Sidley Austin on behalf of the Official
23 Committee of Unsecured Creditors. With me today are my
24 partners Dennis Twomey and Penny Reid.

25 THE COURT: Okay. Good morning. All right. Is that

1 all of the courtroom appearances?

2 All right. We have several people on the phone. I think
3 most of them are just listening in. If you're on the phone,
4 though, and you wish to appear, you may do so at this time.

5 MR. BENTLEY: Good morning, Your Honor. This is
6 James Bentley of Schulte Roth & Zabel. Also on the line is my
7 co-counsel, Joseph Bain of Jones Walker. We represent the
8 Issuers.

9 THE COURT: Okay. Good morning.

10 MS. MASCHERIN: Good morning, Your Honor. This is --

11 MR. MAXCY: Good morning. Patrick --

12 MS. MASCHERIN: Good morning, Your Honor. This is
13 Terri Mascherin of Jenner & Block. Also on the line with me
14 is my partner, Mark Hankin. We represent the Redeemer
15 Committee of the Highland Crusader Fund, which is one of the
16 members of the Unsecured Creditors' Committee.

17 THE COURT: Okay. Good morning.

18 MR. MAXCY: Good morning, Your Honor. This is
19 Patrick Maxcy from Dentons US, LLP on behalf of Jefferies,
20 LLC.

21 THE COURT: Okay. Thank you. All right. Well, I
22 guess that is it for the phone appearances.

23 Mr. Pomerantz, we're -- we have just one matter on the
24 calendar, the motion to compromise with the Committee. I saw
25 two limited objections, and then a U.S. Trustee's broader

1 objection. I'll start with, Do you have any of these
2 objections worked out?

3 MR. POMERANTZ: Yes, we do.

4 THE COURT: Okay.

5 MR. POMERANTZ: We believe we have the Jefferies
6 objection worked out, as well as the objection of the Issuers.
7 And I'll, during the course of my presentation, alert Your
8 Honor to how that's worked out.

9 THE COURT: Okay.

10 MR. POMERANTZ: And then we'll have a revised order
11 that basically addresses each of their concerns, or at least
12 Jefferies' concerns, but the statements on the record for the
13 Issuers' concerns.

14 THE COURT: Okay. Very good.

15 MR. POMERANTZ: Good morning again, Your Honor. Jeff
16 Pomerantz; Pachulski, Stang, Ziehl & Jones. I'm joined in the
17 courtroom by Ira Kharasch, Greg Demo, and John Morris from my
18 office. I would also like to introduce the Court to the
19 proposed new members of the board of directors of Strand
20 Advisors, which is the Debtor's general partner. They're all
21 sitting in the first row behind counsel's well. And that's
22 Mr. James Seery, --

23 THE COURT: Good morning.

24 MR. POMERANTZ: -- Mr. John Dubel, --

25 THE COURT: Good morning.

1 MR. POMERANTZ: -- and the Honorable Russell Nelms.

2 THE COURT: Yes. I've met him before.

3 MR. POMERANTZ: As have we. We thought you would
4 remember him.

5 The resumes of Mr. Seery and Mr. Dubel were attached to
6 the motion filed on December 27th, and those two resumes and
7 the resume of the Honorable Judge Nelms were attached to the
8 reply that was filed last evening. And while Mr. Seery and
9 Mr. Dubel may be new names to Your Honor, we know that you are
10 familiar with Judge Nelms, who sat with you in this district.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: Also in the courtroom, Your Honor, is
13 Brad Sharp, the Debtor's chief restructuring officer from DSI,
14 --

15 THE COURT: Good morning.

16 MR. POMERANTZ: -- and his colleague, Fred Caruso,
17 who spends most of his working hours at the Debtor's Dallas
18 headquarters.

19 THE COURT: Good morning.

20 MR. POMERANTZ: We have the declaration of Mr. Sharp
21 that we would move into evidence at this point in time.

22 THE COURT: All right. I've got a stack of paper.
23 If you have an extra copy for me to use, --

24 MS. HAYWARD: Your Honor, may I approach with the --

25 THE COURT: You may.

1 MS. HAYWARD: Your Honor, it was filed, the
2 declaration was filed. I'm not sure that we have a copy of --

3 MR. POMERANTZ: Your Honor, we will also at the
4 appropriate time during my presentation, I'll bring up to Your
5 -- ask to bring up to Your Honor revisions to the term sheet
6 that was attached to the motion.

7 THE COURT: Okay.

8 MR. POMERANTZ: Copies have been given to Ms. Lambert
9 as well as the Committee.

10 THE COURT: Okay. Very good. All right. Well, what
11 was handed to me was the preliminary term sheet as well as the
12 CVs for the proposed new board members. I don't see the
13 declaration --

14 MR. POMERANTZ: Your Honor, if I may approach, I have
15 a copy.

16 THE COURT: You may. All right. Very good.

17 MR. POMERANTZ: So we would move that declaration
18 into evidence.

19 THE COURT: All right. The Court will admit this.
20 It was filed on the docket at 327, but I will additionally
21 admit it as Exhibit 1 today.

22 (Debtor's Exhibit 1 is received into evidence.)

23 THE COURT: At some point in time, I want to give
24 parties the opportunity to cross-examine Mr. Sharp. Do you
25 want to do that now, or shall we hear an opening statement?

1 MR. POMERANTZ: However Your Honor prefers. I mean,
2 maybe it's helpful to hear argument first, and then, before
3 the Trustee --

4 THE COURT: I think I'd like to hear opening
5 statements and then we'll --

6 MR. POMERANTZ: Thank you.

7 THE COURT: -- make the opportunity available. Okay.

8 OPENING STATEMENT ON BEHALF OF THE DEBTOR

9 MR. POMERANTZ: Your Honor, by way of background, we
10 appeared before Your Honor on December 6th and December 19th.
11 And during each of those hearings, we described for the Court
12 negotiations that were underway between the Committee and the
13 Debtor which, if successful, would have -- would eliminate the
14 need for contested and uncertain and costly litigation
15 regarding the appointment of a Chapter 11 trustee and really
16 put this case in a position where the Debtor and the Committee
17 would be able to work together constructively towards
18 negotiation of a plan.

19 As a result of our hearing on December 19th, Your Honor
20 entered a scheduling order that set deadlines for either the
21 filing of a motion to approve a settlement, or alternatively,
22 the filing of one or more motions for the appointment of a
23 trustee.

24 As set forth and required by the scheduling order, we
25 filed our motion on December 27th, and in that motion we

1 sought approval of a term sheet and ancillary documents
2 between the Debtor and the Committee, which I'll describe
3 shortly.

4 While a couple of items had not yet been agreed to at the
5 time the motion was filed, I'm pleased to report that over the
6 last couple of days we've been able to reach closure with the
7 Committee with respect to those items, and there would also be
8 some modifications to the term sheet, which I'll go through in
9 a few moments.

10 The motion, Your Honor, seeks approval of the term sheet,
11 which accomplishes a variety of things that, again, will allow
12 the Debtor and the Committee to put the acrimony that has
13 existed in this case for the first three months behind us and
14 allow us to focus on productive matters. In the last 24
15 hours, as I mentioned, there have been a few changes to the
16 term sheet that I will describe. And I would like to hand up
17 Your Honor a redline and a clean copy of the revised term
18 sheet and exhibits. May I approach?

19 THE COURT: All right. You may. Do you have an
20 extra for the law clerk? Okay. Thank you.

21 (Pause.)

22 MR. POMERANTZ: Your Honor, the term sheet does a
23 number of things. Would you like me to give Your Honor some
24 time to look through the redlines?

25 THE COURT: No. You may proceed.

1 MR. POMERANTZ: Okay. The term sheet does a number
2 of things. The first thing the term sheet does is appointment
3 of an independent board at Strand Advisors. Strand Advisors
4 is the GP of the Debtor. The Debtor is an LP. The Debtor
5 previously had filed a motion to approve the retention of Brad
6 Sharp as the chief restructuring officer, and that initial
7 agreement and motion contain details regarding the scope of
8 Mr. Sharp's authority and the scope of what the Debtor could
9 do without Mr. Sharp's prior consent.

10 The Committee raised concerns that the structure was not
11 sufficient to ensure that decisions were being made for the
12 Debtor only in their best interests and without any
13 inappropriate influence from Mr. Dondero.

14 To address the Committee's concerns, a focal point of the
15 settlement was the Debtor's agreement to appoint an
16 independent board of directors at Strand who would be
17 responsible for managing the operations of the Debtor.

18 Over the last few weeks, a principal aspect of the
19 negotiations between the Committee and the Debtor have been
20 discussing who should the independent directors be.
21 Conceptually, the Debtor and the Committee both agreed that
22 the board should include, first, a person with significant
23 industry experience in which the Debtor operates -- hedge
24 funds, money management; second, a person with deep
25 restructuring experience from the financial advisor side; and

1 third, a person with some sort of judicial or governmental
2 experience.

3 The Debtor originally provided the Committee with three
4 proposed candidates. The Committee considered the Debtor's
5 request, but instead presented the Debtor with four different
6 candidates and asked the Debtor to choose from those four.
7 The Debtors interviewed each of those people and ultimately
8 agreed on Messrs. Dubel and Seery, who were each on the
9 original list.

10 As of the deadline to file the motion on December 27th,
11 the Committee and the Debtor had still not agreed on the
12 identity of the third board member, but the parties were
13 hopeful that an agreement could ultimately be reached and we
14 decided to go ahead and file the motion. As I'm sure Your
15 Honor saw in the motion, it was contingent upon everyone
16 agreeing on the third board member.

17 Ultimately, the Debtor and the Committee both agreed that
18 Mr. Dubel and Mr. Seery could identify the third board member
19 out of a pool of four people: Two of the people originally
20 requested by the Committee and two people identified by the
21 Debtor. This week and over the weekend, Mr. Seery and Mr.
22 Dubel interviewed each of the four candidates, and ultimately
23 decided on the appointment of Judge Nelms as the third
24 independent board member.

25 The board, as it will be constituted going forward, in the

1 Debtor's opinion, consists of three exceptional individuals
2 who are independent of the Debtor, have a sterling reputation
3 in the community, and bring to the Debtor a variety of the
4 skills that we believe, and believe the Committee agrees,
5 gives the Debtor the best opportunity to achieve a consensual
6 restructuring and otherwise manage the affairs of the Debtor
7 in the best interests of the stakeholders.

8 It is contemplated that the Debtor will continue to retain
9 the services of DSI as the chief restructuring officer, and
10 ultimately the board will determine if it's important to
11 retain a CEO going forward.

12 The second thing that the term sheet does, Your Honor, was
13 the removal of Mr. Dondero as an officer and director of
14 Strand and eliminate all of his control over decision-making
15 of the Debtor. The Debtor recognized early on in this case
16 that Mr. Dondero's continuing role with the Debtor in a
17 position of authority made the Committee extremely uneasy.
18 Accordingly, the term sheet provides for him removing himself
19 as an officer and director of Strand and that he would no
20 longer be in a position of control at the Debtor.

21 However, since the filing of the motion, over the last
22 several days, concerns have been raised about whether removing
23 Mr. Dondero from the business entirely would have unintended
24 consequences. I believe I may have mentioned at prior
25 hearings that, because of his involvement as a portfolio

1 manager under various contracts with third parties, that there
2 could be adverse economic consequences to the Debtor if he
3 didn't stay in some role.

4 As a result of discussions over the last 24 hours, the
5 Committee has agreed and the Debtor agreed to modify the term
6 sheet to allow the new board to decide whether to retain Mr.
7 Dondero in his capacity as a portfolio manager, provided,
8 however, that he will not receive any compensation and he will
9 agree to resign if requested by the board.

10 In any event, he will have no decision-making control at
11 all and he will report to the independent board.

12 The corporate governance documents that create the new
13 independent board of Strand also provide that Mr. Dondero, as
14 the owner of the equity in Strand, may not replace the board
15 without the Committee consent or court order.

16 The third major aspect of the term sheet, Your Honor, was
17 the agreement on operating protocols, and it really relates to
18 the ground rules for the Debtor's operations going forward and
19 when notice to the Committee is required of certain
20 transactions that would otherwise be in the ordinary course of
21 business.

22 Importantly, Your Honor, we are not trying to modify the
23 Bankruptcy Code in any way. Any transactions out of the
24 ordinary course of business would still be subject to Your
25 Honor's approval.

1 However, in this case, as we indicated in the initial
2 motion we filed when the case was in Delaware, whether or not
3 something is ordinary is not straightforward in a case such as
4 the Debtor's, given the nature of the Debtor's operations. So
5 we thought it was important to establish ground rules up
6 front, and establishing those ground rules was one of the
7 things we did initially in the case. We had opposition from
8 the Committee, and we've worked through the opposition and
9 ultimately arrived at the operating protocols that are
10 attached to the term sheet.

11 They have been slightly modified in nonmaterial ways in
12 the documents I handed up to Your Honor.

13 They were subject to substantial negotiations between the
14 Debtor and the Committee, and we also expect them to be the
15 subject of future discussions with the Committee and the
16 independent board after the independent board takes -- takes
17 place. Takes over.

18 Two parties in interest, Your Honor, Jefferies and a group
19 of Issuers, the CLOs, have filed comments to the term sheet,
20 which I'll describe in a few moments.

21 THE COURT: Okay.

22 MR. POMERANTZ: The next aspect, Your Honor, of the
23 term sheet was the provision of standing to the Creditors'
24 Committee to pursue certain insider claims.

25 During the negotiations, the Committee requested immediate

1 standing to investigate and potentially prosecute claims
2 against insiders to the extent those insiders were not
3 employed by the Debtor. Granting standing at this stage of
4 the case was a difficult give by the Debtor. However, the
5 Committee impressed upon the Debtor the importance of them
6 being able to control the filing of any actions against the
7 insiders, and the Debtor decided to accede to the Committee's
8 request.

9 It still remains the Debtor's hope that, with the creation
10 of the independent board, that the Debtor, the Committee, and
11 any insiders who might be subject to any such claims will be
12 able to come together and negotiate a consensual resolution of
13 this case. While all parties, I'm sure, can and know how to
14 litigate, hopefully they will agree that a negotiated outcome
15 is better than a litigated outcome.

16 The next aspect of the term sheet, Your Honor, was the
17 document preservation protocols, and it provides for certain
18 procedures to be put in place to address the Committee's
19 concerns about document preservation. They are contained in
20 an exhibit to the term sheet. Again, slight nonmaterial
21 modifications were made in what I handed up to Your Honor.
22 And essentially they provide also for the Committee's access
23 to privileged documents to aid in their investigation and
24 prosecution of claims to which they are granted standing, and
25 also sets forth a procedure to be followed to address concerns

1 if the information is subject to shared privileges by several
2 entities.

3 As I mentioned, Your Honor, three parties have filed
4 responses to the motion. The first is Jefferies. Jefferies
5 is a secured creditor of the Debtor with respect to its margin
6 account held at Jefferies, and also has a similar account held
7 by a non-debtor affiliate. They have asked for clarification
8 that, one, nothing in the protocols or the motion affects its
9 rights under the underlying agreements or the safe harbor
10 provisions of the Bankruptcy Code entitling them to enforce
11 their remedies; and two, that the Debtors will not trade in
12 the prime account without Jefferies' consent, and if that
13 consent is sought and not obtained, only subject to court
14 order.

15 The Debtor has agreed to include language in the order to
16 address Jefferies' concern, and at the conclusion of my
17 presentation I'll submit to Your Honor an order and a redline
18 containing that language.

19 THE COURT: Okay.

20 MR. POMERANTZ: The second objection -- or not
21 objection, Your Honor -- the second statement was filed by a
22 group of Issuers of CLO obligations.

23 THE COURT: Uh-huh.

24 MR. POMERANTZ: And they were concerned that certain
25 aspects of the operating protocols which require notice to the

1 Committee prior to the Debtor being able to take certain
2 actions could conflict with the provisions of the underlying
3 agreements which might require the Debtor to take action on a
4 more expedited basis.

5 Neither the Issuers or the Debtor are aware of any
6 potential transactions that will arise prior to the next
7 hearing before Your Honor on January 21st. We understand --
8 we were not party to these discussions between the Committee
9 and the Issuers yesterday, but we understand the way it's been
10 resolved is that the Issuers will withdraw their objection as
11 it relates to going forward today, subject to being able to
12 come back to the Court on the 21st and revisit the issue if
13 additional changes are not made acceptable to them to resolve
14 their issues and concerns.

15 THE COURT: Okay.

16 MR. POMERANTZ: But I think all parties acknowledge
17 that over the next 12 days this is a theoretical issue rather
18 than a practical issue.

19 THE COURT: Okay.

20 MR. POMERANTZ: This brings us, Your Honor, to the
21 United States Trustee's opposition, which is really the only
22 true objection to the motion that has been filed. No creditor
23 has filed an objection, no investor has filed an objection,
24 and no governmental agency -- which the U.S. Trustee in its
25 objection purports to be pursuing their interests -- has filed

1 an objection, either.

2 As Your Honor probably recalls, at the December 19th
3 hearing the Trustee indicated its intent to oppose any
4 agreement between the Debtor and the Committee that would
5 involve corporate governance and to file its own motion for
6 the appointment of the trustee. That motion is currently
7 scheduled for hearing on January 21st. We had asked the U.S.
8 Trustee to reserve judgment on the Committee's and Debtor's
9 agreement until after we had come to an agreement and after we
10 had presented it to the Trustee, in hopes that it would
11 address their concerns. However, as the Court told us -- as
12 the U.S. Trustee told us and Your Honor at the December 19th
13 hearing, there was nothing short of appointment of a trustee
14 that would satisfy the Trustee.

15 The comments really didn't make sense to us, and I believe
16 it perplexed Your Honor, but here we are.

17 At its core, Your Honor, the U.S. Trustee's objection is
18 really a request that the Court substitute its business
19 judgment for that of the Debtor and the Committee, the
20 Committee who represents the substantial majority of all
21 claims in this case, when both of them have decided that
22 agreeing to certain changes in corporate governance, among
23 other things, is preferable to the uncertain, costly, and
24 time-consuming litigation over a trustee, and also the
25 uncertainty, even if a trustee was appointed, on how the case

1 would be administered.

2 To the contrary, under the corporate governance proposal,
3 we have three highly-qualified individuals who are poised to
4 take over management of the Debtor, and each bring with them
5 various skills that one trustee would not have.

6 The Trustee has filed its motion for appointment of a
7 trustee, and I'm sure on the 21st will argue that the Code
8 requires it. However, that's not the issue before Your Honor
9 today. It's not whether a trustee is appropriate. It's
10 whether the motion and the term sheet is a sound exercise of
11 the Debtor's business judgment under Section 363, and,
12 importantly, a reasonable compromise of the pending disputes
13 between the Debtor and the Committee.

14 The Trustee's objection raises three general points, none
15 of which have any merit. First, the Trustee argues that there
16 is a lack of disclosure of significant matters. The first
17 aspect that the Trustee raises to, or points to, is the
18 absence of identification of the third board member and the
19 absence of disclosure of the compensation that the board
20 members will receive, which will be backstopped by the Debtor.

21 As I described before, Your Honor, the identity of the
22 third member of the board was a fluid process which was only
23 resolved earlier this week, and the Debtor did not believe
24 that it was appropriate to reach agreement on director
25 compensation until all board members could provide input.

1 Last night, we filed a reply to the Trustee's objection in
2 which we disclosed the identity of the third board member, and
3 we'll also disclose the proposed compensation to be provided
4 to them, which essentially is as follows. Each member of the
5 board will receive \$60,000 a month for the first three months
6 of the case, \$50,000 a month for the next three months of the
7 case, and the presumption thereafter would be \$30,000 a month.
8 However, people recognize that this case will look a lot
9 differently six months from now, and while the presumption is
10 \$30,000, the Debtor, the independent board members, and the
11 Committee will sit down, see how the case looks, and decide
12 whether any modifications are appropriate.

13 The amount of compensation, which at first blush may seem
14 significant, really reflects the significant amount of work
15 that the Debtor, the Committee, and the independent directors
16 anticipate will be required from them not only to get up to
17 speed about the case, but to effectively manage this complex
18 Debtor's business operations. The directors have heard from
19 the Debtor and the Committee of all the issues, of all the
20 concerns, and this is not an enviable task that they are
21 undertaking. The compensation they are being provided thus
22 far we believe is appropriate under the circumstances and
23 commensurate with the work that they are going to be expected
24 to complete.

25 If they are successful and they are able to achieve a

1 consensual restructuring here, the million and a half or so
2 that will be spent on them will be best million and a half
3 dollars I think spent in this case.

4 Your Honor, we also have updated corporate governance
5 documents which --

6 (Pause.)

7 MR. POMERANTZ: Your Honor, may I approach with the
8 updated corporate governance documents?

9 THE COURT: You may. Okay.

10 MR. POMERANTZ: As I will discuss in a moment, Your
11 Honor, there is really no need for the Court to approve the
12 corporate governance documents, as they have been executed by
13 Strand, which is not a debtor before this Court. However,
14 there are a couple of matters in those documents that I want
15 to bring to the Court's attention that do impact on the
16 Debtor.

17 THE COURT: Okay.

18 MR. POMERANTZ: First, as is typical for board
19 members, Strand has agreed to indemnify the independent
20 directors to the full extent permitted by law. The
21 independent directors have requested that the Debtors backstop
22 Strand's agreement, and the Debtor and the Committee agree,
23 and the documents so provide.

24 Strand has also committed to obtain directors and officers
25 coverage for the independent directors. It has been located,

1 it's in the process of being finalized and bound, and the
2 Debtor will pay the cost of that coverage.

3 The independent directors have also asked for language in
4 the order approving the settlement that requires a party
5 seeking to assert a claim against the independent directors
6 relating to their role as an independent director to
7 demonstrate to this Court that a claim is colorable before
8 filing the claim and providing the Court with jurisdiction
9 over any such claim. This is language that's similar in other
10 similar types of cases.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: That will be reflected in the order.

13 Next, the Trustee objects to the failure of the Debtor to
14 identify who the potential chief executive officer of the
15 Debtor will be. And essentially, she's arguing that you have
16 to identify that CEO now; it has to be subject to court
17 approval. However, there's no requirement that any company
18 retain a CEO. It's not a corporate law requirement. And the
19 fact that the board reserves the right to retain a CEO in the
20 future is consistent with corporate law and is not a basis to
21 deny the motion. And in any event, normally, the retention of
22 a CEO is not a subject that is brought to the Court's
23 attention for Court approval.

24 So the lack of any clarity over the identity of the CEO is
25 a reflection of the fact that this independent board does not

1 know if a CEO is required. They will come in, they are going
2 to interview all the employees, they're going to sit down with
3 the CRO, they're going to sit down with counsel, they're going
4 to sit down with the Committee, and ultimately they will
5 decide if a CEO is to be retained. And if a CEO is to be
6 retained, they will go through the process of identifying who
7 that CEO is. But again, it's not a reason to deny the motion.

8 The Trustee has also argued that because the Committee is
9 not granted standing to pursue claims against current
10 employees, as opposed to former employees, that there might be
11 some statute of limitations concerns with respect to claims
12 against those employees. The argument doesn't really make
13 sense to us. In the standard case, the Debtor retains causes
14 of action. And the Committee can investigate causes of
15 action. And at some point during the case, a Committee could
16 come in and could demand that the Debtor prosecute them, and
17 if the Debtor unreasonably refuses, could seek standing before
18 the Court.

19 In this case, the Debtors agreed up front that the
20 Committee has the standing to prosecute certain claims against
21 insiders that are not employees of the Debtor, which obviates
22 the need for standing. So we've gone one step more. But the
23 Trustee is arguing that that leaves a void for the claims that
24 are not subject to the agreement on standing.

25 However, the term sheet provides that the board is going

1 to make determinations on what employees should remain, what
2 employees should not remain. To the extent the board
3 terminates any employees and there are claims against them,
4 then basically the Committee will have the ability to bring
5 those claims.

6 To the extent that those people aren't terminated, we have
7 no doubt that the Committee, in the course of its
8 investigation, will determine whether claims should be brought
9 against those people, and at some point in time may ask the
10 Debtor to prosecute those claims or ultimately seek standing.

11 In any event, these things are not being swept under the
12 rug. There's no real legitimate concern that there's any
13 statute of limitations issue that will prevent those claims
14 from being prosecuted.

15 I am very much aware and have no doubt that the Committee
16 is going to be laser-focused on claims, and any concern that
17 statute of limitations is going to lapse I think is not well-
18 taken.

19 The Trustee next argues that the Court does not have the
20 jurisdiction to implement the corporate governance matters,
21 and for that reason the motion should be denied. They -- she
22 argues that because Strand is not a debtor, that the Court has
23 no authority to appoint --

24 MS. LAMBERT: Your Honor, I object. The United
25 States Trustee is a he. I am not the United States Trustee,

1 and the attacks *ad hominem* are inappropriate.

2 THE COURT: All right. Well, clarification, the U.S.
3 Trustee is the guy in Washington. But anyway, you may
4 proceed.

5 MR. POMERANTZ: I apologize to Ms. Lambert.

6 MS. LAMBERT: Actually, he's downstairs right now.
7 Bill Neary.

8 MR. POMERANTZ: I apologize to --

9 THE COURT: Oh, well, I thought you meant the big guy
10 in Washington. But anyway, you may proceed.

11 MR. POMERANTZ: I apologize to Ms. Lambert and no
12 offense was meant.

13 THE COURT: Okay.

14 MR. POMERANTZ: So, the U.S. Trustee argues that
15 because Strand is not a debtor that the Court has no authority
16 to appointment the independent directors and limit Mr.
17 Dondero's right to remove the independent directors. The
18 Debtor is not really seeking authority to appoint -- to have
19 court authority for the appointment of the directors at
20 Strand. Again, as I mentioned before, that authority exists
21 outside of bankruptcy. Strand is not a debtor. Strand could
22 appoint anyone it wants to carry out its responsibility as the
23 general partner of the Debtor, and it's exercising its
24 corporate authority to do so by installing a board at Strand.

25 Nor is the Debtor seeking court authority for Strand to

1 enter into the corporate governance documents. Other than the
2 couple of items I mentioned before, Your Honor, Strand can
3 enter into these documents without authority from this Court.
4 The only court authority that was required: Debtor to
5 backstop the indemnification obligations, Debtor to pay
6 compensation to the board members, and Debtor to pay for the
7 D&O policy.

8 With respect to the Court's right to limit Mr. Dondero's
9 ability to terminate the independent directors, the term sheet
10 contemplates the Court approving a stipulation which limits
11 Mr. Dondero's ability to terminate the independent directors,
12 and if he does in fact seek to terminate the appointment of
13 the independent directors, he would be in violation of court
14 order. But even more importantly, Your Honor, if he decided
15 to terminate the independent directors without the Committee's
16 consent and without the Debtor's consent, I wouldn't imagine
17 it would take anyone very long to come back before Your Honor
18 and ask Your Honor to very quickly appoint a trustee.

19 Accordingly, Your Honor, I think the argument of lack of
20 jurisdiction over Strand is a red herring and should be
21 denied.

22 Lastly, Your Honor, the Trustee makes a curious argument
23 that a trustee is needed to protect all investors and
24 governmental authorities. The Trustee argues that this case
25 demands transparency which can only be accomplished by a

1 Chapter 11 trustee.

2 One thing I think the Debtor and the Committee and the
3 U.S. Trustee will agree on, this case does demand
4 transparency. And we believe we've installed a corporate
5 governance structure, an operating protocol structure, a
6 document preservation structure, that does just that, provides
7 transparency that this Debtor has not been subject to and
8 which is quite different from the case that was before Your
9 Honor before.

10 So we believe that what the Debtor and the Committee have
11 done is not only in the interests of the Debtor, the
12 creditors, but investors and all governmental entities.

13 And no investor or governmental entity has had any
14 concerns or any problems with what is being done. They
15 haven't filed any objection. The U.S. Trustee apparently is
16 proceeding by proxy asserting those interests.

17 Second, nothing in the term sheet or any of the documents
18 limits the rights of investors or of governmental entities to
19 seek a trustee, to seek documents, or to do anything they
20 would -- that they would be entitled to do under the
21 Bankruptcy Code.

22 In any event, Your Honor, the fact that the Trustee
23 believes that a trustee is more appropriate, again, is an
24 argument that they can make at the January 21st hearing. It's
25 not a basis for denial of this motion.

1 In conclusion, Your Honor, the only economic stakeholders
2 in this case believe that proceeding with the transactions
3 contemplated by the term sheet is in the best interest of the
4 estate, will maximize their ability to achieve a consensual
5 restructuring, and move this case through the system as
6 quickly and efficiently as possible. The term sheet is a
7 valid exercise of the Debtor's business judgment under 363 and
8 an appropriate compromise of controversy, and the Trustee's
9 objections are really nothing more than a rehash of its
10 request for an appointment of a trustee.

11 For all these reasons, Your Honor, we request that the
12 Court overrule the U.S. Trustee's objection and approve the
13 motion.

14 THE COURT: All right. Well, before I hear from our
15 objectors, is there any friendly commentary? Mr. Clemente, I
16 figured you might want to address this.

17 MR. CLEMENTE: I do, Your Honor. And good morning.

18 THE COURT: Good morning.

19 OPENING STATEMENT ON BEHALF OF THE OFFICIAL COMMITTEE OF
20 UNSECURED CREDITORS

21 MR. CLEMENTE: For the record, Matthew Clemente from
22 Sidley Austin on behalf of the Official committee of Unsecured
23 Creditors. I do have some comments that I would like to make,
24 Your Honor, some, so please bear with me. I will try and be
25 brief.

1 THE COURT: Okay.

2 MR. CLEMENTE: I think as late as 1:00 o'clock in the
3 morning I wasn't sure that I would be in front of you with
4 this settlement fully in place in a manner that was
5 satisfactory to my Committee. As I mentioned to you in my
6 prior appearances in front of you, every provision was
7 important to the Committee, and they all work together. As
8 Your Honor can imagine, there was a lot of negotiation that
9 took place, including late in the day and early morning, to
10 come to that conclusion.

11 Some comments on our perspective as a committee, Your
12 Honor. As an initial matter, we were absolutely not okay with
13 the governance structure that was in place when the petition
14 was filed. As we detailed in our objections to the CRO motion
15 and the protocol motion back when the case was in Delaware,
16 the Committee has very real and identifiable concerns about
17 the Debtor's ability to dispatch its fiduciary duty. And the
18 Committee very seriously contemplated moving for a Chapter 11
19 trustee daily. That conversation is something that the
20 Committee continues to -- continued to engage in, Your Honor.
21 So it's something that they considered very, very carefully.

22 That was the lens through which the Committee was
23 approaching negotiations over the settlement agreement and the
24 independent director structure. That's how they viewed it.
25 That's the backdrop against which they came to it.

1 The Committee had two primary goals that it had sought to
2 achieve with the settlement agreement. The first was to
3 ensure that Mr. Dondero does not remain in a position of
4 management authority or control in any fashion with the
5 Debtor. Goal number two was to ensure that the value of the
6 Debtor's estate is preserved and maximized. Those two goals
7 needed to work together.

8 The Committee believes that the carefully-crafted
9 settlement agreement achieves these objectives in a manner
10 that is more beneficial to the estate than a potential Chapter
11 trustee and a related fight over its appointment at this
12 time.

13 The lynchpin of the settlement, Your Honor, is the
14 appointment of the three independent directors. And as Mr.
15 Pomerantz outlined for you, that was the subject of intense
16 discussion, negotiation, debate among the Committee and with
17 the Debtor. But we believe that Mr. Seery, Mr. Dubel, and
18 Judge Nelms are fully independent, highly qualified, and bring
19 relevant and complementary skillsets to this board. Mr.
20 Pomerantz referred to that, but we believe that the three
21 directors all bring unique talents and attributes that will
22 allow them to function effectively as a board and provide the
23 appropriate oversight and direction that we believe is
24 necessary here.

25 However, regardless of how independent or highly skilled

1 they may be, they would be of no use if they weren't bestowed
2 with the appropriate power. So that was another point that
3 was very important to the Committee, and we believe that the
4 settlement does this. The settlement makes clear that the
5 independent directors are granted exclusive control over the
6 Debtor, including over all employees. That's absolutely
7 critical to the Committee.

8 The settlement also provides that the CRO and the Debtor's
9 professionals shall report and serve at the direction of the
10 independent directors. That is also very important.

11 And let me be clear, Your Honor, because I think you may
12 have raised this at a prior hearing: This is not a board that
13 we expect to work at 50,000 feet, as demonstrated by the
14 compensation structure that Mr. Pomerantz outlined for you.
15 This will be a board that's hands-on, members of which will be
16 on the ground, at the Debtor, with a strong presence and a
17 clear message of who is in charge. That is critical for this
18 Committee.

19 Additionally, as Mr. Pomerantz mentioned, the new board,
20 in consultation with the Committee, is empowered to determine
21 whether a CEO should be retained. It's possible that one of
22 the independent directors could be that CEO, Your Honor. But
23 we wanted to make clear that that was an important part of the
24 structure, should the board determine that that was the way it
25 wanted to go.

1 So, in sum, Your Honor, we believe that the independent
2 board has the clear authority and the skillset that's
3 necessary to take control and will be actively and
4 aggressively doing so.

5 But let me be clear, rest assured, Your Honor, this is not
6 going to be a board that answers to the Committee in that
7 sense. I think that we will all be moving together
8 directionally, but it's very possible that I will be in front
9 of Your Honor arguing against a decision that this independent
10 board made. So I want to assure Your Honor that although the
11 Committee was very active and in fact picked Mr. Seery and Mr.
12 Dubel, and then Mr. Pomerantz detailed how the third director
13 was picked, we understand who their duty -- what their duty is
14 and we also understand that they're not a rubberstamp for the
15 Committee, Your Honor. And so I wanted to make that point to
16 you to assure Your Honor that that's not the structure that's
17 being set up here, nor are they the type of individuals that
18 would allow that to happen.

19 Additionally, Your Honor, the settlement grants the
20 Committee standing to pursue estate causes of action against
21 the related parties. That was very important to us, Your
22 Honor.

23 And in addition to that, the settlement provides the
24 Committee access to privileged documents and sets forth a
25 discovery protocol that will assist the Committee in its

1 investigation.

2 The Committee strongly believes that Mr. Dondero's
3 repeated past behavior, that there are many questionable
4 transactions that will need to be thoroughly investigated and
5 pursued. And so having those causes of action with the
6 economic party in interest related to those causes of action,
7 the Committee and its constituencies, we thought was very
8 important and very critical.

9 Granting standing, Your Honor, as I mentioned, avoids any
10 issues regarding who will be controlling those claims.

11 I'll touch on this in a moment, but Mr. Pomerantz talked
12 about Mr. Dondero remaining in name as an employee. Let me
13 assure Your Honor that that is not a backdoor around the
14 Committee's ability to investigate and immediately pursue
15 claims against him should that be the course that we choose to
16 take. So he's not part of that carve-out for current
17 employees. That's not at all happening. That would never be
18 something that my Committee would be comfortable with. So I
19 wanted to make clear to Your Honor that that's not something
20 that's happening with sort of this late edition of Mr.
21 Dondero's continuing on in name as an employee.

22 Your Honor, the settlement also lays out a very detailed
23 set of operating protocols which we do believe are appropriate
24 and provides the Committee with transparency, which I've been
25 expressing to Your Honor we've needed since this case has

1 started.

2 Finally, as we point out in our reply and as would always
3 be the case, should new facts develop or the situation demand
4 it, the Committee reserves the right to seek a Chapter 11
5 trustee, as does any other party in interest, to the extent it
6 may be appropriate at that time.

7 In short, Your Honor, the Committee very carefully and
8 diligently weighed the independent director option versus the
9 Chapter 11 trustee option. The Committee had very clear goals
10 in mind, as I expressed to you, and determined that those
11 goals could be achieved in a value-maximizing manner through
12 the independent director structure.

13 The negotiations were very intense, and it was only after
14 the Committee determined that each piece of the settlement was
15 to its satisfaction did it ultimately conclude that the
16 settlement maximizes value for all stakeholders while at the
17 same time protecting those stakeholders from exposure to
18 continuing insider dealing, breaches of duty, and
19 mismanagement.

20 Therefore, the Committee believes approving the settlement
21 is in the best interest of the estate, and therefore it
22 believes it should be approved.

23 I do want to offer a word about Mr. Dondero continuing as
24 an employee. As Your Honor was aware, the term sheet as
25 originally filed provided that Mr. Dondero would, among other

1 things, resign as an employee of the Debtor. Mid to late
2 afternoon yesterday, Mr. Ellington called me and said that the
3 Debtor was now of the view that Mr. Dondero should remain on
4 as an employee in that capacity for the benefit of the estate.
5 The Committee was, very appropriately, very skeptical of this,
6 as well as the sort of last-minute offer, last-minute, you
7 know, addition, however you want to view it -- some might
8 argue retrade -- that Mr. Dondero was to leave the Debtor,
9 period. That was our view. That was the way that the term
10 sheet was initially structured. And under no circumstances
11 was the Committee going to allow Mr. Dondero to have any
12 control over this Debtor.

13 Your Honor, the Committee doesn't know what, if any, the
14 consequences are of removing Mr. Dondero as an employee. And
15 we're not conceding at all that there are any value lost by
16 removing Mr. Dondero as an employee. Instead, what we're
17 doing is we're staying true to our structure with the
18 independent directors and we're empowering them to decide.
19 And so it's consistent with, you know, our goals of having the
20 independent director structure in place. And under the
21 settlement as now constructed, even with this late addition or
22 adjustment, Mr. Dondero would remain as an employee in name
23 only, subject in all respects to the direction, oversight, and
24 removal by the independent board. And importantly, should
25 they decide to do that, Mr. Dondero shall resign. And he

1 shall receive no compensation.

2 So he will not be in control of this Debtor. The
3 independent directors are. And he's not going to be empowered
4 to make decisions on behalf of the Debtor. Instead, we're
5 empowering our independent directors to make those decisions
6 and determinations on behalf of the Debtor.

7 I wanted -- I thought it was important that I provide that
8 perspective to Your Honor, as this is something that came in
9 at a very, very late hour.

10 Overall, Your Honor, for the reasons I have stated and the
11 reasons in our reply, the Committee, as a fiduciary of all
12 creditors in this case, believes that the settlement is in the
13 best interests of the creditors and should be approved. And
14 at this time, it's the better alternative than the cost,
15 delay, and uncertainty resulting from a Chapter 11 trustee
16 fight and the potential appointment of a Chapter 11 trustee.

17 It is time to put the governance issues behind us, Your
18 Honor, and to move forward to determine how to maximize value
19 for the creditors and how to get them paid.

20 Your Honor, just regarding the specific resolutions of
21 objections that Mr. Pomerantz put on the record, I agree with
22 how Mr. Pomerantz characterized those, and the Committee is
23 supportive of those resolutions as well.

24 Those are all my remarks, Your Honor, but I am happy to
25 answer any questions or address any concerns Your Honor may

1 have.

2 THE COURT: Okay. Two follow-up questions. First, I
3 know I asked you this at a previous hearing and you told me,
4 but your Committee, as I recall, is very well constituted.
5 Just remind me of the members.

6 MR. CLEMENTE: Yes.

7 THE COURT: You have a representative from the
8 Redeemer Committee, --

9 MR. CLEMENTE: Yes, Your Honor.

10 THE COURT: -- which is a \$140 million or so
11 arbitration award?

12 MR. CLEMENTE: Yes, Your Honor.

13 THE COURT: Okay. And who else is on the Committee?
14 Is an Acis representative?

15 MR. CLEMENTE: Acis is on the Committee, Your Honor.

16 THE COURT: Uh-huh.

17 MR. CLEMENTE: Meta-e Discovery, who is a trade
18 vendor of the Debtor, is on the Committee. And UBS
19 Securities, who is also --

20 THE COURT: Okay.

21 MR. CLEMENTE: -- a litigation claimant, is on the
22 Committee.

23 It was the U.S. Trustee in Delaware's parting gift to me
24 to name a four-member committee, Your Honor.

25 (Laughter.)

1 THE COURT: Okay. Makes it awkward at times. And
2 then back to the Dondero subject.

3 MR. CLEMENTE: Yes, Your Honor.

4 THE COURT: I mean, again, both Mr. Pomerantz and you
5 clarified that the proposal now is the new board will decide
6 if he stays on, Mr. Pomerantz said as a portfolio manager.

7 MR. CLEMENTE: That is correct, Your Honor.

8 THE COURT: Am I -- I mean, I'm hearing that
9 correctly?

10 MR. CLEMENTE: That is correct, Your Honor.

11 THE COURT: So, right now, whatever officer positions
12 he has, he's technically not resigning? Or --

13 MR. CLEMENTE: He is resigning as an officer of the
14 company, Your Honor.

15 THE COURT: Okay. He's resigning? So the board will
16 just decide, is he going to be a portfolio manager or some --
17 whatever the employee title is?

18 MR. CLEMENTE: Or they could decide that he's not
19 necessary.

20 THE COURT: Or not necessary? In any event, no
21 compensation?

22 MR. CLEMENTE: That is correct, Your Honor.

23 THE COURT: Okay.

24 MR. CLEMENTE: And as you can see, the term sheet
25 provides that Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor as well. That was
2 language that was added last night as well.

3 THE COURT: All right. So they're going to make the
4 decision, does he help preserve value by staying in some
5 capacity or not?

6 MR. CLEMENTE: That is correct, Your Honor.

7 THE COURT: Okay.

8 MR. CLEMENTE: That, cutting through it, that is the
9 way that ultimately the Committee views it.

10 THE COURT: Okay.

11 MR. CLEMENTE: And if there's an opportunity -- and
12 I'm not conceding that there is. I'm not conceding that he
13 preserves any value.

14 THE COURT: Uh-huh.

15 MR. CLEMENTE: But we wanted to give the option to
16 our independent directors to make that determination. Because
17 if there's an opportunity to preserve value, that's what we're
18 trying to achieve.

19 THE COURT: Okay. And I don't even know if you've
20 thought through this. Would there be some sort of notice
21 filed on record in the case if --

22 MR. CLEMENTE: If --

23 THE COURT: -- if the decision is made to --

24 MR. CLEMENTE: To -- to --

25 THE COURT: -- hire him or keep him as a portfolio

1 manager?

2 MR. CLEMENTE: So, I think the default under the term
3 sheet, as revised, is he stays in that capacity in terms of
4 name. The independent directors will -- they're subject to
5 his control and direction, and they could decide to remove
6 him.

7 THE COURT: Uh-huh.

8 MR. CLEMENTE: Perhaps if Your Honor --

9 THE COURT: Okay.

10 MR. CLEMENTE: We could provide notice if they make
11 the determination to remove him, but I think the default is
12 that, you know, he's in that -- he's remaining as that
13 employee name currently. So that's the current default.

14 THE COURT: Okay. All right. Thank you.

15 MR. CLEMENTE: Thank you very much, Your Honor.

16 THE COURT: Well, Ms. Patel, you're getting up so
17 I'll hear -- I don't know who all has been in the loop over
18 this overnight development.

19 OPENING STATEMENT ON BEHALF OF ACIS CAPITAL MANAGEMENT

20 MS. PATEL: Your Honor, Acis has been in the loop as
21 a member of the Committee. And I will be very brief with
22 respect to Acis's individual comments. And I just want to be
23 clear: Obviously, I'm here as counsel for Acis, and so this
24 is Acis's individual position. Mr. Clemente aptly and very
25 ably handled the Committee's overall position with respect to

1 this.

2 But Your Honor, I just want to, on behalf of Acis, make
3 sure that, because of these developments, that's really -- I
4 really had hoped to have zero role today, but I want to make
5 sure that we're -- Acis is on record with respect to our
6 position. And obviously, given Your Honor's knowledge and
7 oversight of the long history of Acis's bankruptcy case and
8 seeing some of the events that transpired there, I'm sure that
9 this will all, against that backdrop, make an awful lot of
10 sense.

11 But, you know, it's this continued role for Mr. Dondero
12 that is of concern. You know, this issue even being raised
13 within like the last 48 hours by Mr. Ellington, the timing of
14 it just creates an issue. I mean, did this -- how could this
15 possibly have come out of left field when this is such a huge
16 part of what the Debtor does in its ordinary course of
17 business, is serve as a portfolio manager, and these are
18 contracts that have been negotiated, generally speaking,
19 internally by Highland. So the fact that if Mr. Dondero were
20 to exit the structure and there would be some potential
21 ramifications to that, I've got to wonder how much of a
22 surprise could that really have been to Highland folks.

23 But I just wanted to highlight, in connection with the
24 term sheet -- this is the preliminary term sheet that was
25 handed up Your Honor, and I believe Your Honor has a redline

1 version of it as well --

2 THE COURT: Uh-huh.

3 MS. PATEL: -- on Page 2, with respect to the role of
4 Mr. James Dondero, there's various provisions in there. And I
5 guess I would be remiss, Your Honor, if I didn't say, at least
6 out of the gate, Acis obviously supports the implementation of
7 this independent board of directors. We believe all the
8 candidates are very capable and are -- we put our reliance
9 upon them.

10 Obviously, we don't concede any issues. We'll see what
11 we're going to do. But certainly, for the time being, we do
12 support the entry of this agreement of the settlement -- or,
13 I'm sorry, approval of the settlement agreement by the Court
14 that lets the independent board be put into place.

15 But what I'll focus the Court on, on Page 2 under the role
16 of Mr. James Dondero, it goes through various provisions as to
17 what he'll resign to -- positions he'll resign from and that
18 he will remain as an employee of the Debtor, including
19 maintaining his title as portfolio manager for all funds and
20 investment vehicles for which he currently holds that title.
21 And then it goes on to provide as to who he'll report to and
22 how he will be governed, which includes by the independent
23 board, he will receive no compensation, and that he will be
24 subject to at all times the supervision, direction, and
25 authority of the independent directors.

1 Again, we have faith that the independent directors will
2 oversee this and will govern his role accordingly. However,
3 given Acis's history with how transactions have transpired at
4 Highland, we remain highly cautious with respect to what
5 happens next.

6 And to that end, Your Honor, the very last sentence there
7 on Page 2, "Mr. Dondero shall not cause any related entity to
8 terminate any agreements with the Debtor," is a key provision
9 of this that keeps Acis, as a Committee member, on board with
10 this agreement. I wanted to highlight that and note that, in
11 the last less than 48 hours, in the last 12 hours, or maybe a
12 little bit more than that, call it 18 to be safe, that's where
13 -- that's a provision that's been -- that's where we've ended
14 up. It's all of these issues have been going at lightning
15 speed, but I did want to just, for the record and so everybody
16 is clear, that is an important piece of this agreement to --
17 for Acis.

18 And as Your Honor knows, this Debtor, Highland, is wont to
19 try to terminate agreements and to try -- in an attempt to try
20 and transfer valuable contracts away and valuable revenue
21 stream away from an entity to an alternate entity. And that's
22 really the heart of our concern, Your Honor.

23 So, with that, I just wanted to be clear and be on record
24 as to Acis's position. Thank you.

25 THE COURT: Thank you. All right.

1 MR. POMERANTZ: Your Honor, if I briefly may respond
2 to the issues with Mr. Dondero while they are fresh in Your
3 Honor's mind?

4 THE COURT: Okay. Okay.

5 MR. POMERANTZ: Your Honor, look, we appreciate the
6 timing of this coming to the attention of the Committee as
7 being less than optimal. As Your Honor can appreciate, this
8 case that's been filed three months ago, a lot of people are
9 looking very carefully at what's happening to the Debtor.
10 Investors are looking. There was a transfer of venue. There
11 have been a lot of reports about potential trustee motions.
12 And we believe a lot of parties are waiting to see the outcome
13 of this hearing and the trustee hearing to determine whether
14 they will determine to continue to do business with the
15 Debtor.

16 It's not only an issue of contractual rights. It's also
17 an issue of whether investors feel comfortable on who is
18 managing, who is managing their investments.

19 This issue of Mr. Dondero's continuing role has been
20 something that at the Debtor we've continued to grapple with
21 over the last several weeks. It's always been our thought
22 that we should do nothing that would unduly harm the company
23 from an economic standpoint. I think the Committee shares
24 that. That if it's determined by an independent board -- and
25 don't take current Debtor professionals, don't take current

1 Debtor employees' word for it -- but if they determine that
2 there's an economic benefit by keeping him on to preserve
3 material revenue stream, they should be able to make that
4 determination. I think that's really at the core here. And I
5 think the Committee got ultimately comfortable with it because
6 it will be an independent board, the majority of the members
7 identified and chosen by them and accepted by the Debtor.

8 So, again, we apologize to the parties and the Court for
9 bringing this on late. It wasn't my intent to come here and
10 present modified versions of the term sheet that hadn't been
11 filed. But that's where we are, and that's why it has come
12 up, and that's why it's an extremely important issue, because
13 preserving whatever revenue we can for the Debtor is
14 important.

15 Now, at the end of the day, the board may either decide
16 that he doesn't preserve the revenue, or the negatives from
17 keeping him involved with the company outweigh any benefits.
18 And that's a decision they will have to make, and it'll be
19 their province to make. So I just wanted to give Your Honor
20 that perspective.

21 THE COURT: Okay.

22 MR. DAUGHERTY: Your Honor, may I approach?

23 THE COURT: Mr. Daugherty? You may.

24 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

25 MR. DAUGHERTY: I apologize. I was not planning to

1 address the Court at all today. I would have had my attorney
2 here for it. But I just ask a little bit of indulgence to
3 represent myself *pro se* for this issue.

4 This is the first I've heard that Mr. Dondero would stay
5 with the company. I think it's an awful idea. There's a
6 litany of reasons for that.

7 By the way, I'm completely in support of this -- of this
8 board that's been chosen. I have every confidence that
9 they'll be able to make good decisions eventually. But
10 they're stepping into this thing new. Obviously, I've been
11 through this in your court with *Acis* and other matters, and I
12 have deep, deep concerns about Mr. Dondero continuing in that
13 role, simply because of the influence it has on the rest of
14 the organization and the message that it sends, both
15 internally and externally, of where the company goes from
16 here.

17 So I just wanted to let you know my thoughts. I wasn't
18 planning to make them. I haven't filed anything. But that's
19 where I stand.

20 THE COURT: All right. Thank you, Mr. Daugherty.

21 All right. Before we hear from the U.S. Trustee, who I
22 know is going to have a lot to say, let me just circle back
23 briefly to Jefferies counsel and the CLO Issuers' counsel.
24 You heard the representations of Mr. Pomerantz earlier about,
25 well, first, in the case of Jefferies, that the Debtor has

1 agreed to language to address your concerns. Do you want to
2 weigh in on that and confirm that you're content that you're
3 going to have language to work out your concerns?

4 OPENING STATEMENT ON BEHALF OF JEFFERIES, LLC

5 MR. MAXCY: Thank you, Your Honor. Patrick Maxcy for
6 Jefferies.

7 No, I don't have anything additional to add to what Mr.
8 Pomerantz said. The language that we have worked out will
9 speak for itself and will be included in the order.

10 THE COURT: All right. Thank you.

11 And counsel for the CLO and CDO Issuers, do you confirm
12 that you would be in agreement to basically withdraw your
13 objections for now, but perhaps come back and make argument on
14 the 21st if you have not worked out language with the
15 Committee that you think works?

16 OPENING STATEMENT ON BEHALF OF THE ISSUER GROUP

17 MR. BENTLEY: James Bentley from Schulte Roth for the
18 Issuers, Your Honor.

19 I believe the deal that Mr. Pomerantz and Mr. Clemente
20 and I have discussed was adjourning our objection to the 21st,
21 --

22 THE COURT: Okay.

23 MR. BENTLEY: -- rather than withdrawing it.

24 THE COURT: Okay.

25 MR. BENTLEY: We're -- we believe we will be able to

1 come up with language acceptable to the Issuers, but we would
2 like to reserve the right to come back to the Court on our
3 limited objection if we cannot, given that our issue is really
4 -- really only relates to the 25 Issuers we represent.

5 THE COURT: Okay. Thank you very much.

6 All right. Ms. Lambert?

7 OPENING STATEMENT ON BEHALF OF THE UNITED STATES TRUSTEE

8 MS. LAMBERT: May it please the Court. As the Debtor
9 acknowledges, the motion that they are settling, the issues
10 that they are settling, are the issues that the U.S. Trustee
11 has raised in his motion to appoint a Chapter 11 trustee. As
12 a matter of statutory construction, Section 1104 does not
13 contemplate settlement of these issues. 1112, in contrast,
14 has a provision that if the Court finds and determines that
15 there is cause to convert a case, there are unusual
16 circumstances and the Court can find a reasonable
17 justification for the wrongdoing or the error that occurred
18 that led to cause -- for example, administrative defects in
19 1112, not filing monthly operating reports -- and that can be
20 cured. The Court has to make a finding that those -- these
21 defects can be cured within a reasonable period of time.
22 Section 1104 contains no analog to his.

23 If the Court finds cause to direct the appointment of a
24 Chapter 11 trustee, then the Court is supposed to appoint a
25 Chapter 11 trustee. And *Trailer Ferry* and *AWECO* both stand

1 for the proposition that, on today's day, we're supposed to
2 have evidence about what the management issues are that led to
3 this agreement. There's been no evidence. There's been no
4 allegations in the motion for settlement. And so the U.S.
5 Trustee is prepared to put that evidence on.

6 And Your Honor, one aspect of this is that the arbitration
7 agreement has been sealed. And there are people on the phone.
8 I don't know who's on the phone. The U.S. Trustee has opposed
9 the sealing of the arbitration -- not arbitration agreement,
10 the arbitration judgment -- has opposed the sealing of that.
11 And then they referenced a confidentiality order as the basis
12 to seal it. The U.S. Trustee also opposed that
13 confidentiality motion, which was filed subsequently to the
14 motion to seal.

15 There is no confidentiality order. An interim order was
16 entered sealing the arbitration award, but -- and the U.S.
17 Trustee has honored that by redacting all of the pleadings
18 that we filed relating to that, but it's important today for
19 the U.S. Trustee to be able to discuss it in argument, and it
20 is here -- and we have it prepared to be admitted into an
21 exhibit.

22 So, to proceed with my argument, Your Honor, I need some
23 clarification about what I can say.

24 THE COURT: You want clarification from me on what
25 you can say?

1 MS. LAMBERT: Well, I mean, either that or we need to
2 clear the room.

3 THE COURT: I've read the arbitration award.

4 MS. LAMBERT: Right.

5 THE COURT: It's in my brain.

6 MS. LAMBERT: Right. Okay.

7 THE COURT: Uh-huh.

8 MS. LAMBERT: And so one of the arguments here today
9 is that the U.S. Trustee is representing the SEC and
10 representing other Government agencies and things. No.
11 Obviously, that is not the U.S. Trustee --

12 THE COURT: I didn't hear that.

13 MS. LAMBERT: Okay. The -- one of the positions has
14 been, in the papers, is, well, that we don't have standing to
15 raise their issues. And that's true.

16 THE COURT: Okay.

17 MS. LAMBERT: But the problem is that the U.S.
18 Trustee has been constrained from discussing those issues with
19 the SEC. The arbitration award is very relevant to the SEC's
20 oversight. I anticipate the evidence today will be that the
21 SEC, after the financial crisis of 2008, imposed restrictions
22 on this Debtor on breach of fiduciary duty issues. I
23 anticipate that the arbitration findings would be very
24 relevant to whether those issues are ongoing or not.

25 THE COURT: Okay. Let me weigh in. I view the legal

1 standard that this Court has to weigh today as being: Is the
2 Debtor proposing something that is reflective of sound
3 business judgment, reasonable business judgment? And to the
4 extent this is a compromise of controversies with the
5 Committee, is this fair and equitable and in the best interest
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this
8 maybe doesn't even need Court approval. But to the extent
9 there are aspects of this that are appropriate to seek Court
10 approval on, you know, this is my task. I have to look at
11 what's presented, and is this reflective of sound business
12 judgment? Is this fair and equitable? Is it in the best
13 interest?

14 So, assuming there are tons of bad facts here reflected in
15 the arbitration award, reflected in other evidence, bad facts
16 that might justify a trustee, a Chapter 11 trustee, is this
17 nevertheless, what's proposed today, a reasonable compromise
18 of, you know, the trustee arguments the Committee could make
19 or, you know, is this a reasonable framework for going
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you
22 know, do I need to look at the arbitration award? Do we need
23 to have evidence of all of that? I can assume that there are
24 terrible facts out there that might justify a trustee, but I'm
25 looking at what's proposed. Is this a fair and equitable way

1 to resolve the disputes? Is it sound business judgment?
2 Frankly, is it a pragmatic solution here to preserve value?
3 So that's the legal standard I have in my mind here.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. LAMBERT: The standard is whether it is fair and
7 equitable to resolve the issues in the Chapter 11 trustee
8 motion, and it is the U.S. Trustee's position that they are
9 not resolved by this. And how are they not resolved? Number
10 one, they're not resolved because the problems that led to the
11 breach of fiduciary duty issues and findings are more
12 pervasive, both based on this Court' finding in the *Acis* case
13 and in the arbitration court's finding in Mr. Dondero. Other
14 officers are implicated.

15 THE COURT: But how --

16 MS. LAMBERT: Other employees are implicated.

17 THE COURT: Okay. I feel like maybe we're talking at
18 each other, not getting each other. I've got a proposed
19 solution here to totally change the playing field, if you
20 will. Bring in incredibly qualified people to --

21 MS. LAMBERT: Those people --

22 THE COURT: -- to change out the, you know, the
23 person that you say breached fiduciary duties, the, you know,
24 mismanagement, whatever bad labels we have here, but bring in
25 a clean slate.

1 MS. LAMBERT: No, Your Honor, because employees
2 remain at the Debtor who are problematic. The board that is
3 appointed owes a fiduciary duty to whom? Strand. Dondero.
4 He's still the board -- he is the sole stockholder. Yes. In
5 addition, --

6 THE COURT: And they won't be taking directions from
7 him.

8 MS. LAMBERT: In addition, --

9 THE COURT: The term sheet is they won't be taking
10 directions from him.

11 MS. LAMBERT: Your Honor, there is no evidence before
12 the Court today that Mr. Dondero has entered a stipulation.
13 This is part of the problem. This continues --

14 THE COURT: Well, if he doesn't, in five minutes the
15 Committee is going to be filing their trustee motion, right?

16 MS. LAMBERT: Well, then we haven't saved any time or
17 any money. This is the whole issue. They have to put on
18 evidence that this is a resolution of issues. We're going to
19 have the motion to appoint a Chapter 11 trustee either way.

20 THE COURT: All right. Well, we did have the
21 evidence of Mr. Sharp. Would you like to cross-examine him at
22 this point?

23 MS. LAMBERT: Your Honor, I would like to put the
24 U.S. Trustee's exhibits into evidence and then cross-examine
25 him.

1 THE COURT: All right. Your exhibits?

2 MR. POMERANTZ: Your Honor, we would object to any
3 exhibits. The Trustee has not filed an exhibit list.

4 MS. LAMBERT: Your Honor, this matter was set on an
5 expedited basis and the Court does not require exhibit and
6 witnesses lists when a matter is filed on an expedited basis.
7 It's impossible, when a response is filed at 5:00 o'clock the
8 evening before and supplements are made in the morning of the
9 hearing, for the U.S. Trustee to put on a witness and exhibit
10 list.

11 MR. POMERANTZ: Your Honor, we were here on the 19th.
12 We set out a briefing schedule. And maybe it was a couple
13 days short of normal notice. Ms. Lambert agreed to issue
14 discovery by a certain date, and she at no point said that
15 because there was 13 days' notice as opposed to longer period
16 that she couldn't comply and provide a witness list.

17 We provided with a witness list. We provided an exhibit
18 list. The Trustee's effort and attempt to now submit exhibits
19 and rely on maybe there were some changes this morning, that
20 just doesn't cut it, and that's not fair and that's not due
21 process.

22 THE COURT: Okay. I sustain the objection. The
23 exhibits won't be admitted since there was no exhibit list.

24 MS. LAMBERT: Your Honor, I do not have an exhibit
25 list from them. And they --

1 THE COURT: Well, they haven't offered any.

2 MS. LAMBERT: They put on new exhibits this morning.
3 The exhibits that the U.S. Trustee has are all things that
4 they are familiar with.

5 THE COURT: Let me back up. They didn't introduce
6 any exhibits. They --

7 MS. LAMBERT: But they introduced the declaration,
8 they introduced the supplements to the agreement that were
9 drafted this morning, they've introduced the new corporate
10 resolutions, all of which they handed me this morning.

11 THE COURT: All right. Well, the declaration of Mr.
12 Sharp, it's two pages long. It is, I don't think, any kind of
13 surprise information.

14 MS. LAMBERT: Your Honor, --

15 THE COURT: I'll allow you to cross-examine him.

16 MS. LAMBERT: -- the U.S. Trustee's exhibits are no
17 surprise, either. The *Acis* opinion is no surprise to anybody
18 in this courtroom.

19 THE COURT: Okay. Well, what are your exhibits?

20 MS. LAMBERT: The --

21 THE COURT: I probably should have asked.

22 MS. LAMBERT: The exhibits are the *Acis* opinion, the
23 arbitration awards or the determinations, both the partial and
24 the final, and the SEC's original judgment. There are four
25 exhibits.

1 THE COURT: All right. Well, Mr. Pomerantz, what
2 would you like to say? One of them I have obviously seen,
3 since I wrote it.

4 MR. POMERANTZ: Yes, you've written it. You wrote
5 it.

6 (Laughter.)

7 MR. POMERANTZ: Your Honor, I think this is a tempest
8 in a teapot. The Committee's brief that it filed in
9 opposition to the CRO retention, the ordinary course
10 protocols, and the cash management motion had a litany of
11 description of the Redeemer litigation, of the SEC litigation.
12 There are plenty of bad facts out here. Okay? We have an
13 interim order to seal. There was no hearing set today for our
14 final hearing.

15 The Trustee has objected to that order, and I suspect that
16 will be heard on the 21st. We don't think it's appropriate to
17 introduce the Redeemer award. However, we have read the
18 redacted provisions or portion of the U.S. Trustee's brief,
19 and we have no problem if the U.S. Trustee limits its argument
20 to the redacted portion in presenting that to the Court.

21 In other words, we don't believe that the few sentences
22 that were redacted need to be redacted.

23 However, to the extent they intend to submit the
24 arbitration award, we don't think it's appropriate, we don't
25 think it's necessary, we think Your Honor hit it right, that

1 the issues today are not whether there's mismanagement at the
2 Debtor. Okay?

3 The U.S. Trustee's position is, notwithstanding this new
4 structure, it doesn't work. She has a trustee motion on. She
5 can argue on the 21st that it doesn't work. Nobody is
6 prejudicing her right to do so.

7 We think it's prejudicial, it's unfair, it's procedurally
8 improper to submit the Redeemer arbitration award and to allow
9 the Trustee to do anything other than describe exactly what
10 she has in her pleading.

11 THE COURT: Okay. I sustain the objection to those
12 exhibits. Again, I've read them. They're in my brain. I
13 wrote one of them. But I will allow you to cross-examine Mr.
14 Sharp. So, Mr. Sharp, would you please come to the witness
15 stand? Please raise your right hand.

16 BRADLEY SHARP, DEBTOR'S WITNESS, SWORN

17 THE COURT: All right. Please be seated.

18 MS. LAMBERT: To clarify, Your Honor, has the Court
19 considered the *Acis* opinion and the arbitration opinions based
20 on judicial notice?

21 THE COURT: And we're doing a lot of hair-splitting
22 here. I'm just letting you know I -- the facts are in my
23 brain. You can't extract them from my brain. Okay?

24 MS. LAMBERT: Okay.

25 THE COURT: I know there have been a lot of bad

Sharp - Cross

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1 things, arguably bad things. But to me, the real issue here
2 today is whether this framework that has been heavily
3 negotiated with the Committee reflects reasonable business
4 judgment on the part of the Debtor, is a fair and equitable
5 resolution of the Committee's, you know, arguments in favor of
6 a trustee, and whether this makes, you know, sense going
7 forward to allow this Debtor to go forward without a trustee.
8 Okay?

9 So I really think that the evidence you want is not
10 terribly relevant. We technically aren't here on a trustee
11 motion today. We're here on whether a new board and the
12 terms, the protocols suggested, reflect reasonable business
13 judgment and reflect a fair compromise of arguments the
14 Committee has raised. All right? So I don't know how much
15 more clear I can make that. I guess the technical answer is
16 I'm not taking judicial notice of those things for purposes of
17 today.

18 All right. You may proceed.

19 CROSS-EXAMINATION

20 BY MS. LAMBERT:

21 Q Mr. Strand, can you state your name for --

22 A Sorry. Bradley Sharp, S-H-A-R-P.

23 Q Sharp. Mr. -- oh, sorry.

24 A No relation to Strand.

25 Q All right. Strand is the general partner of the Debtor,

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1 right?

2 A That is correct.

3 Q And there has been no change in the board of the Debtor
4 except Mr. Dondero's resignation; is that right?

5 A Well, it's a little different, because the -- Strand is
6 the general partner of the Debtor.

7 Q Yes.

8 A So the new board will be acting and in control of the
9 Debtor.

10 Q Yes. And there is -- Strand is a non-debtor, correct?

11 A That is correct.

12 Q And the stock of the non-debtor, Strand, is owned by
13 Dondero?

14 A Mr. Dondero owns Strand Advisors.

15 Q In its entirety?

16 A That is correct.

17 Q So the board will owe a fiduciary duty to Mr. -- to Mr.
18 Dondero?

19 A The board will have a fiduciary duty to the Debtor and to
20 Strand Advisors.

21 Q All right.

22 A Their duty is to the entity.

23 Q The -- Strand, as the general partner, as an entity, owes
24 a fiduciary duty to the Debtor, right?

25 MR. MORRIS: Objection to the extent it calls for a

1 legal conclusion.

2 THE COURT: Sustained.

3 BY MS. LAMBERT:

4 Q Do you know?

5 A As a lay person. I'm not an attorney.

6 Q Okay. So you don't know what the fiduciary roles of the
7 board will be; is that right?

8 A Well, the fiduciary board will be acting -- you know,
9 looking at it from my perspective as the chief restructuring
10 officer, the new board will be acting as the Debtor-in-
11 Possession. And, you know, they will be directing the Debtor-
12 in-Possession. You know, the Debtor-in-Possession has duties
13 to all parties in interest, and they will be directing the
14 Debtor. They will be directing me as CRO.

15 Q And, in addition, there may be a CEO, right?

16 A That is contemplated, correct.

17 Q It is contemplated? It --

18 A It is -- it is an option that the board has if they think
19 a CEO is necessary.

20 Q But you don't know whether a CEO is going to be appointed
21 or not?

22 A That's up to the board.

23 Q And you don't know what the compensation for that
24 individual might be, right?

25 A Again, that's up to the board.

1 Q Mr. Dondero is going to be an employee of the Debtor,
2 right?

3 A That's correct.

4 Q And Mr. Dondero started the Debtor, correct?

5 A I believe so.

6 Q And he also started Strand, right?

7 A I believe that's correct.

8 Q And he is also in control of a number of entities that the
9 Debtor does business with; is that right?

10 A That is correct.

11 Q Mr. Ellington is going to remain on with the Debtor?

12 A That -- Mr. Ellington is an employee. All employees are
13 now subject to the board.

14 Q Okay. And Mr. Ellington's role with the Debtor is what?

15 A He is general counsel with the Debtor.

16 Q And there are other in-house attorneys with the Debtor,
17 right?

18 A That's correct.

19 Q And who else is there currently?

20 A I don't have the list in front of me, you know, the
21 employee list. As of now, because obviously this is still --
22 hasn't been effected, so the board has not made any decisions
23 with respect to any employees going forward.

24 Q And the CFO remains the same?

25 A Yeah, that is, again, as of now. I don't know what the

1 board is going to do, if anything.

2 Q Do you have any anticipation of what you would recommend
3 to the board regarding the CFO?

4 A You know, I have many recommendations I have not made to
5 the board yet. I just met them this morning.

6 Q Are you aware that historically this Court has found that
7 the lawyers provided bad advice to the Debtor?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Sustained.

10 BY MS. LAMBERT:

11 Q Do you have any knowledge about whether there have been
12 findings that the law firm gave erroneous advice to the
13 Debtor? Or, I mean, the in-house counsel gave erroneous
14 advice.

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Sustained.

17 MS. LAMBERT: Your Honor, I'm asking for the
18 foundation.

19 THE COURT: Rephrase.

20 BY MS. LAMBERT:

21 Q Do you -- are you aware of any concerns about the in-house
22 counsel?

23 A Yes.

24 Q What is your knowledge?

25 A I have read the rulings from this Court.

1 Q And what is your understanding of those rulings?

2 A I don't recall specifically. I read that early on when I
3 was first employed. But there have been concerns with respect
4 to, you know, management of the Debtor.

5 Q As the CRO, have you made any recommendations to change
6 employees to date?

7 A As of now, I don't have a -- the board. You know, the
8 board has just been employed. We have not made
9 recommendations up to this point. We are still -- obviously,
10 have been evaluating our position and what needs to happen. I
11 think it's important for the Debtor at this time, a little
12 stability would be a good thing for -- until we develop the
13 direction going forward.

14 Q Are you familiar with the compensation terms for the
15 directors?

16 A Yes.

17 Q And the directors are employees of Strand but paid by the
18 Debtor; is that right?

19 A Oh, I'm not sure they're employees of Strand, but they are
20 paid by the Debtor, their compensation. That's correct.

21 Q And yet the compensation is technically through Strand,
22 right?

23 A They -- they are. They have to act through the general
24 partner of the Debtor because of the corporate structure.

25 Q One of the portions of the agreement is that the Committee

1 acquires litigation claims. Are you familiar with that?

2 A I am.

3 Q Have you parsed out which litigation claims those might be
4 at this point?

5 A I think the agreement says they have litigation claims
6 against insiders and related parties. So I don't know what
7 those individual claims are. I don't know what exists.

8 Q Are you aware that the Committee obtains the attorney-
9 client privilege and work product privilege?

10 A Yeah. Subject to the terms of those agreements, correct.

11 Q Have you gone through the documents and determined which
12 ones would fall on -- which attorney files would fall on which
13 side?

14 A Not as of yet.

15 Q Have you been taking direction from Mr. Dondero?

16 A We've had -- I've had limited interaction with Mr. Dondero
17 since my retention. You know, we have been complying with the
18 protocols that we had been negotiating with the Committee and
19 providing information to the Committee. We have been, as a
20 result of those protocols, instructing management of the
21 company on compliance with those protocols. So they have
22 brought to us transactions that they would like to do. We
23 have reviewed those transactions and compared it to the
24 proposed protocols and have been enforcing those. So if
25 management has asked to do a transaction that does not meet

1 within those protocols, we have been declining the
2 transaction. And that -- you know, the company has agreed
3 with that decision and accepted that decision.

4 Q When you say management, who are you -- to whom are you
5 referring?

6 A You know, the whole management team at the company. In-
7 house counsel. The CFO. You know, I've had limited
8 interaction with Mr. Dondero. One interaction was he did
9 question one of my decisions that I made. We discussed it and
10 he accepted my conclusion.

11 Q You're at the Debtor every day?

12 A My team is.

13 Q You are not?

14 A I have had some travel restrictions due to a medical
15 issue, but I have three of my team there every day.

16 Q Is Mr. Dondero there every day?

17 A I don't know. I don't think so. In the few days I'm
18 there, I've not seen him.

19 Q Is Mr. Ellington there every day?

20 A No.

21 Q Who on the management team is there every day?

22 A You know, our primary interaction is with Isaac Leventon,
23 Frank Waterhouse, the CFO. You know, primary interaction, you
24 know, with David Klos, who is the controller, in dealing with
25 the financial issues.

1 Obviously, we spend a lot -- my team spends a lot of time
2 with the head of compliance.

3 Q Were you surprised by this addition that Mr. Dondero would
4 remain as an employee?

5 A I can't say I was surprised. It is an issue that we
6 struggle with, given the nature of this company's business.
7 You know, I see the change in the language and, you know, as
8 CRO, I am comfortable with it.

9 Q So, as CRO, if Mr. Dondero is necessary now, you recognize
10 that he was necessary three weeks ago?

11 A I'm not saying that he's necessary. I'm saying that it is
12 important for the board to be able to make that decision.

13 Q And it wasn't important when the settlement was filed?

14 A It was the -- it was a struggle at the time. I was
15 concerned at the time it was filed the unintended consequences
16 of Mr. Dondero resigning completely and disappearing, because
17 there are a significant number of funds that the Debtor deals
18 with related parties that are controlled by Mr. Dondero, and I
19 was worried about the financial impact with it. I knew this
20 issue was important to the Committee. And if that's something
21 that the Debtor agreed to and the Committee agreed to, so be
22 it.

23 You know, I think the last-minute compromise is acceptable
24 and appropriate. I think the language as negotiated is going
25 to be very helpful to the Debtor. And I think, then, it's up

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1 to the board to make the decision, with full knowledge on
2 what's the best avenue forward.

3 Q And the language as negotiated was added because, in the
4 past, there have been problems with Mr. Dondero changing or
5 terminating agreements with related entities, right?

6 A There was that -- I've seen that -- issues raised in the
7 *Acis* case.

8 MS. LAMBERT: No further questions.

9 THE COURT: All right. Any redirect?

10 MR. POMERANTZ: Not from the Debtor.

11 THE COURT: Anyone have examination? No? All right.

12 Thank you, Mr. Sharp. You're excused.

13 THE WITNESS: Thank you.

14 (The witness steps down.)

15 THE COURT: All right. Are we going to have any
16 other, I guess, witnesses, evidence?

17 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

18 MR. POMERANTZ: No, Your Honor. I just had a couple
19 points. One, Ms. Lambert mentioned that she hadn't seen a
20 copy of the stipulation referred to, which was prohibiting Mr.
21 Dondero from terminating the board. There's a good reason for
22 her not having seen it. I hadn't provided it to her. It just
23 came this morning, right before the hearing. I have one
24 signed copy. I have other copies that I could represent, even
25 though they're unsigned, are the same, so I would like to

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1 provide Your Honor. I'll keep the signed copy but provide you
2 with an unsigned copy, but it's the same, and also give one to
3 the U.S. Trustee.

4 THE COURT: But you've got a signature of Mr. Dondero
5 on that?

6 MR. POMERANTZ: Yes, I do.

7 THE COURT: Okay.

8 MR. POMERANTZ: May I approach?

9 THE COURT: You may. Thank you.

10 MR. POMERANTZ: Your Honor, maybe for the record it
11 would be appropriate for me to show Your Honor the signature,
12 so you could say that you've seen it?

13 THE COURT: Yes. Yes.

14 MR. POMERANTZ: May I approach again?

15 THE COURT: You may. (Pause.) Okay. Thank you.

16 The record will reflect I've seen Mr. Dondero's signature.

17 MR. POMERANTZ: Your Honor, one of the threads that
18 Ms. Lambert said to Your Honor is that there were employees
19 still remaining at the Debtor and that those employees may
20 have been involved in some wrongdoing.

21 I submit, Your Honor, if Your Honor appointed a Chapter 11
22 trustee today, what would a Chapter 11 trustee do? A Chapter
23 11 trustee wouldn't terminate every employee at the Debtor. A
24 Chapter 11 trustee, if he or she was doing what they should
25 do, would go down to the company, would interview members of

1 the company, senior management, and decide who should stay on
2 and who should not stay on.

3 That, I submit, Your Honor, is exactly what this board
4 will do. So the concept of there being something different
5 done, if you have a board here or not, I don't think makes
6 sense.

7 And lastly, Your Honor, Ms. Lambert expressed the issue as
8 whether it's fair and equitable to resolve the U.S. Trustee
9 issues in this way. I don't think that's the standard. The
10 only fair and equitable I understand is in plan confirmation.
11 I think Your Honor said it straight, which is: Is this a
12 valid exercise of the Debtor's business judgment and is it an
13 appropriate compromise of controversy? That is the standard.
14 And, again, we have always acknowledged that, notwithstanding
15 how Your Honor rules today, the Trustee reserves the right to
16 come back to court and argue a trustee is appropriate on the
17 21st.

18 We believe, Your Honor, that many of the cases, in this
19 circuit and elsewhere, look to the continuing management of
20 the company and whether management issues have been addressed
21 as a significant factor in determining whether a trustee is
22 appointed. And it'll come as no surprise, of course, if Your
23 Honor grants our motion today, this will be a lynchpin of our
24 opposition to the trustee motion.

25 But, again, those issues are for another day, and we

1 believe that we have satisfied our standard, and we request
2 that Your Honor approve the motion.

3 THE COURT: All right. Other closing arguments?

4 CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES TRUSTEE

5 MS. LAMBERT: Yes, Your Honor. As the Debtor
6 acknowledges, the Court has no jurisdiction over Strand. This
7 is a complicated structure. A trustee avoids all of the
8 complications involved in the Court exercising jurisdiction
9 over an entity that it doesn't have jurisdiction over.

10 To enter a stock stipulation related to a non-debtor is
11 highly irregular, and Mr. Dondero is the person behind that.
12 It has happened in cases where people have been in these kinds
13 of structures, like that FSLIC used to put in these kinds of
14 structures -- there's published opinion, the *Goubert*
15 (phonetic) case -- where the person continued to exercise
16 control even though they had a stock trust.

17 The Court needs a person beholden to the Court. The
18 evidence is that, historically, this Debtor has entered into
19 things that breached its fiduciary duty and resulted in self-
20 dealing and liability for the Debtor. The evidence is that
21 these go beyond Mr. Dondero and the Court does not have
22 jurisdiction over his stock. The Court does not have
23 jurisdiction over Strand. The board members of Strand are not
24 employees of the Court, they're employees of Strand, a non-
25 debtor. These members have a fiduciary duty to Strand.

1 Yes, Strand is the general partner of this Debtor and has
2 a fiduciary duty, but all these fiduciary duties intermix in
3 ways that result in conflicts for this case. These conflicts
4 are unnecessary. The Court could just appoint a trustee who
5 only owes a fiduciary duty to the members and creditors of
6 this case, as well as the next (inaudible).

7 There is no evidence that this is cheaper. There is no
8 evidence that this is a total resolution, because issues are
9 left open, such as whether or not a CEO is going to be
10 appointed, how much that person is going to cost.

11 Finally, Your Honor, the sealing has constrained the
12 ability of some of the parties to understand what's going on
13 in this case. And that is material to the argument about who
14 is here, because we don't know who -- that all the people who
15 would have participated in this discussion had an opportunity
16 to participate in it.

17 Yes, the creditors have a fiduciary duty, and I believe
18 that they represented to the best of their ability, but they
19 are not charged with the issues that others are charged with,
20 such as the SEC.

21 There is no evidence that the officers are disinterested.
22 Rather, the new officers are going to be conflicted by the
23 nature of their position. There's no evidence that it's
24 cheaper. And a trustee, if appointed, could be appointed on
25 an hourly basis. This is a Chapter 11 trustee.

1 They argue that the trustee would not have the knowledge,
2 and yet they've been able to find three candidates to serve
3 for the board who are qualified. So there's no evidence that
4 it would not be better to have a trustee for that reason as
5 well.

6 The evidence is that, historically, the Redeemer Committee
7 was set up to prevent these kinds of transactions and have
8 oversight. Historically, the evidence is it did not work.
9 For this reason, the statute provides a solution, and the
10 Court should impose it. The Court should deny this motion as
11 not being in the interest of the estate, as not being a sound
12 exercise of discretion, because it's really the discretion of
13 Strand, not the Debtor, and it will remain the discretion of
14 Strand, not the Debtor.

15 Thank you.

16 THE COURT: All right. Anyone else have comments?

17 MR. POMERANTZ: Your Honor, just a couple of minor
18 points.

19 THE COURT: Okay.

20 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

21 MR. POMERANTZ: Ms. Lambert started by saying the
22 Court doesn't have jurisdiction over Strand. I know I just
23 handed her the stipulation, but the last paragraph of the
24 stipulation specifically says that the parties stipulate and
25 agree that the Court shall have exclusive jurisdiction over

1 all matters arising from or related to the interpretation and
2 implementation of this stipulation and the adjudication of any
3 parties breaching the stipulation.

4 So the Court does have jurisdiction now that the
5 stipulation has been signed, assuming that the Court enters
6 it, so I think that addresses that issue.

7 Your Honor, the evidence of the disinterestedness of the
8 members of the board, we've provided their *curriculum vitae*.
9 We've made representations that they have no connections with
10 the Debtor or any of the parties in interest. We don't think
11 that, just because they become appointed and become a director
12 of Strand, that that renders them disinterested [sic], and we
13 think that the Trustee's arguments that being at a different
14 level creates different duties is just not -- is not accurate.
15 I don't think that the Committee would have had any appetite
16 for this type of structure had they believed that each of
17 these board members wouldn't feel that their fiduciary duty
18 was to the Debtor's estate. And they all are seasoned
19 restructuring people from different aspects, all understand
20 their fiduciary duties well, and all are prepared to carry
21 them out.

22 Lastly, the Trustee points to the historic issues, and
23 specifically mentioned the Redeemer Committee and that
24 structure didn't work. Well, I think it speaks volumes, Your
25 Honor, that not only the Redeemer Committee, are they on the

1 Committee and the Committee has supported this motion, but the
2 Redeemer Committee hasn't come to Your Honor and said that,
3 notwithstanding that structure that may or may not have been
4 effective, this structure is ineffective.

5 And at the end, Your Honor, the Trustee is trying to
6 replace the business judgment of the Debtor. The Debtor is
7 entitled to deference of the judgment, again, focusing on the
8 correct standard. And, again, the Trustee will have her day
9 in -- his day in court in connection with the ultimate trustee
10 motion on the 21st.

11 Thank you, Your Honor.

12 THE COURT: Anyone else?

13 All right. Well, the Court is going to note a few things
14 as part of its ruling, obviously. The new proposed
15 independent board members for Strand, Strand obviously being
16 the general partner of the Debtor, Highland -- Mr. James
17 Seery, Mr. John Dubel, and retired Judge Russ Nelms -- are
18 highly-qualified individuals with respect to the industry.
19 Some of them with respect to restructuring. Certainly, in the
20 case of retired Judge Nelms, with regard to fiduciary duties
21 and the Bankruptcy Code requirements.

22 These three individuals were chosen by the Creditors'
23 Committee, whose constituency is broad, whose constituency is
24 owed well over \$100 million. And they were chosen by the
25 Committee after literally months of negotiation. Obviously,

1 this bankruptcy was filed in October, and it appears to this
2 Court, from the representations of counsel, that from the very
3 beginning of the case -- the Committee was, I guess, appointed
4 a week or two after the case was filed in October -- there's
5 been haggling over corporate governance of this Debtor.

6 So we have highly-qualified individuals. We have
7 individuals who were chosen by the well-constituted Creditors'
8 Committee. And what has been proposed to the Court is that it
9 is these independent directors that would have sole and
10 exclusive management and control of the Debtor.

11 An interesting jurisdictional argument has been made, and
12 it's one of those arguments that, frankly, you know, sounds
13 good when you first hear it, but when you really drill down
14 about the governance structure here, I mean, obviously, this
15 Debtor is a limited partnership and it acts through a general
16 partner. It's the general partner that controls the Debtor
17 entity. And while Strand Advisors, Inc., the general partner,
18 may not technically be in bankruptcy, it's the structure of
19 these entities such that it controls the Debtor. So the
20 jurisdictional argument, when you drill down, feels a little
21 off.

22 Moreover, we have language in the stipulation where Strand
23 is stipulating and consenting, if you will, to this Court's
24 exercise of jurisdiction over it.

25 There are many things about the compromise here that have

1 very compelling appeal. Among them, certainly, the Committee
2 that's negotiated this term sheet retains the right at any
3 time to move for a Chapter 11 trustee if it believes there are
4 grounds. The Committee is granted standing to pursue estate
5 claims, certain estate claims right off the bat, without
6 having to come back and ask the Court, without having to rely
7 on the Debtor to pursue that. There are document production
8 provisions, document preservation provisions, a shared
9 privilege negotiated, that are very powerful tools for the
10 Committee, and certainly operating protocols that have been
11 negotiated regarding the Debtor's operations that are very
12 powerful tools for the Committee.

13 I said many times during the *Acis* case -- those who were
14 here will remember -- that the company, *Acis*, was not a great
15 fit for Chapter 11. Lots of companies aren't great fits for
16 Chapter 11, I suppose, but the kind of business it was was
17 kind of tough to maneuver in Chapter 11. Human beings and
18 their expertise create value. And while we had a Chapter 11
19 trustee, a stranger come in and take control over *Acis*, you
20 know, there's great uncertainty whether that stranger is going
21 to be able to preserve value and have the smooth transition
22 into Chapter 11 that's really going to be the best fit.

23 Here, as I've said earlier, the legal standard I view as
24 controlling here is 363 and whether what has been proposed
25 reflects reasonable business judgment. Is there a sound

1 business justification for proposing the independent slate of
2 directors at the GP level for the Debtor, the protocols, the
3 negotiation with the Committee, the document sharing, the
4 standing given to them? Does all of this reflect reasonable
5 business judgment? And I find, quite clearly, it does. I
6 find it to be a pragmatic solution to the Committee's concerns
7 about existing management and control.

8 And I think I used the words "fair and equitable," not
9 just Ms. Lambert, because it is also presented to the Court as
10 a 9019 compromise of disputes with the Committee, and we
11 traditionally use a fair and equitable and best interest of
12 the estate analysis in this context. So, to the extent that
13 applies, I do find this a fair and equitable way of resolving
14 the disputes with the Committee, and I find this to be in the
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet
17 as it's been presented, the various terms therein, the
18 exhibits thereto. I'm specifically approving the new
19 independent directors, the document management and
20 preservation process, the standing to the Committee over
21 certain of the estate claims, the reporting requirements, the
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the
24 role of Mr. Dondero. When Ms. Patel got up and talked about
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of
2 the term sheet, the sentence reading, "Mr. Dondero shall not
3 cause any related entity to terminate any agreements with the
4 Debtor." Her statement that that was important, it really
5 resonated with me, because, you know, as I said earlier, I
6 can't extract what I learned during the *Acis* case, it's in my
7 brain, and we did have many moments during the *Acis* case where
8 the Chapter 11 trustee came in and credibly testified that,
9 whether it was Mr. Dondero personally or others at Highland,
10 they were surreptitiously liquidating funds, they were
11 changing agreements, assigning agreements to others. They
12 were doing things behind the scenes that were impacting the
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,
15 but I am going to require that language to be put in the
16 order. Okay? So we're not just going to have an order
17 approving the term sheet that has that language. I want
18 language specifically in the order. You know, you can figure
19 out where the appropriate place to stick it in the order is,
20 but I want specific language in here regarding Mr. Dondero's
21 role. I also -- the language in there that his role as an
22 employee of the Debtor will be subject at all times to the
23 supervision, direction, and authority of the Debtors, I want
24 that language in there as well. Let's go ahead and put the
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want
4 it crystal clear that if he violates these terms, he's
5 violated a federal court order, and contempt will be one of
6 the tools available to the Court. He needs to understand
7 that. Mr. Ellington needs to understand that. You know, if
8 there are any games behind the scene, not only do I expect the
9 Committee is going to come in and highlight that to the Court
10 and file a motion for a trustee or whatever, but we're going
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a
16 clean redline of the order, of course not including the
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload
20 and hope to get an order signed by Your Honor today, if you're
21 around. But to go over the other changes, the changes to
22 Jefferies, the other language changes I discussed before. I
23 gave a copy to Ms. Lambert and to the Committee. May I
24 approach with a --

25 THE COURT: You may.

1 MR. POMERANTZ: Thank you.

2 THE COURT: Okay. All right. (Pause.) All right.

3 The form of order looks fine to me. Obviously, you'll add the
4 Dondero-related language, and we may have further wording
5 tweaks negotiated with the CLO Issuers. But, again, I approve
6 all of this. I didn't say on the record the compensation, but
7 certainly I am approving that as reasonable. I expect these
8 three directors are going to be working very, very hard. And
9 so, as you said, not 50,000-foot level monitoring, actually
10 rolling up sleeves on-site, so I think the compensation is
11 reasonable.

12 MR. POMERANTZ: Thank you, Your Honor. We will
13 submit an order shortly that includes Your Honor's language
14 requested.

15 THE COURT: Okay.

16 MR. POMERANTZ: Are you around this afternoon?

17 THE COURT: I am around, --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- so just pick up the phone or send an
20 email to Traci, my courtroom deputy, --

21 MR. POMERANTZ: Yes.

22 THE COURT: -- so she can tell me, "It's in your
23 queue to sign."

24 MR. POMERANTZ: She has been extremely helpful and
25 responsive.

1 THE COURT: Good. I'm glad to hear that.

2 MR. POMERANTZ: Yes.

3 THE COURT: Now, as far as future scheduling, I did
4 have her sitting by, listening, in case we needed to discuss
5 anything. Obviously, we're going to have a kind of a
6 carryover placeholder on the 21st as part of the trustee
7 motion hearing for any remaining issues with the CLO Issuer.
8 And, you know, that's just a placeholder if necessary to hear
9 language controversies.

10 My courtroom deputy was concerned, because you have a lot
11 of pending motions that have just sort of sat there pending
12 because this was the big issue, right? She wants to make sure
13 she sets anything you need a setting on. And I don't know if
14 you want to discuss that today or go back as a group and --

15 MR. POMERANTZ: We're happy to -- I think, you know,
16 I think that's appropriate to do. We had the motion to
17 appoint the CRO.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: That was pending. That gets resolved
20 by this motion. We will submit an order --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- with the new agreement that was
23 attached to the term sheet.

24 We had the cash management order which Judge Sontchi had
25 issued an interim order. We will have a final order with

1 respect to that.

2 THE COURT: Okay.

3 MR. POMERANTZ: We will be withdrawing the motion to
4 approve ordinary course protocols which was originally on for
5 hearing.

6 THE COURT: Uh-huh.

7 MR. POMERANTZ: I think on the 21st we have currently
8 set a motion to approve the retention or Mercer, which is the
9 Debtor's compensation consultant, --

10 THE COURT: Uh-huh.

11 MR. POMERANTZ: -- and an analog motion that was
12 originally set for today with respect to insiders, non-
13 insiders, but is on for non-insiders and insiders on the 21st,
14 --

15 THE COURT: Uh-huh.

16 MR. POMERANTZ: -- which is the motion to approve
17 bonuses.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: Of course, the Debtor's new board is
20 going to be wanting to very carefully review that. And we are
21 going back and today having our first new board meeting with
22 the board to start bringing them up to speed. But we
23 presently intend, subject to, obviously, their direction, to
24 go forward on the 21st.

25 We also have the retention of Lynn Pinker and Foley

1 Gardere, which had been filed and was brought on for hearing
2 previously. It had been delayed, again, for the board to look
3 at the issues. We expect to have that on for the 21st. And I
4 believe, I believe that would be it.

5 MS. LAMBERT: No, Your Honor, the --

6 MR. POMERANTZ: No?

7 MS. LAMBERT: -- U.S. Trustee has objected to the
8 motion to seal, which was the second item on the Wilmington
9 Court's docket that got -- and it got transferred here. The
10 U.S. Trustee has also objected to the motion for protective
11 order. The issues overlap. We request that they be set as
12 quickly as possible.

13 MR. POMERANTZ: We're happy to set both of those for
14 the 21st as well.

15 THE COURT: All right. So I think what I'm going to
16 ask you to do is just get on the phone, one of you, with Traci
17 and just make sure she's clear on everything you need set on
18 the 21st, and then you can do a big notice of hearing, just
19 kind of listing all of these matters.

20 MR. POMERANTZ: Your Honor, with respect to the CRO
21 motion -- order and the cash management order, I was wondering
22 if it would be helpful for my colleague Mr. Demo to go over
23 the amendments to those orders -- we would like those to be
24 entered today -- to see if Your Honor has any questions.

25 THE COURT: All right. That would be good. Mr.

1 Clemente, did you have something first?

2 MR. CLEMENTE: Just very quickly, Your Honor. We had
3 filed our retention applications for the Committee
4 professionals and filed CNOs, and your office had indicated
5 you wanted to get through today, which I totally understand,
6 but I just wanted to make sure that Your Honor didn't lose
7 sight of those. I don't believe there were any objections to
8 those, but I think your intent was probably to deal with them
9 after today, but I just wanted to --

10 THE COURT: All right. Yes, it was to get through
11 today.

12 MR. CLEMENTE: Yes.

13 THE COURT: So, since you've had plenty of time run
14 on those, you can submit orders and I'll get them signed in
15 chambers.

16 MR. CLEMENTE: Thank you very much, Your Honor.
17 Appreciate it.

18 THE COURT: Okay. Thank you. Counsel?

19 MR. DEMO: Good afternoon, Your Honor. Greg Demo,
20 Pachulski Stang, on behalf of the Debtor. I'm happy to keep
21 this as brief as possible, but I think walking through the
22 cash management motion has the most changes.

23 THE COURT: Okay.

24 MR. DEMO: The biggest change there, and we had
25 discussed this with the United States Trustee in Delaware, is

1 that in our initial motion we disclosed that the Debtor had
2 bank accounts at BBVA and then also at NexBank. Those
3 accounts have been moved to East West Bank, --

4 THE COURT: Okay.

5 MR. DEMO: -- which is a party to a depository
6 agreement with the United Stated Trustee.

7 THE COURT: Okay.

8 MR. DEMO: The only exception to that is a
9 certificate of deposit that is at NexBank. It's a relatively
10 small amount of money. It's \$135,000. But it also is pledged
11 as collateral on a lease. So that has been -- proven
12 problematic to move. The Trustee for Delaware did say that
13 was okay. I would hope that the Trustee for Texas would agree
14 with that. We did disclose it in the initial debtor
15 interview.

16 But those are the bank accounts. The bank accounts at
17 BBVA and NexBank, with the exception of that CD, were all
18 closed as of yesterday.

19 THE COURT: Okay.

20 MR. DEMO: So now we are going to be using East West
21 Bank for all operating accounts, all cash, going forward.

22 The other two accounts are the account at Jefferies, which
23 is the prime brokerage account.

24 THE COURT: Uh-huh.

25 MR. DEMO: That account, we are keeping open.

1 Obviously, there have been conversations with Jefferies that
2 are going to be reflected in the proposed order on the
3 settlement, but we do propose to keep the Jefferies prime
4 brokerage account open as well.

5 And then we filed a supplement for another prime brokerage
6 account that we have at a prime broker called Maxim Group.
7 That account has \$30 million in securities in it, give or
8 take, and then literally like \$100 in cash. The Debtor
9 considers that account more an investment than actual
10 operating account, but we would like to keep that account open
11 as well, just so it can continue holding those securities.

12 Jefferies and Maxim, neither of them are on the depository
13 list, so we are requesting a waiver of 345(b) for those two
14 accounts, and then also requesting a waiver of 345(b) with
15 respect to the certificate of deposit at NexBank.

16 THE COURT: Okay.

17 MR. DEMO: That's where we're at at cash management.
18 And I guess, sorry, one more thing. In the original cash
19 management motion, we had a series of intercompany
20 transactions that we disclosed, and we had gotten interim
21 relief from the Delaware court to make those payments up to a
22 hundred -- or, \$1.7 million. We are below that account, and
23 on a go-forward basis, all of those intercompany transactions
24 are getting subsumed into the settlement motion and the
25 operating protocols and all of that. But we are asking for

1 final relief on the intercompany transactions that we made
2 under the interim order.

3 THE COURT: Okay. All right. Who wishes to be heard
4 on this? I don't know how much discussion we've had outside
5 the courtroom on this.

6 MS. LAMBERT: We haven't -- normally, a bond would be
7 appropriate for the Jefferies and the other small account.
8 The estate is at risk on the CD, but it's not that much money.
9 It's not worth bonding. It'll be more expensive to bond it.

10 NexBank, as you know, Your Honor, is a bank where Mr.
11 Dondero is the CEO. So that was part of the reason that
12 NexBank was carved out. But the -- so I would like them to
13 bid bonds on the Jefferies and the other account. And if we
14 -- let's carry it on those issues so that we can see how
15 expensive bonding it would be, and if it's cost-prohibitive,
16 maybe we reconsider. But in the past, the bonds haven't been
17 very expensive, relatively.

18 MR. DEMO: We're happy to discuss that with the U.S.
19 Trustee. I mean, just for the record, the Jefferies account,
20 you know, does support a margin loan. It's \$80 million in
21 securities. It's \$30 million at Maxim. They're SIPC. I
22 mean, it's Jefferies and, you know, another large prime
23 broker. Again, we're happy to discuss it with the Trustee. I
24 don't know that it's necessary, but we will discuss it.

25 THE COURT: Okay. Well, you all can discuss it, and

1 if you have an unopposed order, an agreed order, --

2 MR. DEMO: Uh-huh.

3 THE COURT: -- you can upload it and I'll sign it.

4 Otherwise, if you need hearing time on the 21st, --

5 MR. DEMO: Okay.

6 THE COURT: -- we'll get it all figured out then and

7 --

8 MR. DEMO: Okay. All right.

9 THE COURT: -- resolve it then.

10 MR. DEMO: Thank you, Your Honor. And then I guess
11 the other motion is the CRO retention. This one should
12 hopefully be pretty brief. We are just filing a new proposed
13 order that attaches the engagement letter, as has been
14 modified by all of the settlement discussions. I believe the
15 Committee is on board with that, and it's consistent. It was
16 one of the attachments that you approved this morning in
17 connection with the settlement.

18 THE COURT: All right. Comments on that?

19 A VOICE: None, Your Honor.

20 THE COURT: Committee, you're good?

21 MS. LAMBERT: The U.S. Trustee had also objected to
22 the CRO motion, but it's some of the same issues that the
23 Committee raised. And the CRO, my understanding, is now not
24 an employee of the board but totally overseen by the board,
25 and with that, we can withdraw our objection.

1 THE COURT: All right. Very good. I'll sign your
2 order on the CRO, then.

3 MR. DEMO: Okay. Thank you, Your Honor.

4 THE COURT: All right. Well, if there's nothing
5 else, I'll be on the lookout for your orders. And, again, if
6 you could coordinate with Traci to make sure she's clear on
7 everything you need set on the 21st.

8 MR. POMERANTZ: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTE: Thank you, Your Honor.

11 MR. DEMO: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 11:54 a.m.)

14 --oOo--

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CERTIFICATE

21

22

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

23

/s/ Kathy Rehling

12/10/2020

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

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EXHIBIT 2

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

5 For the Official Committee: Paige Holden Montgomery
6 of Unsecured Creditors: SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
7 Dallas, TX 75201
(214) 969-3500

8 For Acis Capital Rakhee V. Patel
9 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
10 Dallas, TX 75201
(214) 745-5250

11 For Acis Capital Brian Patrick Shaw
12 Management GP, LLC: ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
13 Dallas, TX 75201
(214) 239-2707

14 For Redeemer Committee of Mark A. Platt
15 the Highland Crusader FROST BROWN TODD, LLC
Fund: 100 Crescent Court, Suite 350
Dallas, TX 75201
16 (214) 580-5852

17 For Redeemer Committee of Terri L. Mascherin
18 the Highland Crusader JENNER & BLOCK, LLP
Fund: 353 N. Clark Street
19 Chicago, IL 60654-3456
(312) 923-2799

20 For Redeemer Committee of Marc B. Hankin
21 the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
22 New York, NY 10022-3098
(212) 891-1600

23

24

25

1 APPEARANCES, cont'd.:

2 For UBS Securities, LLC: Andrew Clubok
3 Latham & Watkins, LLP
4 555 Eleventh Street, NW,
5 Suite 1000
6 Washington, DC 20004
7 (202) 637-2200

8 For UBS Securities: Kimberly A. Posin
9 LATHAM & WATKINS, LLP
10 355 South Grand Avenue, Suite 100
11 Los Angeles, CA 90071-1560
12 (213) 891-7322

13 For Certain Employees: David Neier
14 WINSTON & STRAWN, LLP
15 200 Park Avenue
16 New York, NY 10166
17 (212) 294-6700

18 Recorded by: Michael F. Edmond, Sr.
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

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transcript produced by transcription service.

1 DALLAS, TEXAS - JULY 14, 2020 - 1:34 P.M.

2 THE COURT: ... to get lawyer appearances. First,
3 for the Debtor, do we have some Pachulski lawyers on the
4 phone? Please make your appearance.

5 MR. POMERANTZ: Good morning, Your Honor. It's
6 Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones. Also with
7 me are John Morris, and then listening in are Greg Demo and
8 Ira Kharasch.

9 THE COURT: All right. Thank you all. And do we
10 have any Hayward lawyers on the phone?

11 MR. ANNABLE: Yes, Your Honor.

12 THE COURT: I presume that was Mr. Annable.

13 MR. ANNABLE: Yes, Your Honor. Sorry. My mic's not
14 picking up. It's Zachery Annable and Melissa Hayward --

15 THE COURT: All right.

16 MR. ANNABLE: -- as local counsel for the Debtor.

17 THE COURT: Okay. Thank you. For the Unsecured
18 Creditors' Committee, who do we have from Sidley Austin?

19 MR. CLEMENTE: Good afternoon, Your Honor. Matthew
20 Clemente from Sidley Austin, and Paige Montgomery is also on
21 the phone.

22 THE COURT: All right. Thank you. All right. I'll
23 go to some of our usual appearances. Do we have lawyers for
24 the Redeemer Committee this afternoon? (No response.) All
25 right.

1 MS. MASCHERIN: Yes. Excuse me, Your Honor.

2 THE COURT: Yes?

3 MS. MASCHERIN: This is Terri Mascherin. I wasn't
4 sure whether I had the microphone on mute or not.

5 THE COURT: Okay.

6 MS. MASCHERIN: I apologize. Terri Mascherin, Jenner
7 & Block. My colleague, Marc Hankin, is on the phone. And I
8 believe that Mark Platt is also on the line.

9 THE COURT: All right. Thank you. What about UBS?
10 Anyone wanting to appear for UBS?

11 MR. CLUBOK: Yes. Good afternoon, Your Honor. This
12 is Andrew Clubok from Latham & Watkins, LLP. And my partner,
13 Kimberly Posin, is on as well.

14 THE COURT: Okay. Thank you. What about for Acis?
15 Any lawyers appearing for Acis?

16 MS. PATEL: Yes. Good afternoon, Your Honor. Rakhee
17 Patel of the Winstead firm and Brian Shaw of the Rogge Dunn
18 Group appearing on behalf of Acis.

19 THE COURT: All right. Do we have Mr. Lynn or Mr.
20 Bonds for James Dondero? (No response.) Maybe not. All
21 right. Is there anyone else who wishes to appear for today's
22 hearings?

23 MR. NEIER: Good afternoon, Your Honor. David Neier
24 of Winston & Strawn making a reappearance, but this time for
25 several employees of Highland: Mr. Leventon, Mr. Sevilla, Mr.

1 Ellington, several others.

2 THE COURT: Oh, okay. Thank you. Any other
3 appearances today?

4 (No response.)

5 THE COURT: All right. I'll assume everyone else is
6 just going to observe.

7 Well, we have two employment applications. Mr. Pomerantz,
8 how did you want to proceed on those?

9 MR. POMERANTZ: So, Your Honor, we have the two
10 motions to present, Your Honor. I'm happy to say that neither
11 of them are opposed.

12 Before I present the motions to Your Honor, I wanted to
13 ask if Your Honor would like to address the mediation issues
14 at the conclusion of the hearing or prior to the presentation
15 of the motions.

16 THE COURT: At the conclusion. Thank you.

17 MR. POMERANTZ: Thank you, Your Honor.

18 Your Honor, the first motion on the docket today is a
19 Motion to Appoint James Seery as the Debtors' chief executive
20 officer and chief restructuring officer, effective as of March
21 15th, which is about the time that Mr. Seery began performing
22 the services as the chief executive officer.

23 While there's a good argument that the retention of a
24 chief executive officer is in the ordinary course of business
25 and does not require court approval, the Debtor, out of an

1 abundance of caution, filed the motion, and the motion seeks
2 approval of the agreement which is attached to the motion.

3 The second motion, Your Honor, is a Motion to Approve the
4 Retention of DSI as the Debtors' Financial Advisor. And as
5 the Court is aware, Mr. Sharp, a managing director of DSI, was
6 approved as the Debtors' Chief Restructuring Officer pursuant
7 to this Court's January 10th order.

8 Although Mr. Seery is proposed to replace Mr. Sharp as the
9 Debtors' Chief Restructuring Officer, Mr. Seery still requires
10 the financial assistance and advisory support that DSI has
11 been providing to him, the Board, and the Debtor for several
12 months.

13 While each of these motions, as I mentioned, Your Honor,
14 are unopposed, we plan to put on the testimony of James Seery,
15 John Dubel, and Brad Sharp to provide the Court with the
16 evidentiary basis to support the relief that is requested.
17 And with the testimony, Your Honor, we intend to accomplish
18 several things.

19 First, Your Honor, in light of our exchange at the hearing
20 on July 8th, we thought it'd be appropriate for Mr. Seery to
21 provide a more fulsome response to Your Honor regarding the
22 nature and extent of the Debtors' operations and assets and
23 the variety of significant activities that the Board in
24 general and Mr. Seery as the chief executive officer has been
25 performing over the last several months.

1 We think this is very important, Your Honor, given that
2 the Debtor has substantial and multiple complex business
3 operations that it oversees that are in -- that are in
4 subsidiaries outside of Chapter 11 or are in entities managed
5 by the Debtor and also not in Chapter 11. And the Court, we
6 appreciate, especially in light of Your Honor's comments, does
7 not have the benefit of seeing what is really going on. So
8 we're hoping, by Mr. Seery's testimony, it will provide Your
9 Honor with a much clearer picture, and, quite frankly, a better
10 job doing it than I was able to do last week.

11 Mr. Seery's testimony will support the need for the
12 retention of the chief executive officer and why his
13 particular background and qualifications made him the
14 appropriate choice for the role.

15 Second, Mr. Dubel, as the chairman of the compensation
16 committee of the Board, will testify regarding the process
17 undertaken by the compensation committee that led to the
18 conclusion to ask Mr. Seery to become the chief executive
19 officer and the agreement -- under the terms and conditions
20 set forth in the agreement.

21 Lastly, Mr. Sharp will testify regarding the activities he
22 and DSI have been performing since the commencement of the
23 case, the assistance they have been providing to Mr. Seery
24 over the last few months, and how the nature and extent of the
25 services they are providing will essentially remain the same

1 if Your Honor approves the motion to employ Mr. Seery.

2 Before I turn the virtual podium over to my partner, John
3 Morris, to present the testimony, Your Honor, I thought I
4 would provide the Court with a brief summary of the events
5 leading to the Debtors' filing of the motion.

6 THE COURT: Okay.

7 MR. POMERANTZ: As Your Honor will recall, the Court
8 entered an order on January 9th approving a settlement between
9 the Debtor and the Committee, and a significant part of that
10 settlement involved modifications to the Debtors' corporate
11 governance that resulted in the installation of the
12 Independent Board.

13 The term sheet that was attached in the settlement motion
14 specifically contemplated that the Independent Board, in
15 consultation with the Committee, would determine whether it
16 was appropriate to retain a chief executive officer, and
17 further went on to say that the chief executive officer could
18 be a member of the Board.

19 And the retention of a chief executive officer was on
20 everyone's minds from the beginning, because since Mr.
21 Dondero's authority as the CEO of the Debtor was being
22 terminated in connection with the settlement, the Debtor and
23 the Committee contemplated that, in order to manage a dynamic
24 and widespread asset management platform like Highland's, that
25 the retention of a chief executive officer may very well be

1 necessary.

2 I will leave it to Mr. Seery and Mr. Dubel to explain to
3 the Court what transpired during the early stages of the case
4 and the decision-making process that led to Mr. Seery starting
5 to act as the Debtors' chief executive officer. And I would
6 also leave it to Mr. Dubel to discuss the sequence of events
7 which led from the appointment of him as the chief executive
8 officer through the filing of the motion that brings us here
9 today, which events will include the establishment of a
10 compensation committee; the commissioning of a report from the
11 Debtors' compensation expert, Mercer; the procurement of the
12 Debtors' [sic] and officers insurance coverage to cover Mr.
13 Seery and Mr. Dubel; the negotiations over the (inaudible) of
14 Mr. Seery; and lastly, the negotiations with the Committee
15 which has resulted in the motion being fully consensual.

16 I'll also leave it to Mr. Seery to explain his personal --
17 professional background and why he was qualified to fill that
18 role.

19 The agreement, Your Honor, between Mr. Seery and the
20 Debtor includes the following material provisions.

21 First, there would be base compensation at the rate of
22 \$150,000 a month, retroactive to March 15th. And while Mr.
23 Seery will remain on the Board as part of his role as the
24 chief executive officer, the \$150,000 per month would cover
25 his services not only as a CEO but also a member of the Board.

1 In other words, the Board fees that were agreed to back in
2 January of \$60,000 a month, \$50,000 a month, and \$30,000 a
3 month would be replaced by the \$150,000 a month commencing on
4 March 15th.

5 While the compensation committee and Mr. Seery reached
6 agreement on the structure of potential bonus compensation,
7 the Committee has not agreed to that proposed structure. As a
8 result, the compensation committee and Mr. Seery decided that
9 approval sought in this motion would only be the monthly
10 compensation and the other non-economic terms, but would not
11 include the bonus compensation. Any bonus compensation sought
12 to be paid to Mr. Seery would be pursuant to a separate motion
13 filed, if at all, a lot later in the case.

14 The Committee was also uncomfortable with the open-ended
15 nature of the agreement and wanted some control in being able
16 to seek to terminate it. To accommodate the Committee, Mr.
17 Seery and the Debtor agreed to the following: After 90 days
18 from the date the Court enters an order approving this
19 agreement, if the Court is inclined to do so, the Committee
20 may provide the Debtor with notice that it does not want the
21 agreement to continue. The Debtor would then have two weeks
22 to file a motion on normal notice seeking to extend the date
23 of the agreement, and Mr. Seery would be entitled to his base
24 compensation until the Court ruled on the motion.

25 Also, the Committee asked us that be made clear in the

1 order, which we've done, that Mr. Seery's retention would
2 terminate on the effective date on the plan, subject, of
3 course, of his right to seek bonus compensation pursuant to a
4 separate motion. The agreement also contains standard
5 reimbursement and indemnification provisions.

6 Your Honor, those conclude my initial remarks. I'm happy
7 to take questions. And then, at the appropriate time, I
8 return it over to Mr. Morris, who will put on the testimony of
9 Mr. Seery, Mr. Dubel, and Mr. Sharp.

10 THE COURT: All right. I'd like to pretty quickly
11 get to the evidence. So, I'll ask: Does anyone have a
12 burning desire to make an opening statement? If so, please
13 let's keep it brief.

14 (No response.)

15 THE COURT: All right. I assume everyone is content
16 to wait until the end and speak up in any way they want to
17 speak up.

18 Mr. Morris, are you ready to call your witness?

19 MR. MORRIS: I am, Your Honor. Can you hear me right
20 now?

21 THE COURT: I can. Thank you.

22 MR. MORRIS: Okay. Your Honor, this is John Morris
23 from Pachulski Stang Ziehl & Jones for the Debtor. As the
24 Debtors' first witness, we call James Seery.

25 THE COURT: All right. Mr. Seery, I need to swear

Seery - Direct

13

1 you in by video. So could you take your phone off mute and
2 please raise your right hand. Can you say Testing 1, 2, so I
3 know you're there?

4 MR. SEERY: Testing 1, 2.

5 THE COURT: All right.

6 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: All right. Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor. Before I begin
9 my questioning of Mr. Seery, the Debtor had filed its witness
10 list and its exhibit list. We provided copies of the exhibits
11 to the Court and to the Committee, and I would like to just
12 move into evidence Debtors' Exhibits 1 through 7 at this time.

13 THE COURT: All right. So I have in front of me
14 Docket Entry No. 822 with Exhibits 1 through 7. Any
15 objection? (No response.) All right. 1 through 7 are
16 admitted.

17 (Debtors' Exhibits 1 through 7 are received into
18 evidence.)

19 MR. MORRIS: Thank you, Your Honor. And just as an
20 overview, so you have a sense of where we're going with Mr.
21 Seery's testimony, I am going to begin with some very brief
22 background questionings and then have Mr. Seery answer some
23 questions concerning the overview of the company and the
24 corporate structure of the company. You may have heard some
25 of this before, but I think in the context of a motion such as

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Seery - Direct

14

1 the appointment of a CEO, I think it would be helpful to hear
2 it all.

3 When I finish with that, we're going to move into the area
4 of the Board and the work that the Board has done and Mr.
5 Seery's work as a member of the Board.

6 And then we'll transition into really the meat of the
7 discussion here, and that is what has he done in his capacity
8 as CEO. And to be clear, he's not the CEO, he doesn't call
9 himself the CEO, but he's functioned as the CEO, and I think
10 that's the point that we want to present to the Court. And we
11 want to present to the Court the fact that he functioned as a
12 CEO really from day one of the process. And we're not going
13 to get into, you know, every single thing he's done, because
14 we'd be here for an awfully long time, but we do intend to
15 highlight a couple of the transactions that he worked on and
16 give you a sense of his role in trying to develop a plan and
17 resolving claims.

18 And I think, with that, you'll have a better understanding
19 of Mr. Seery, his role, and why we believe it's a proper
20 exercise of the Debtors' business judgment to appoint him as
21 CEO.

22 THE COURT: All right. Sounds good.

23 MR. MORRIS: All right.

24 DIRECT EXAMINATION

25 BY MR. MORRIS:

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Seery - Direct

15

1 Q Mr. Seery, can you hear me?

2 A I can. Can you hear me?

3 Q Yes, I can.

4 MR. MORRIS: Your Honor, just one other point. I
5 have a legal assistant on the phone here. She's participating
6 in the WebEx. Her name is La Asia Canty. La Asia is going to
7 handle the exhibits when and if we need to put them up on the
8 screen. So we've tried to practice that, and hopefully it
9 will go smoothly, but I may turn to Ms. Canty from time to
10 time with some help with the exhibits.

11 THE COURT: All right. Fine.

12 BY MR. MORRIS:

13 Q Okay. Mr. -- what is your current relationship to the
14 Debtor?

15 A I'm an Independent Director of Strand, which is the
16 general partner of the Debtor.

17 Q All right. And when did you become the Independent
18 Director of Strand?

19 A On January 9th, along with John Dubel and Russ Nelms.

20 Q The Court has previously heard about your background, but
21 from a high level, can you just hit the highlights for the
22 Court as to your experience, et cetera?

23 A To go swiftly -- and if Your Honor wants me to go further,
24 I certainly can -- I was a restructuring and finance lawyer
25 for 10 years, handling virtually every type of restructuring

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1 matter as well as financing in distressed matters during that
2 time.

3 In 1999, I went to the business side and I began to manage
4 distressed assets at Lehman Brothers as well as a leverage
5 finance business. That grew into my running the risky finance
6 business as well as the loan business at Lehman globally,
7 which included high-grade loans, high-yield loans, trading and
8 sales of those products, a big part of distressed, all of
9 restructuring, all of asset management, and all of the hedging
10 of the portfolio that we had.

11 From there, I left Lehman with a small group and sold it
12 to Barclay's. I moved on and ran a hedge fund with two former
13 partners of mine who are the founding partners called River
14 Birch Capital. It was a long-short credit fund; mostly
15 credit, though we did structured finance as well, and we also
16 handled some equities.

17 Q Okay. Let's spend a few minutes, as a preview, talking
18 about the Debtor and its business. And let's start with the
19 basics. Is there a way you can summarize the business of the
20 Debtor?

21 A I think, from a high level, the best way to think about
22 the Debtor is that it's a registered investment advisor. As a
23 registered investment advisor, which is really any advisor of
24 third-party money over \$25 million, it has to register with
25 the SEC, and it manages funds in many different ways.

1 The Debtor manages approximately \$200 million current
2 values -- it was more than that at the start of the case -- of
3 its own assets. It doesn't have to be a registered investment
4 advisor for those assets, but it does manage its own assets,
5 which include directly-owned securities; loans from mostly
6 related entities, but not all; and investments in certain
7 funds which it also manages.

8 In addition, the Debtor manages about roughly \$2 billion
9 in -- \$2 billion in total managed assets, around \$2 billion in
10 CLO assets, and then other entities, which are hedge funds or
11 PE style.

12 In addition, the Debtor provides shared services for
13 approximately \$6 billion of assets. Those are assets that are
14 owned by related entities but not owned by Debtor-owned or
15 managed entities. And those are a combination of back office
16 services, which include timely reporting, asset management,
17 legal and compliance support, trading and research support,
18 but not the actual management of the assets.

19 The Debtors run -- and I think the way to think about it
20 is on a functional basis; at least, that's the way I think
21 about it -- and there's really six areas. There's corporate
22 management; finance, accounting and tax; trading and research;
23 private equity and fund investing; compliance and legal; and
24 then structured equity, which really includes all of the CLO
25 businesses.

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1 The goals of the Debtor generally are what you'd expect
2 out of an asset manager. A little bit different than most
3 because the Debtor does own assets, which is a little
4 different than when money asset managers typically hold assets
5 away from the asset manager. But number one, discharge
6 Highland's, which I'll call Highland (inaudible), LP, duties
7 to investors in the funds. Those are fiduciary duties under
8 the Investment Advisors Act. Each day, you've got to make
9 sure that you do that first and foremost.

10 Number two, create positive MPD in each of the funds that
11 we manage, either through sales, purchases, or hedging.

12 Next, make sure that we report timely finances of our own
13 assets, including in the funds, but also, to the third-party
14 investors. Maximize the value of HCMLP's owned assets. And
15 then operate as efficiently as possible for the lowest cost.

16 That's essentially how the Debtor -- how we think about
17 the Debtor from a functional perspective. It's got about 70
18 employees laid out in those areas that I mentioned, and each
19 of those employees every day usually think about those goals
20 and try to discharge their duties by focusing on those goals.

21 Q Thank you, Mr. Seery. And can you describe for the Court
22 how those 70 or so employees are organized? Is there an
23 internal corporate structure that you're working with?

24 A Yeah. The way -- the way -- I apologize. The way we
25 think about it is, as I said, corporate management, which is

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1 really HR and overseeing the function that it's filling every
2 day, that's been really -- because Mr. Dondero was removed
3 from management. It used to all roll up to him. That's been
4 effectively rolling up to me since February.

5 Finance, accounting, and tax. Each of these businesses
6 every day require certain amounts of liquidity. Each of them
7 have requirements that they have to pay out to investors.
8 Each of them have expenses. And all of them have different
9 kinds of tax either obligations or reporting. Those are
10 managed by Frank Waterhouse as the CFO. (inaudible), sorry.

11 Trading and research. With respect to the assets, they're
12 not -- they're not static assets. Many of them do get traded
13 on a regular basis. A gentleman, Joe Sowin, heads up the
14 trading of the liquid assets. John Povish (phonetic) heads up
15 the research and the trading of the more illiquid assets, but
16 not PE. In addition, we have PE assets that require some
17 management every day, including Board seats. That's a
18 gentleman by the name of Cameron Baynard, and also he will
19 fund investments in that area. J.P. Sevilla is responsible
20 for working with Cameron on those investments and leading that
21 team.

22 Importantly, because of the nature of what the Debtor
23 does, the fiduciary obligations, as well as the
24 responsibilities to each investor and the legal overlay, we
25 have a robust compliance and legal department. That's headed

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1 by Thomas Surgent and Scott Ellington. Scott: more focused
2 on transactional issues with respect to legal. He is actually
3 general counsel. Everything that has do with compliance, the
4 interrelatedness of the funds, trading between funds or
5 positions that are shared across funds, which are many, runs
6 through Thomas Surgent and his team.

7 And finally, structured equity. Sitting on top of the
8 structured finance business that we have, understanding those
9 assets, particularly of two billion-ish assets in CLOs, that's
10 headed by Hunter Covitz.

11 Q Can you describe for the Court your interaction with each
12 of the department heads that you just identified?

13 A Well, depending on the nature of the issue each day, I
14 have at least -- I'd say generally at least weekly contact
15 with most, often daily contact with most. So, for example,
16 when there are trading issues, particularly as the market was
17 extremely volatile with respect to unliquid securities, Joe
18 Sowin and I were on the phone several times a day.

19 Relating to the COVID issues, Brian Collins, who heads the
20 HR group, and I were on the phone several times a day.

21 Relating to structured equity, depending on what's
22 happening with a particular fund or what's happening in loan
23 prices, I speak to Hunter Covitz. And it goes down the line.

24 So it really depends on each of the areas and what's going
25 on in the business, but I try to touch base with each of those

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1 department heads on a regular basis.

2 Frank Waterhouse, of course, is at least weekly. We have
3 a standing call every week to make sure that we're focused on
4 liquidity, which is always a concern in a Chapter 11, and
5 Frank and his team are on that call and prepare weekly
6 materials for us.

7 Q Okay.

8 MR. MORRIS: Your Honor, before I move to the next
9 area of questions, the work of the Board, I just wanted to see
10 if the Court had any questions on the corporate organizational
11 structure, the internal structure of the business, or any of
12 the matters that Mr. Seery touched on?

13 THE COURT: I do not. And I do have in front of me a
14 demonstrative aid that Mr. Annable sent over ahead of time, so
15 I appreciate that as well.

16 MR. MORRIS: Okay. Your Honor, I think Mr. Seery
17 covered much of what's on that document, but if you'd like him
18 to go through that, we're happy to do it.

19 THE COURT: No, that's fine.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Then let's shift gears a little bit and start talking
23 about the work of the Independent Board itself. The
24 Independent Board was appointed in mid-January; is that right?

25 A Yeah. It was the first -- January 9th, the first week of

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1 January, and we started working that afternoon.

2 Q Okay. Can you describe for the Court what the -- the
3 Board's initial focus? What were you focused on?

4 A Well, if you think about the areas that I just mentioned
5 previously, the Board initially, for lack of a better term,
6 gang-tackled everything. So we tried to make sure that we had
7 a broad base of understanding among the three of us with
8 respect to the business.

9 I, because of my background, had a lot more familiarity
10 with asset management, these type of asset security
11 businesses. But we wanted to make sure that each of us was at
12 least facile with the main areas that we had to understand.
13 First was operations. How does the company run each day?
14 Particularly, how was it going to run without Mr. Dondero?
15 And I went through some of those functional areas and how we
16 thought about those and who head each of those.

17 Next in the -- I don't mean to say it's second, because
18 it's always first, but liquidity. What did the Debtors'
19 liquidity look like? How are we going to manage that
20 liquidity, not just for the near-term, but also for the
21 medium-term, and then even into the slightly longer-term? We
22 had to think about what assets are there, what money those
23 assets might need that we would have to invest in them, and
24 whether there was liquidity in those assets that we can create
25 liquidity in order to fund the Debtors' business.

1 Personnel, we needed a good opportunity to understand who
2 did what, not just in the senior managers that I mentioned,
3 but deeper into the staff, because we're going to rely on
4 those folks. Particularly worked through with DSI.

5 As I mentioned, the Debtor, unlike a lot of other asset
6 managers, owns a lot of assets. It's a disparate group of
7 assets, but getting a feel and understanding for what those
8 assets were, what the critical issues surrounding those assets
9 are, who managed them day-to-day: We wanted to make sure that
10 each of the directors had a good (inaudible) and understanding
11 of those issues that might arise with respect to those assets,
12 and a good sense of how quickly those issues could, you know,
13 further arise.

14 We also had to get a very good understanding of each of
15 the funds that we manage. As I said, the Investment Advisors
16 Act puts a fiduciary duty on Highland Capital to discharge its
17 duty to the investors. So while we have duties to the estate,
18 we also have duties, as I mentioned in my last testimony, to
19 each of the investors in the funds.

20 Now, some of them are related parties, and those are a
21 little bit easier. Some of them are owned by Highland. But
22 there are third-party investors in these funds who have no
23 relation whatsoever to Highland, and we owe them a fiduciary
24 duty both to manage their assets prudently but also to seek to
25 maximize value. And we wanted to make sure we had a good

1 understanding of that.

2 Finally, with respect to the shared service arrangements,
3 we needed to get an understanding of that \$6 billion in assets
4 and how our business, HCMLP, worked with those -- those shared
5 service counterparties and exactly who did what for whom.

6 It's very complicated because it had been run much more on a
7 functional basis than on a line basis from each contract. So
8 it's not as if your employees are allocated to NexBank. It's
9 the whole panoply of businesses that we enter into, and
10 providing those services to NexBank, not through a central
11 point but through whatever requests come in from the counter-
12 parties. So we needed a good understanding of what those
13 contracts looked and what those obligations were.

14 A VOICE: John, you're on mute.

15 MR. MORRIS: Thank you.

16 BY MR. MORRIS:

17 Q All of that work was going on in the first weeks of the
18 appointment of the Board?

19 A Yeah, it would not be fair to say we could do that in a
20 couple weeks. So it took far longer than that. But that
21 didn't mean that issues didn't start to arise immediately in
22 February. And so, while we were learning, we were also
23 starting to get a feel for different things that could happen
24 in the company.

25 As in many companies, immediately, one of the first things

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1 you have to deal with is, particularly at the beginning of the
2 year, what does compensation look like; who are the -- what do
3 promotions look like; are you going to be able to hold this
4 team together to service these assets? And yeah, we had that,
5 with an additional wrinkle that Highland's payment structure
6 defers a significant amount of compensation to its employees,
7 and it vests over time, and it has the very typical provision
8 that if you are not there when it vests -- when it is going to
9 be paid, actually, not when it vests. Even if you're vested,
10 if you're not there when it gets paid, you're not entitled to
11 it. And so understanding who was owed what; how the vesting
12 worked; what the compensation structure looked like compared
13 to third parties, was one of the first things we had to do.
14 And Highland has an extremely robust review process. Brian
15 Collins manages it. It's first-rate. It goes through both
16 360 in terms of what other employees think of each other as
17 well as bottoms up, in terms of performance. And then it has
18 a top-down component, which ultimately ran through Mr.
19 Dondero. Since he was effectively removed from that role, the
20 Board had to jump in and get a full understanding with Brian
21 about what the process looked like; how it was going to work;
22 how it compared to other firms; and whether we could go
23 forward with it. And that was one of the motions that was
24 brought early to the Court.

25 A Let's talk a minute about the transactional work that the

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1 Board was called to focus on initially. Are you familiar with
2 the transactional protocols that the Debtor agreed to with the
3 Committee?

4 Q I am.

5 A Can you describe for the Court the impact those protocols
6 had on the Board's work?

7 Q Well, they make it extremely difficult. And I understand
8 the purposes behind the protocols. Was not involved in
9 negotiating them. However, because of the limitations they
10 put on the Debtor, they make it very difficult to manage
11 certain of the assets. So, if an asset needs money to invest
12 in it, depending on the size, it may need Committee approval.
13 If the -- if there are expenses that need to be paid from --
14 in related entities, and the related entity does not have the
15 capital to make the expense payment, the Debtor needs to put
16 the money in. Can the Debtor put that money in without the
17 Committee's approval, and if the Committee doesn't approve,
18 would we have to go to Court?

19 So, the functioning on a day-to-day basis for how to deal
20 with those assets became very difficult. And that came up
21 really early, as the market started to get a lot more
22 volatility by mid-February. We saw with respect to the
23 internal accounts trades that we would have liked to put on,
24 for example, short position, where we just weren't able to put
25 the trades on.

1 Now, we could go to the Committee, and we did, but
2 understanding why we wanted to put it on; explaining it;
3 presenting that opportunity to the Committee; and then having
4 them go to the full Committee with it: It's very cumbersome.
5 And the trading markets don't wait for a week to determine
6 whether that offering that you want to -- that you want to
7 access is available.

8 So, early on, we got a sense of how difficult it would be
9 to manage the business with the protocols.

10 One of the areas I think that was significant and that we
11 talked about significantly with the Committee was an entity
12 called Multi-Strat. Multi-Strat is a fund that is owned by
13 the Debtor. It's, in essence, a PUNY-style (phonetic) fund.
14 It's an older fund. And it's about 60 percent owned by the
15 Debtor and roughly 30 percent owned by Dondero-related
16 entities.

17 However, there are 90 million, roughly 89 million,
18 approximately, third-party redeemers who had redeemed in that
19 fund but have yet to be paid, so they're treated like equity
20 claims but they're a fixed dollar amount because they are set
21 at the date that they redeemed based on the NAV at that time,
22 the net asset claim.

23 So, we were -- we were stuck with looking at that fund and
24 trying to determine how do we best manage the fund to get up-
25 side for the Debtor as well as the related entities that owned

1 the equity, making sure that we treated the redeemed entities
2 as fiduciaries, so which we acted as their fiduciaries, but
3 then also assuring that we managed the assets that that fund
4 owns in a prudent way.

5 One of the large assets in that fund were 13 life
6 policies. And these are, in essence, life insurance policies
7 that the Debtor bought from third parties. And there's a
8 market that trades life policies, and they owned these
9 policies on (inaudible). The value at the time was marked
10 around \$32 million when -- when we took control.

11 The problem with the policies and some of the other
12 expenses at Multi-Strat is that they didn't -- Multi-Strat
13 didn't have the funds to continue to pay premiums. So, if the
14 premiums weren't paid, that \$32 million was at risk of going
15 to zero. Why? Because if the premiums aren't paid, the
16 policies lapse. And once they lapse, the insurance company
17 will pay you zero for them. They don't them buy them back
18 anywhere. That's the market. But we looked at those assets
19 and began to consider how we would fund, from a liquidity
20 perspective, monies going into Multi-Strat.

21 The amounts required would require CC's approval under the
22 protocols, and the Debtor prepetition had advanced monies to
23 Multi-Strat to make premium payments and other expenses at
24 Multi-Strat. We went to the Committee and were able to get
25 approval to put a couple million dollars in early on to keep

1 the policies alive while we analyzed the best opportunity for
2 maximizing value with respect to those policies.

3 But thereafter, we needed additional money to try to
4 consider how to continue to maximize value, and the Committee
5 balked. So we went to Dondero-related entities, and they
6 actually put equity into the Multi-Strats. So we -- the
7 Debtor had made a postpetition, in essence -- it wasn't a
8 postpetition advance because it was going outside of the
9 Debtor, but postpetition, the Debtor made a loan to Multi-
10 Strat to service the policies, and then Dondero-related
11 entities made an equity investment into Multi-Strat to
12 continue to service the policies.

13 Well, we understood as a Board but that wasn't going to
14 work and that the protocols were going to continue to hinder
15 us, so we entered into a sale process with respect to those
16 policies.

17 Q And the work that you're describing with respect to Multi-
18 Strat, is that -- just to transition to your work as
19 functionary CEO, would it fall into that bucket as opposed to
20 the Board work that we were talking about earlier?

21 A Yeah, absolutely. I think the -- the initial assessment,
22 as I said, we made as a group. And we looked at what the
23 opportunity set was, and determined that, because of the
24 costs, we weren't going to be able to continue to fund money
25 into Multi-Strat to make those payments.

1 So the Board asked me to take on trying to work out a
2 process to sell those policies. So, working with Fred Caruso
3 of DSI, we hired a broker, after interviewing a couple
4 different brokers. We considered the views of the internal
5 Highland team with respect to value and how to maximize that
6 value. We entered into a sale process for those policies, and
7 we ended up with a number of bidders and broke it down to two
8 bidders for the 13 policies, breaking up the policies to
9 maximize the value. They're only on eight lives, so it's not
10 fair to call it a portfolio. And so there's significant
11 amounts of premiums that have to be paid on a monthly basis
12 and going forward, and realizations on those policies are very
13 uncertain because it's hard to take them over an actuarial
14 methodology because there's only eight lives.

15 We tried to consider other ways to finance those policies,
16 but seven turned out to be, in our view, far and away the best
17 net present value for the investors in the fund.

18 The challenge that we had, as I mentioned, is the
19 complexity of Multi-Strat was also layered with a loan from
20 NexBank that was secured by four of the policies. That \$32
21 million loan was also secured by the MGM stock owned by Multi-
22 Strat.

23 And then, as we got towards closing, we learned that one
24 of the buyers wanted a more detailed title rep, and as we
25 peeled through, we found a long-dormant UBS fraudulent

1 conveyance suit that had been brought against Multi-Strat.
2 There was no lien on the policies, but it made it impossible
3 for us to give the clean rep that the buyer wanted.

4 And at this point, I was running that with Fred Caruso, at
5 the request of the Board, and it became almost a full-time job
6 except for the five other things that we have to do during
7 April. And we negotiated a variety of different -- well,
8 considered a variety of different opportunities to try to
9 complete the sale.

10 First, I negotiated directly with UBS to see if they would
11 agree to a release, and then when the funds, other than
12 certain escrows which had to be paid out to NexBank as well as
13 repayment of the Debtors' fund, (inaudible), that didn't -- it
14 was very unfruitful in terms of those negotiations.

15 I then moved towards a potential bankruptcy of Multi-
16 Strat, where we would file Multi-Strat, have to do a 363 sale,
17 have a DIP loan to service the NexBank monthly payments. That
18 seemed very expensive.

19 We also thought about doing it as not selling them, so
20 perhaps we would a 360 -- a filing without a sale and try to
21 maximize the value by holding onto the policies but have to
22 get financing.

23 Ultimately, we came up with a structure which was we
24 escrowed funds for UBS, \$10 million of funds, but they're not
25 actually for UBS. We preserved all of our rights to defend

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1 the claims and we had paid down NexBank. We allocated funds
2 to make sure that we can pay NexBank for the next year before
3 their loan comes due. We allocated for all the expenses in
4 Multi-Strat. And then when we went back to the sellers, lo
5 and behold, one of the two sellers balked. Didn't -- or
6 buyers, I'm sorry. Balked. Didn't want to complete the sale.
7 And fortunately, our broker (inaudible) and Fred Caruso had
8 had another buyer in the wings, kept them warm, and were able
9 to complete the sale for \$37 million.

10 So that goes to: How does this business function, what's
11 the complexity of it, and what have I and the rest of the
12 Board been doing? That was virtually a month's worth of work.

13 Q And when did the Board ask you, if you recall, to
14 undertake this project? When did it begin and when did it
15 end?

16 A Well, the initial project, around -- around Multi-Strat,
17 we started analyzing it as a group in January, the first week
18 we were there. I started probably taking control of it
19 sometime in mid-February, with Fred Caruso. So, DSI was
20 already on it. We were looking to work with the Debtors' team
21 as well as hire a broker. We, as a group, as a Board, made
22 the decision to sell the policies. Ultimately, we sold them
23 for about \$37 million, which was -- which was more, a few
24 million dollars more than the mark on the policies when we
25 took them.

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1 Q Can you give the Judge a sense of your role, as distinct
2 from the Board's role, how you went about completing or
3 attempting to complete all of the tasks that you've described
4 and the interaction with the Board and what the Board's role
5 was in assessing all of that?

6 A With respect to the Multi-Strat policies?

7 Q Uh-huh.

8 A I think, you know, initially, it was a understand, for the
9 three of us, understand the policies; understand the premium
10 obligations; understand what the benefits, the potential up-
11 sides to those policies were; and understand what the risks
12 were if we were to fail to make a premium payment; what did
13 the lapse period look like. And we did that collectively.
14 From there, all of the individual work around -- we came up
15 with a strategy to sell the policies, and then the tactical
16 work with Fred Caruso about how to execute sale of the
17 policies and completing that sale through the issues NexBank,
18 through the issues with UBS, resolving those issues, that
19 became really my job.

20 Q Now, I do want to take a step back, because we kind of
21 transitioned from the Board to the work that you were doing,
22 and I wanted to ask: You're seeking -- the Debtor is seeking
23 to have you appointed as the CEO, right?

24 A Yes.

25 Q Can you just describe for Judge Jernigan your

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1 understanding of the duties and responsibilities of the CEO
2 position that we're seeking your appointment for?

3 A Sure. From a high level, it's -- I apologize. From a
4 high level, it's what I said earlier, which is the Board sets
5 the strategy, the CEO implements the strategy. And so I work
6 with the Highland team and the managers that I described
7 earlier, whose function that is, to try to execute on that
8 strategy. So that's, that's the basic overlay of what we do.
9 But that includes everything from, as I mentioned, personnel
10 issues to COVID-19 protocol to determining whether we're going
11 to sell certain assets and then how we're going to sell them,
12 determining how we'll resolve issues like Multi-Strat.

13 Another good example was the trading accounts that the
14 Debtor had. So, on the second or third week of January, or
15 perhaps the third or fourth week, we determined as we were
16 going through the asset review that the Debtor had two primary
17 liquid or semi-liquid securities accounts, and those were in
18 the Select account, which was a separate fund that had
19 previously third-party investors but was effectively a hundred
20 percent, 99 and change percent, owned by Highland at this
21 point. And an internal account, which was basically just
22 HCMLP-owned and denominated securities. These were generally
23 at Jefferies. Both of them employed significant margin.

24 THE WITNESS: If this is too pedantic, Your Honor,
25 please tell me if I'm going too deep.

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1 But margin is, in essence, a way for a security purchaser
2 to borrow money to facilitate the purchase and holding of the
3 securities. In essence, the lender, which in this case was
4 Jefferies, a large, well-known, reputable financier and New
5 York investment bank, was the Debtors' account holder. The
6 Debtor would select securities. Jefferies would establish a
7 haircut. The haircut is really the -- how the lender
8 determines how much they want to lend against the assets. So
9 if there's a -- if there's a haircut of a hundred percent in
10 use there, there would be no margin against that asset. A
11 haircut of 50 percent means the debtor will give you -- or,
12 the lender will give you 50 percent of the funds you need to
13 own and hold that asset and you put up 50 percent of the
14 funds.

15 And in a margin loan, the way that the lender protects
16 itself is, each day, it assesses the value of the asset; it
17 looks at the volatility of the asset; and then it asks for
18 more margin if the asset value went down in the trading
19 markets; and then you have a day or two or three, depending on
20 the structure, to post the new margin.

21 If you don't post the new margin, and this the way every
22 margin loan works, the lender has the ability to seize the
23 asset, sell it, and pay off its loan. It will then give you
24 the proceeds above the loan, if any.

25 The debtor -- the lender does that by looking at both the

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1 daily prices, to make sure that it can manage its exposure,
2 but also it considers the volatility. And what it does when
3 it's looking at the volatility, and volatility is really a
4 measure, the way -- the way that securities analysts look at
5 it, is a forward year of the movement, potential movement of a
6 security. And that's how you set your haircut. Because if
7 the -- if the asset is very, very stable -- for example, your
8 home -- if your home was a margin loan and your mortgage, say,
9 is a margin loan, there wouldn't be much calling of margin
10 every day, because if the lender loaned 80 percent of the
11 value of your home, there may be house sales that go higher or
12 lower, but they don't necessary move that much really quickly,
13 particularly if these loans set what's called a threshold
14 amount that allow a little bit of movement each way.

15 The margin loans, though, are on securities that can move
16 tremendously. And what happened in February and then in early
17 March, volatility spiked up, prices moved significantly,
18 prices moved against the Highland positions. So Jefferies did
19 two things. One is it called margin, because it was -- its
20 equity cushion, in essence, was getting trimmed, and it wanted
21 more protection. Number two, it increased the haircuts, which
22 it was entitled to do because it looked forward and said, The
23 volatility in this market is worse than we thought. It will
24 be a higher volatility and there's more risk to us that the
25 asset could be worth less than the loan.

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1 I started working with Joe Sowin, who's a head trader, a
2 very accomplished trader at Highland. He actually reports
3 into the -- not on the Debtors' payroll but another payroll
4 that we don't manage. But he spends a ton of time working on
5 Highland assets and trading those assets. And Joe and I
6 started working together to try to manage the Jefferies
7 exposure.

8 At one point, Jefferies actually seized the Select
9 account. Again, Select wasn't in bankruptcy, but Jefferies
10 had safe harbor provisions or protections anyway and they
11 could have done it. We felt they were about to seize the
12 internal account, and so we sent them a note that said that
13 perhaps their safe harbors weren't as good as they thought.
14 But, more importantly, here's our sale program. Jim Seery's
15 going to take over the account, working with Joe, and we're
16 going to manage it down.

17 In the Select account, Jefferies took it over -- and this
18 is not really a blame to Jefferies; it's part of the market --
19 they sold out of that account pretty quickly. They did work
20 with us, but they were the selling position and covering their
21 loan, and we lost virtually all of the value in that account.

22 In the internal account, we effectively kept Jefferies
23 from seizing it, gave them a sale program, and then day-to-day
24 managed the sale of the more significant assets, as well as
25 the hedges, which mean we traded pretty aggressively

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1 throughout the day. This was a full-day job, trading that
2 account, with Joe as the trader and then me acting as the PM,
3 effectively.

4 We took that account, which if Jefferies had taken it over
5 and done -- it had virtually the same securities, it had just
6 a small number of securities, as well as some hedges which had
7 significant basis risk related to the securities -- we took
8 that account over. If we'd gotten the same program as
9 Jefferies, we would have lost \$11 million. We made about \$23
10 million. So that swing, that swing was pretty significant.
11 I'm sorry, we made about \$11-1/2 million, about a \$23 million
12 swing than if Jefferies had taken it over.

13 So that was another example of what I've been doing that
14 the Board designated me to do to help run this business.
15 Working with Joe, as well as research, as well as discussing
16 these positions on a regular basis with Jefferies, weekly
17 calls and daily e-mails, we were able to preserve that value
18 in that account.

19 Q And so, just for context, this is happening in late
20 February or early March, as COVID is hitting and the markets
21 are volatile; is that fair?

22 A That's when we started taking it over. The real -- the
23 real -- the lay in the markets was about March 22nd or 23rd.

24 Q Uh-huh.

25 A And that's when it became a daily grind on those positions

1 for a solid month to make sure that we got it in a decent
2 place.

3 And remind you that we were trading those accounts within
4 the strictures of the protocols. So we didn't have the
5 ability to -- the securities were -- rather less liquid. We
6 didn't have the ability to just dump them, because we would
7 have destroyed the market and taken significant losses.

8 In addition, because of the protocols, we didn't have the
9 ability to go out and buy hedges, even though we had a
10 negative bias as to where the market was, particularly in
11 those less-traded securities.

12 And it's -- it was public that Highland (inaudible) and
13 Highland (inaudible) was in bankruptcy, so you can be certain
14 that the traders were leaning on those -- those securities
15 from short decisions. So it was a very difficult, time-
16 consuming effort, and a great job by Joe.

17 Q When you talk about a time-consuming effort, how would
18 you -- how would you characterize the amount of time you spent
19 on this project in the month of March? Was it a full-time
20 job?

21 A Yeah. Yeah. I mean, full-time is relative, right, but it
22 was -- it was a lot of time. So we would start out, you know,
23 like everybody else who is in those markets and do it the same
24 way, it's pretty tried and true: By 6:30 in the morning,
25 you're starting to look at what the EOP, what Asia did, where

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1 European markets were opened up, what the futures were looking
2 like, looking at your own securities, checking all of the
3 mail, talking to your research folks. To the extent that you
4 know that there's other investors in those investments, we
5 reached out to those -- I have a number of contacts in the
6 market who are in these kinds of assets -- to see what they're
7 thinking and how they're looking at value. And then set up a
8 trading strategy with Joe, and then execute on it every day.
9 And that trading strategy, again, was not static. So during
10 the day, a dynamic trading strategy has to be adjusted
11 depending on what the market is doing, and Joe was excellent
12 at it.

13 Q I think you mentioned the protocols earlier. Can you just
14 talk a little bit more about how you and the Debtor
15 communicated with the Committee through this process of
16 addressing the Jefferies mortgage -- mortgage defaults?

17 A Well, every day, we sent a report to -- to the Debtor -- I
18 mean, to the Committee, I apologize -- with our positions in
19 each of the accounts and tell them exactly what we're doing,
20 what the plan is, what we're set up to do, where we think it's
21 going, and what assistance we might need through the
22 protocols.

23 I think it became really difficult for the Debtors'
24 professionals -- the Committee's professionals to deal with
25 these issues, because it's just not what they were used to

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1 doing every day. So we would report to them. The Committee
2 met weekly. We can -- provided direct information to
3 Committee members when they -- you know, there's members on
4 the Committee who are very versed in these types of assets.
5 We would talk to them directly, I would talk to them directly,
6 and tell them exactly what we're doing and why and get their
7 input, because there was no magic special sauce as to exactly
8 what to do.

9 Q And would you characterize the process as transparent and
10 open between you and the Committee and its members?

11 A Oh, oh, absolutely. You know, we were -- they were
12 constructive. I wouldn't say that the Committee wasn't
13 constructive. I think the difficulty the Committee had, which
14 is what, you know, any third party would have, is that: Why
15 are we going to put more money into these accounts when the
16 value is going down, and what's -- what's your -- what are
17 your price targets? How do you think about those assets;
18 who's the analyst who's working on it; how do they compare to
19 other assets? So it wasn't an easy process for the Committee
20 to get their arms around, either.

21 Q Okay.

22 MR. MORRIS: Your Honor, we have other transactions
23 that we could talk about if you think that would be useful, or
24 we could continue to push this forward.

25 THE COURT: You can continue to push it forward.

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1 Thank you.

2 MR. MORRIS: Okay.

3 BY MR. MORRIS:

4 Q Then let's transition for a moment just about your
5 recollection as to kind of when and how, you know, the
6 discussions with the Board and the Committee evolved with
7 respect to your taking over as CEO. Did there come a point in
8 time that you can recall when the Board asked you to consider
9 that?

10 A Yeah. The Board asked me to consider it I would say
11 probably late January or early February. And the initial
12 discussions, even before, you know, before we were selected.
13 So, as John Dubel and I had been selected by the Debtor and
14 the Committee, we talked about the need for one central point
15 of management for this company. That it's 70 employees and
16 diverse assets, diverse business practices. How are we going
17 to mold that as a Committee? It really needed somebody to
18 execute the strategic plan that the Board put in place.

19 And so John had asked me about that even before we were
20 selected. Committee counsel asked me about it. So there was
21 -- there was some, at least away from me, there was some view
22 that perhaps I was going to be the person that was most
23 likely, if it was needed.

24 My view in early February was that, you know, we were
25 effectively, as the phrase goes, drinking from a fire hose,

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1 and I wanted to get a better sense of who the folks were at
2 Highland; what their responsibilities are; how they performed;
3 what I thought of them as performers; how -- I had -- or,
4 having some idea what the claims are and how that process
5 would work; and could we make this a success?

6 So, early on, in January and in February, as we started
7 having these discussions, I was in the Highland offices at
8 least three, usually four days a week. And I was there from
9 7:30 in the morning until 6:00 or 7:00 at night every day.
10 And that gave me just a different feel for exactly how the
11 organization was running and the issues that were coming up
12 every day.

13 That evolved into March where, after I took over the
14 securities accounts in early March and then took over the
15 Multi-Strat issues, that John and Russ Nelms pushed me to
16 really consider stepping up fully to the CEO role. So, by
17 early April, I think it's the first week of April, we actually
18 -- we put it forth and go to the Committee. So we started
19 negotiating what potential terms were, how it would work.

20 You know, one of the concerns that I had, you know, we had
21 no idea, and I suppose we still don't, how the COVID-19 issues
22 will play out and how that would both -- because at the time
23 they were really affecting New York, where I'm based and I
24 live, and less so in Dallas. But by mid-March, it was pretty
25 clear that the whole country was being affected. And now,

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1 obviously, it's hitting all over.

2 And hopefully that will settle, but what we did learn, and
3 I think a lot of businesses learned, is that particularly
4 these types of service businesses that function electronically
5 in lot of respects, even when they are in an office, because
6 you're in front of your screen, that we are very lucky to have
7 these types of roles where we can really perform the job, if
8 not equally well, pretty darn close to how you perform it when
9 you're at the office. And so that issue subsided a little bit
10 in terms of how I would interrelate -- not the issue going
11 away, obviously -- but how I could interrelate and work with
12 the team to drive the business, even if I was doing it from
13 New York.

14 Q And have you continued to play a leadership role from the
15 time you spoke with your fellow Board members in early March
16 until the present?

17 A I have. And I think one of the things that the Committee,
18 you know, recognized was that John and Russ, experienced
19 professionals, were willing to step back and let me take the
20 day-to-day working with the Committee or presenting to the
21 Committee. So we do have weekly Board meetings and we do have
22 almost daily Board calls, and then, without an official
23 meeting, we meet on the phone virtually every Saturday or
24 Sunday, sometimes both, with the three of us, to go through
25 what's happened every -- each week, how the plan has evolved

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1 and where we're pushing it.

2 But in terms of the presentations to the Committee, I took
3 the lead on those in both designing and working with the Board
4 then and then implementing them and laying them out for the
5 Committee, as well as the individual negotiations.

6 So, early on, we determined that we had to try to figure
7 out a way to push this case forward, notwithstanding that we
8 weren't getting -- we didn't see a lot of movement from any of
9 the parties, frankly, on trying to figure out a way to
10 coalesce around a direction. So we designed a program that we
11 laid out for the Committee in which we considered three main
12 areas to consider for a plan. And I took the lead on doing
13 that.

14 Q So, let's talk a little bit about the claims resolution
15 process and the formulation of a plan. Have you played any
16 role in the claims resolution process?

17 A Well, we haven't actually resolved any claims completely
18 yet, but we're very close on one, and I've taken the lead on
19 doing that.

20 On the other two, I've been involved heavily with the --
21 both counsel and with DSI in analyzing the claims. As well as
22 with the rest of the Board, frankly. The -- you know, we've
23 got a significant amount of expertise between John Dubel and
24 Russ Nelms with respect to how to think about these issues in
25 the context both of a bankruptcy, obviously, with Russ, and in

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1 the context of both a restructuring and in the business with
2 respect to John.

3 So we've gang-tackled those, again, effectively, all
4 analyzing the various issues with respect to these claims.
5 But in terms of having the direct negotiations, particularly
6 on two of them, I've taken -- I've taken more of the lead
7 about where we could go. And if you -- particularly with my
8 background in restructuring, and having wrestled with
9 substantive consolidation, alter ego, piercing the veil since
10 1988 or '89, you know, some of the issues that have arisen in
11 this case are very, very familiar to me. I've spent a
12 significant part of my career dealing with those. So I've
13 taken the lead on those types of issues.

14 I think that where I was going was in terms of structuring
15 potential outcomes for plans. And we are -- you know, we've
16 been slowed down, as I think Jeff Pomerantz mentioned last
17 week, to a fair degree by COVID, in that the business impacts,
18 we can go into, and Jeff touched on some of those, but the
19 social impacts with respect to negotiating are hard to -- are
20 hard to understate. The -- you can run a business like this
21 through your screen. It's very difficult to simply negotiate
22 by phone or by video. The face-to-face, at least in my
23 experience, makes a big difference in moving parties, and we
24 haven't had as much of that.

25 What we've tried to do recently, starting in May, is we've

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1 put together a program for the Committee, and we'll walk them
2 through what I think are the -- what we determine as a Board
3 and then we laid out the specifics -- I didn't; DSI -- of what
4 the options are in this case.

5 And I think number one was the status quo. Do we maintain
6 this case status quo, continue to run the business, and then
7 try to negotiate, resolve, mediate, or litigate, first through
8 dispositive motions, then through something more significant
9 if we can't do it through dispositive motions, these claims?

10 The Debtor right now on an operating basis does burn cash.
11 I can go into the specifics, but the Committee knows them, and
12 I'd prefer to do those *in camera* if we -- if the Judge would
13 like that. We do burn cash on an operating basis, but not
14 that much. The Debtor has about \$30 million (inaudible) and
15 the business does run, and generally each year the operating
16 burn, if you will, which is, in compensation, is filled by
17 selling some assets that have appreciated in value. And the
18 Debtor runs real -- with those accretions, run roughly
19 breakeven.

20 The problem in this case is that we are burning a
21 significant amount of bankruptcy professional fees. And it's
22 the lament of creditors and business operators and the
23 bankruptcy bar. I think, certainly, the judges that I see for
24 a long time. And the percentage -- the cost of the cases
25 keeps going up and the percentage of the assets keeps going,

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1 but particularly if the asset values are going down.

2 So the status quo didn't make a lot of sense unless we
3 were going to get very swift movement from the parties, and I
4 mean all sides, to try to resolve the case.

5 The other type of outcome we thought about in terms of a
6 plan was a downsiding model. Downsizing model, excuse me. In
7 that model, we would try to significantly cut headcount, try
8 to significantly cut expenses. Run the business as leanly as
9 possible. And then try to go through those steps with respect
10 to resolving the claims.

11 Again, the problem, the problem with that is resolution of
12 those claims was uncertain and could take a long time, unless
13 we had significant movement from either side. But, moreover,
14 in terms of operating the business, we determined that with
15 respect to both the managed accounts and shared service
16 agreements, we really couldn't effectively do the job that the
17 Debtor does with a smaller staff. Truth is, even at 70
18 people, the HCMLP staff is pretty lean. It's a really good
19 team and they are very efficient and they've really proved it
20 through working offsite, you know, through the pandemic.

21 But we really thought that if we -- and analyzed it. If
22 we were to try to cut that team and provide the services, we
23 would fall down. So we would breach the duties or potentially
24 incur liabilities under those various contracts.

25 The third area that we took a look at, which was what we

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1 called the subservicing model. In this model, we would try to
2 separate the business of the Debtor, which has a small
3 operating loss, but it's still material money, from the asset
4 management. That way, you could hold onto the assets for the
5 benefit of the creditors or the Debtor, depending on where the
6 claims comes out, still provide the services to those third
7 parties under the subservicing agreements or the management
8 agreements. You wouldn't make money on that, but you'd get
9 rid of the operating burn.

10 And that model had a number of issues, but we've sort of
11 evolved that model to what I think has been referred to in
12 court as the debtor-creditor monetization vehicle. So a
13 little bit of a cumbersome name, but the idea would be to try
14 to separate the assets, which potentially are the ways to pay
15 the creditors, depending on where claims come out, and then --
16 and the operations, and make sure you can continue the
17 operations without a heavy burn.

18 That model also permits us to cut, we believe, bankruptcy
19 operating expenses significantly. So, right now, because of
20 the nature of the case, we have two professionals doing every
21 job: Committee professionals and Debtor professionals. We
22 would be able to reduce that cost by putting those into one
23 entity that'll be a trust-like structure to service the
24 business, resolve the claims, monetize the assets.

25 And, finally, something I started working on -- I'd say on

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1 my own, but that wouldn't be true -- with the DSI team,
2 particularly the two -- we have two excellent analysts on the
3 case. A very detailed model of what I think has been referred
4 to maybe even in court as a potential grand bargain plan. And
5 that plan looks at monetizing the assets over what period we
6 believe that we could get that done. (inaudible) we're
7 looking at the values that we could achieve as well as setting
8 out what we think are reasonable numbers for the claim
9 distributions and then how they would be made.

10 Now, on the asset side of the ledger, we have a pretty
11 good understanding. We obviously know where the assets are
12 bought, and we have a pretty good sense of what the current
13 market looks like for those assets. We're not a forced
14 seller, but we have -- we have been involved in processes
15 around a number of the assets and have a good sense of where
16 values are and how long it would take to achieve those values.

17 You don't have to sell an asset as well to get money from
18 it. There might be ways to finance those assets. Although,
19 to be sure, in this environment, financing particularly these
20 types of assets has become very, very difficult.

21 The other side of the equation of the claims, and we're
22 using our best estimate of where we think those claims come
23 out in terms of payment, the creditors often have a different
24 view as to what they would like those claims to come out with.
25 So we're trying to figure out, through negotiation and

1 discussion, how we get those two sides closer together. And
2 that, that would be the grand bargain plan.

3 And I think where we're really focused now is that status
4 quo doesn't make sense. We've gone that way too long.
5 Downsizing doesn't work because of the complexity of these
6 operations and the contractual obligations that the Debtor
7 has. And it's really a grand bargain plan or a Debtor
8 monetization, a debtor-creditor monetization vehicle, which
9 would be structured like a trust and still be able to service
10 the business while resolving the claims.

11 Q Taking into account the uncertainty because there are
12 still some options being considered, in your leadership role,
13 have you -- do you have a sense of timing? Is there a
14 timeline by which certain milestones are at least
15 aspirational, if not achievable?

16 A Well, I don't think I'm telling anyone what they don't
17 know, that deadlines get people to act and make decisions.
18 Sometimes they're good decisions, sometimes they're not, but
19 we're going to push forward on both of these plan
20 opportunities now. So we intend to file a debtor-creditor
21 monetization vehicle plan, and we'll keep pushing the parties
22 towards settlements.

23 You know, as we say on the Multi-Strat negotiations, until
24 it was clear that we were either going to default, because we
25 didn't have the money to pay those premiums, or we're going to

1 file Multi-Strat as a bankruptcy, it was hard to get folks to
2 really come to the table and think about how to settle that
3 issue.

4 These issues in regard to the total case are much more
5 complicated. We're going to file a plan. We believe that
6 will set a bit of a crucible to folks to think about how to
7 move forward with their claims. We are, as Jeff Pomerantz
8 mentioned last time, agreed in principle, but we have some
9 issues to work through with Redeemer that we hope to be able
10 to resolve by this week. And so that's my internal goal, but
11 I expect to be able to do it.

12 The reason that's complex is not that it's simply a -- the
13 arbitration award is not simply a money award; it actually
14 requires certain offsets, it requires certain assets be sold
15 and paid for. And we're trying to carve our way around some
16 of those, because they (inaudible) agreement, because they're
17 -- they're more difficult than simply exchanging cash for
18 assets, because we don't have the ability to do that right
19 now. We don't have the cash, and we're in bankruptcy.

20 So I do believe that we can get these done. And then if
21 mediation is something that would work, great. We're going to
22 try to do it without mediation as well. Going to try to do it
23 before we get to mediation and resolve claims. And if we're
24 unable to do that, hopefully mediation will push it forward or
25 we have to have a fallback, which will be dispositive motions

1 with respect to certain of the claims.

2 But we expect to have and I think we have a number of
3 claims objections that have (inaudible). We've resolved
4 those. We're really down to three claims. And one of them is
5 almost done.

6 Q All right. At the last hearing, --

7 MR. MORRIS: Your Honor, that really does finish the
8 substance of the testimony with respect to this motion, but at
9 the last hearing Your Honor raised some questions about PPP
10 loans.

11 THE COURT: Yes.

12 MR. MORRIS: Would you like me to just take a moment
13 with Mr. Seery to address that?

14 THE COURT: Yes, please.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q Mr. Seery, you're aware that the Judge raised some
18 questions about whether and to what extent the Debtor may have
19 been involved in any of the PPP loans?

20 A Yes.

21 Q And have you done any work to try to figure out the
22 answers to the questions the Judge posed?

23 A Well, work in response to the question, but also work
24 previously. So, just a -- quickly, as I think we all know,
25 the PPP program was put forth to try to give companies cash

1 that they had to use for employee payments, to continue to
2 keep payroll supported and to continue to have folks hold
3 their jobs.

4 We have -- and I think the *Business Insider* article, which
5 I'm not familiar, I know the publication is not something I
6 seen much, but I'm not familiar with the specifics of that
7 article, and -- but any PPP, away from the assets that HCMLP
8 actually owns or controls. And we've got -- we've got three
9 -- and I think there's some substance to the article. But
10 we've got three businesses. And these are -- this is public,
11 but I'll go into the -- sort of the obvious reasons without
12 going into the specifics of the business around the ones that
13 I know of well.

14 Carey Limousine is a business that transports folks in
15 high-quality cars from airports or from events or between
16 businesses. It was hit severely by the COVID-19 pandemic.,
17 particularly with respect to the air transportation, which was
18 really one of its biggest areas. The business,
19 notwithstanding Uber and the other type of shared ride
20 services, had actually done quite well, and Highland was an
21 owner of a significant portion of that business related to
22 some loans that it held in various funds.

23 That business's management, with its own outside counsel,
24 sought a PPP loan. Then our director came to us and discussed
25 with the Board the propriety of that loan. We engaged outside

1 counsel, not bankruptcy counsel but counsel that had
2 particularized expertise in PPP, and spent a ton of time
3 really understanding both the law as well as the specific
4 regs. Carey did get a PPP loan. It is potentially
5 forgivable, depending on how it's used.

6 The second entity that was similar but didn't come to the
7 Board, we have a business called SSP, which is an excellent
8 highway business that provides equip -- materials for a lot of
9 different road construction, but primarily highway road
10 construction. Very well run business. That entity got a PPP
11 loan as well, primarily worried about whether the construction
12 on the highways would shut down.

13 So it's been -- I don't believe that's really happened in
14 Texas, which is where most of their business is, but they
15 qualified for that loan. They did not come to the Board. A
16 very specific carve-out, because one of the interest holders
17 that we share that position with is a Small Business
18 Administration fund and, so it was very clear that it was
19 entitled to that loan.

20 Then there's a third entity called Roma that got a very
21 small PPP loan. We don't control the entity and we were not
22 involved in its acquisition of that loan. Again, it would
23 have to be used as required.

24 One of the things I want to make sure that is in the
25 record and for Your Honor with respect to Carey, we spent a

1 lot of time as a Board focused on, one, whether it was legal
2 to get that loan, first. We're doing everything right, by the
3 book. We're not going to play in the gray. There is no gray.
4 There's black and white in these areas.

5 Number two, was it ethical, was it appropriate that we
6 went and got this loan or that Carey went and got this loan?
7 Management, with the outside counsel, was sure that we could
8 do it, but we didn't want to take their word for it, so we
9 went out and got our own counsel, third-party counsel for the
10 Board to make sure that this was appropriate.

11 Three, the requirements around these loans are significant
12 and the penalties for violating them are severe. So if you
13 get a loan by mistake, are you really required to pay it back?
14 And if you're mistaken, that will be expensive, but it won't
15 be a real penalty. But if you get a loan that's really
16 inappropriate, that you shouldn't have gotten, that was a
17 material misstatement of any of the facts around it, the
18 penalties are significant. And not only in terms of the
19 opprobrium that you'd suffer in the press, because that's
20 coming, but in terms of how you use the funds.

21 So they can only be used in very specific ways, and we
22 were exceptionally careful around this program.

23 The basis of the program is to keep people employed. And
24 with a business like Carey Limousine in particular, where
25 there's a significant amount of debt, where the business is

1 shut down by COVID, where we didn't have the funds to put into
2 Carey, nor even if we wanted to, we might not have been able
3 to do it without the Committee's approval because of the
4 protocol, a PPP loan was not only legal but it was
5 appropriate. And it's being used in that fashion, meaning to
6 keep employees employed.

7 Q Thank you very much, Mr. Seery.

8 MR. MORRIS: Your Honor, I have no further questions
9 of Mr. Seery. Does the Court have any questions?

10 THE COURT: I actually have a follow-up question
11 regarding the PPP, just to kind of put a bow on this.

12 EXAMINATION BY THE COURT

13 THE COURT: I'm looking at the demonstrative aide. I
14 don't know if you, Mr. Seery, have it there handy.

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. So I'm turning to Page 6, the
17 chart, the subchart, Investments and Subsidiaries. The third
18 column, Privately-Held Equity, Various Companies. I mean,
19 that would be the type of investment entity we're talking
20 about here that got the PPP loan: Carey Limousine, SSP, Roma?
21 Nothing that was -- well, I'm going to say Highland affiliate.
22 Affiliate, that's a dicey term, but that's the type of entity
23 in the organizational structure we're talking about, correct?

24 THE WITNESS: Those are the ones -- I want to be very
25 careful, because I know what I know and I know I won't

1 represent anything that I don't know.

2 So, with respect to the entities that HCMLP, the Debtor,
3 controls, that's absolutely the case. I don't know, and I can
4 try to find out, but they are not HCMLP-controlled entities.
5 Whether other entities in the related-party complex received
6 loans -- so, obviously, HCMLP did not receive a loan. And the
7 only entities that we were involved with is the ones I
8 mentioned to you.

9 And I should mention, there are other entities in the
10 privately-held equity that got other government money, in the
11 medical space, that they didn't even ask for. HHS pushed
12 forward payments to folks in the business, medical healthcare-
13 providing businesses, to assure that they had liquidity to
14 provide. And so -- and this has been described to me exactly
15 this way, that they woke up in the morning and found money in
16 their account. And with one of the companies, they actually
17 returned a bunch of the money because it was from a dormant
18 provider number and they didn't believe it was appropriate to
19 keep that money. So that was one of the entities that we
20 control with other investors.

21 But with respect to our HCMLP entities, these are the only
22 ones I know. With respect to other related entities that
23 might be in the family of businesses, for lack of a better
24 term, that were alluded to in the *Business Insider* article, I
25 don't know that answer. So, I -- if I -- I can try to find

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1 out. I just don't know the answer, Your Honor.

2 THE COURT: All right. Thank you. Well, this has
3 been extremely helpful.

4 I should ask does anyone have any questions of Mr. Seery?
5 The Committee counsel, perhaps? Anyone else?

6 MR. CLUBOK: Your Honor, this is Andrew Clubok. In
7 light of the testimony, I do have some questions on behalf of
8 UBS.

9 THE COURT: All right. Briefly. Go ahead.

10 MR. CLUBOK: Okay.

11 MR. MORRIS: Your Honor? Your Honor, I'm sorry to
12 interrupt, but there's no objection lodged here. If Your
13 Honor wants to permit it, that's obviously the Court's
14 prerogative. But as just a point of order, having not lodged
15 an objection, I don't know what right anybody has to cross-
16 examine the witness.

17 THE COURT: All right. Well, that's why I said
18 briefly. I think that Mr. Morris makes a good point, Mr.
19 Clubok. You could have filed a written objection, response,
20 comment, or something. So, you're a party in interest. I'll
21 give you a little bit of leeway here. But please keep it
22 brief.

23 MR. CLUBOK: Yeah. Thank you, Your Honor. It's just
24 some of the things that Mr. Seery said which we didn't expect
25 to hear that has raised a few questions that I just very

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1 briefly will try to address.

2 CROSS-EXAMINATION

3 BY MR. CLUBOK:

4 Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham &
5 Watkins, on behalf of UBS.

6 Mr. Seery, you talked about the fiduciary duties you've
7 understood yourself to have with respect to certain parties,
8 and my question to you is: Have you understood, since the
9 beginning of your service as an Independent Director of
10 Strand, that you had fiduciary duties to the unsecured
11 creditors of the Debtor?

12 A It's a -- it's a -- the answer is I understand the
13 fiduciary duties very well. I think we have fiduciary duties
14 to the estate. So Highland -- what I tried to explain is that
15 Highland, as an asset manager, has very specific fiduciary
16 duties that are set forth in (inaudible) in the cases and the
17 rules that have interpreted it. We, as directors of Strand,
18 have a duty to the estate.

19 I don't think it's -- I don't think it's fair, and I'd
20 have to subject myself to some education from counsel, I don't
21 think it's fair to say we had a specific fiduciary duty to a
22 particular creditor.

23 So, for example, if I had a fiduciary duty to UBS, it
24 would be very difficult for me to object to UBS's claim. It
25 would be -- I don't know how I could do that as a fiduciary.

1 When the claim is crystalized in the estate, I believe that we
2 have fiduciary duties to each and every interest holder in the
3 estate.

4 Q My question is a little simpler, and I just -- well, I'm
5 actually not asking legally whether you do or not. I'm asking
6 what your understanding has been since your role. Have you
7 conducted yourself in a way in which you have treated your
8 obligations as though you have a fiduciary obligation to the
9 unsecured creditors?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q You said that you believe that you have, with respect to
15 Multi-Strat, which is an entity that you manage, you said that
16 you understood yourself to have fiduciary duties to the
17 redeemers of Multi-Strat. Do you recall that?

18 A Yes.

19 Q Yeah. And Multi-Strat is outside of the estate, but HCM,
20 the Debtor manages Multi-Strat. And you said because of, you
21 know, your role, you personally feel as if you have a
22 fiduciary duty to the redeemers in Multi-Strat, correct?

23 A I --

24 MR. MORRIS: Objection to the form of the question.

25 Mischaracterizes the testimony.

1 THE COURT: Sustained.

2 MR. CLUBOK: Your Honor, I believe that the
3 transcript -- I believe Mr. Seery said in direct that he
4 considered himself to have fiduciary duties with respect to
5 the redeemers of Multi-Strat. The transcript will show it. I
6 don't know what the objection is. Maybe I misstated when I
7 asked my question, but I'm just starting --

8 THE COURT: Okay.

9 MR. CLUBOK: I'm just trying to understand --

10 THE COURT: All right. I'll let you rephrase the
11 question, but this -- I've probably -- I may have made a
12 mistake in letting you ask questions, because this is about
13 the propriety of him being CEO and the reasonableness of
14 compensation. This isn't a discovery opportunity. So I'm a
15 little confused the relevance of what you're asking. Could
16 you address that for me?

17 MR. CLUBOK: Sure. Your Honor, Mr. Seery on direct
18 described what he understood his fiduciary duties to be. I
19 think we -- it made me wonder, he didn't mention the unsecured
20 creditors or what he believes his fiduciary relationship is,
21 if any, with the creditors, unsecured creditors. I would -- I
22 think it's a fair question to ask what his understanding is,
23 because now he's going to take on a new role as CEO, and I
24 think it's appropriate for everyone to understand, so we know
25 when we're dealing with Mr. Seery --

1 THE COURT: Okay.

2 MR. CLUBOK: -- what his --

3 THE COURT: I think -- I think he --

4 MR. CLUBOK: -- he understands -- what he understands
5 his fiduciary duties to be.

6 THE COURT: I think he answered the question, and
7 frankly, I think he answered it correctly. His fiduciary
8 duties go to the estate, right? And the creditors are the
9 beneficiaries of his actions in that regard, right? So I
10 think he correctly answered the question already. All right?
11 Next question.

12 MR. CLUBOK: Okay. He says that there's three
13 aspects of the business he's been managing: \$300 million,
14 roughly, of Highland's own assets; the fact that they manage
15 \$3 billion in other assets, I think in managed assets; and
16 then they have shared services for \$6 billion in assets owned
17 by related entities, mostly.

18 BY MR. CLUBOK:

19 Q For those three separate businesses, I just want to
20 briefly understand: With respect to the first one, for
21 example, there's \$300 million, you said, roughly, of
22 (inaudible) assets. Roughly what were the value of the assets
23 when you started your role in January of 2020?

24 A It's hard to compare apples to apples on this because
25 there are certain assets that we've taken out that didn't

1 change in value. So I would say they were carried on the
2 balance sheet at different levels. I think a good rough
3 number would be in the \$500 to \$600 million area.

4 Q Okay.

5 A And the biggest -- the biggest movants in asset values
6 have been on securities, both ones that we continue to own and
7 the accounts that Jefferies -- that were levered, and those
8 were shown as unlevered marks on the balance sheet and the
9 losses that were incurred there. And then with respect to
10 certain of the PE assets and then a major movement on a
11 related-party loan, where the Board, through analysis that we
12 did with DSI and others, believes that loan is likely to be
13 worthless. Likewise, the claim of that entity we believe is
14 likely to be worthless.

15 Q And then to the extent the assets, you say, have a rough
16 value of \$300 million, you alluded to significant professional
17 fees, bankruptcy costs, administrative fees, the Debtor is
18 burning cash. My question is, If it's \$300 million today
19 roughly of total value of assets, what's your current best
20 estimate of the total amount that will be available to be
21 distributed to the creditors net of those -- that burning of
22 cash and the admin fees and the other issue that you
23 mentioned? What is your current expectation of the total
24 amount that will be able to be distributed to the creditors?

25 MR. MORRIS: Your Honor, just -- I just object to

1 this line of inquiry. It's like free discovery, as Your Honor
2 suggested earlier. I don't know what it has to do with Mr.
3 Seery's work, his qualifications, the compensation
4 arrangements. And I think it's inappropriate.

5 THE COURT: Okay. I'll overrule and allow this one
6 remaining question, but that's going to be it, unless your
7 next questions pertain to the employment or compensation
8 structure.

9 THE WITNESS: Yeah, I don't have a crystal ball as to
10 what the assets are going to be worth. I think that they are
11 fairly marked right now, and we have significant discovery
12 that we've had with respect to a number of the assets and
13 marked at views as to their value. So I think that we're at a
14 pretty good base value, assuming that we don't rush into
15 forced sales of assets.

16 So, as I know the Court is aware and I hope you're aware,
17 when you look at asset values, and you look at them on a
18 liquidation basis, the numbers are normally much lower than
19 when you look at them as selling them on a more controlled
20 basis. If you have liquid securities, that's not the case.
21 So if I have \$500 million of Apple at \$363 today, it's
22 probably a good chance that it'll be worth something different
23 in a month, something different in two months. But if I need
24 to move my position, I can do that.

25 These assets are much more difficult to move. And the act

1 of selling them often changes the value, which is why we
2 engage professional bankers to help move, first, those assets.

3 So I just don't have a good crystal ball. I think the
4 valuations that we have now are pretty good. I think they've
5 been scrubbed well. But that doesn't mean that certain of
6 these assets will maintain the exact value they have. So, I
7 gave a good example of Carey Limousine, which is a very small
8 asset but it's an easy one to understand because everybody can
9 relate to a car service company that does, you know, a little
10 bit more high-end and is focused on the airport travel and how
11 that's been impacted.

12 That asset value has gone down precipitously, even though
13 it was small, because of that. So I don't -- I don't really
14 have a great crystal ball as to what's going to happen. If
15 we're very successful in the fourth quarter and the economy
16 stabilizes and the COVID vaccines are out in record time and
17 move forward, then I think we've got potential for upside.
18 But right now, in the current environment, I think we're
19 marked fairly.

20 BY MR. CLUBOK:

21 Q Yeah. But my question really wasn't about the value of
22 the assets. I realize those could go up or down. And you
23 think they're fairly marked. My question was, What's the
24 total amount of setoff from those assets to the extent the
25 bankruptcy fees you alluded to, the burning of cash on the

1 other businesses, you know, how much, you know, net -- what's
2 the amount that will come off of those assets or that should
3 be -- that we should assume will be deducted from those assets
4 because of the professional fees that have been incurred or
5 you predict will be incurred through the end of the year and
6 the burn of cash that you mentioned, et cetera?

7 I'm trying to understand how you supervised -- because
8 you've managed those expenses as well as the assets, right?
9 And so I just think it's important for us to understand, at
10 the end of six months, and then how things are set for the
11 rest of the year, what's the total amount of, you know, call
12 it liabilities or costs associated with running the business,
13 running the business and at a cash burn rate, bankruptcy fees,
14 et cetera, that we --

15 THE COURT: Okay. I'm going to cut it off. I'm
16 going to cut it off. That, in my view, is going a little too
17 far afield. That's a discussion outside the courtroom. So,
18 thank you, and we're going to see: Does the Committee have
19 anything they want to ask?

20 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
21 the Committee.

22 I certainly do not have any questions to ask. I do have a
23 couple of statements that I want to make, but I don't know if
24 now is the appropriate time or if there's going to be further
25 testimony.

1 THE COURT: Okay. I think there might be another
2 witness or two, but we'll let you make your comments at the
3 appropriate time.

4 EXAMINATION BY THE COURT

5 THE COURT: Mr. Seery, I meant to ask, I forgot to
6 ask: You've mentioned a couple of times the Debtor, Highland,
7 has 70-ish employees. Has the number gone down since the case
8 was filed, is Highland losing employees, or is it staying
9 stable?

10 THE WITNESS: We lost -- we lost seven employees.
11 There were some that were severed for performance reasons.
12 That happens every year. There were some that just moved on
13 because they decided to move on. And that some -- and then we
14 had some that, because of the bankruptcy, we lost. We added,
15 I think, one or two employees that we're pretty excited about
16 in the fund valuation area, which is a pretty critical area
17 for the shared services. Unfortunately, they haven't been
18 able to go to the office, but fortunately, they've been able
19 to work.

20 So we're down, Your Honor, probably eight total, and so
21 we're more of the low to mid-60 area right now.

22 THE COURT: Okay. And --

23 MR. SEERY: And we were a little bit north of 70 when
24 we took the case.

25 THE COURT: Okay. And the COVID situation, I mean,

1 if you walked into the office, would there be people around in
2 masks, or are people still working at home?

3 MR. SEERY: People -- so, in -- yeah. So, in March,
4 very early on, as things started to shut down, Brian Collins,
5 who's the director of human resources and an accomplished
6 professional, came to the Board and basically said, you know,
7 yeah, Texas is better, but it's not immune. We need to come
8 up with a program.

9 And with Russ Nelms and John Dubel and I, we developed a
10 program, with Brian -- with Brian driving it, to figure out
11 exactly how to approach going into the office; how we would
12 maintain the office; and then, if something were to happen,
13 what we would do.

14 We had an employee who, with her family, got COVID in --
15 we believe in New York, came back. And as soon as we found
16 out that person wasn't feeling good in the office, it was the
17 first day they were back, a protocol with thermometers and --
18 at that time, thermometers were thought to be valuable -- we
19 immediately sent that employee home. We then brought in a
20 cleaning crew to clean up the office with EPA and FDA-approved
21 materials, and then had several days off and brought folks
22 back the following week.

23 We found that to be, frankly, unwieldy as COVID started to
24 continue to creep a bit through March and into April. At that
25 point, we did have other employees, not who came into the

1 office, but who had contracted COVID, so we shut down HCMLP.
2 When we cleaned the office, we shut it down completely.
3 Nobody could go in.

4 When -- since then, we have set the office up where we had
5 initial (inaudible) when things were pretty good, so we
6 divided the move into -- into basically 20 percent could be in
7 the office at any one time. And then, since that time, as
8 things have gotten worse, we found that we were, one, working
9 extremely well offsite; and two, that it was just a better
10 environment for the employees. So we've been working
11 continually offsite.

12 If folks need to go in, because either they need more
13 advanced systems that they can't go to plug-and-play at home,
14 or because there's just materials that they want to get,
15 they're able to do in. We have tons of disinfectant
16 everywhere. We have masks available. We put in dividers,
17 Plexiglas dividers between the work stations to assure that if
18 someone was at a station for a long time, it didn't -- it was
19 less likely that you could have transmission.

20 I will tell Your Honor that HCMLP is not reporting to the
21 office. Some of the affiliated businesses, and I don't know
22 the percentage, have been. So those businesses, which we
23 don't control, are going in.

24 From my perspective, as long as the numbers are where they
25 are in Texas, from both a business perspective in terms of

1 making sure that the employee base doesn't contract COVID in
2 material amounts -- first, any amount -- but in material
3 amounts that would impact our ability to run the business.
4 And then with respect to the civic part of it, which is we
5 don't want to be a part of forcing the spread or causing the
6 spread of this disease, we know we can work from home. We're
7 going to continue to do that until we believe it's very safe
8 to go back.

9 Notwithstanding that we have the ability and have been
10 doing it with extensive cleaning, extensive disinfectant, and
11 with dividers, until we are very comfortable that we can go
12 back and protect our employees and that it's the right civic
13 thing to do, we're not going to go back, particularly since it
14 doesn't impact our ability to perform.

15 THE COURT: Okay. I really want to, you know, get to
16 the rest of our hearing soon, but I heard something that made
17 me have a question. You said there are other entities we
18 don't control whose employees are going in. Could you tell me
19 exactly what you meant by that?

20 THE WITNESS: There's -- away from HCMLP, there's
21 approximately another 75 to 80 -- it may be slightly more --
22 employees at the other entities that are NexPoint, NexBank,
23 NexPoint Advisors. They are under different protocols that
24 neither I nor Russ nor John control. The office --

25 THE COURT: Let me just stop you.

1 THE WITNESS: Please.

2 THE COURT: So it's just Nex -- well, NexPoint-
3 related companies?

4 THE WITNESS: Uh-huh.

5 THE COURT: NexPoint and --

6 THE WITNESS: Yes.

7 THE COURT: -- affiliates of NexPoint?

8 THE WITNESS: Correct, Your Honor. The office, the
9 HCMLP offices are huge. And when we were there pre-COVID,
10 with the full complement of folks, it felt like they were
11 relatively empty. I shouldn't say -- they felt like there was
12 plenty of space.

13 What we found, with both sets, our employees and then the
14 NexPoint-related employees, when 140 or 150 people were in
15 that office, which pre-COVID felt comfortable, post-COVID
16 didn't feel so comfortable. So our employees, we started, as
17 I mentioned, with the shift-working. And then we decided to
18 go completely mobile unless somebody feels they have to be in
19 the office, and we want to make sure that they follow the
20 protocols when they do.

21 With respect to the non-HCMLP related entities, those
22 entities, some percent of those employees are still going into
23 the office.

24 Now, when they're there, to be frank, what I said was a
25 pretty comfortable place with 140 people is a pretty empty

1 place if there's only 50. But our employees, we felt it was
2 important, since we were able to execute from home, we didn't
3 need, on most parts, the extra systems to be able to execute
4 in the office, that we could largely perform from home to make
5 sure that we weren't taking any risks with the business but
6 also taking -- one, taking risks for the employees; two,
7 taking any risks for the business; and three, as I mentioned,
8 the civil perspective.

9 THE COURT: Okay. We're going to have to take a
10 five-minute break here in just a second, but let me kind of
11 elaborate on why I was drilling down on that question about
12 NexPoint. I mean, isn't it Highland employees who service
13 NexPoint? Or am I wrong about that?

14 THE WITNESS: Highland employees service a lot of
15 NexPoint. But NexPoint, NexBank, the various funds, NXRT,
16 there's a number of businesses: They have their own employees
17 as well.

18 THE COURT: Okay.

19 THE WITNESS: So the whole complex is about 150
20 employees.

21 THE COURT: Okay.

22 THE WITNESS: Highland Management is about 70.

23 THE COURT: Okay. All right. Well, are we finished
24 with Mr. Seery's testimony, Mr. Morris?

25 MR. MORRIS: Yes, Your Honor. Our next witness after

1 the break will be John Dubel.

2 THE COURT: Okay. Very good.

3 MR. MORRIS: And we --

4 THE COURT: Mr. Seery, again, this has been extremely
5 helpful for me, and I hope for others. I hope you'll stick
6 around, because when we circle back to the mediation
7 discussion at the end of today, I really would like you to be
8 involved in that discussion. I may want your input on one or
9 two things. So can you stick around?

10 THE WITNESS: Absolutely, Your Honor. Other than
11 getting some water and maybe turning the air conditioning back
12 on in this room, I'll stay.

13 THE COURT: You must not be in Texas if you don't
14 have your air conditioning on. I assume you're in New York.
15 All right. Five-minute break. We'll be back.

16 THE WITNESS: It's hot, but not Texas hot.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE CLERK: All rise.

20 (A recess ensued from 3:16 p.m. until 3:22 p.m.)

21 THE CLERK: All rise.

22 THE COURT: All right. Please be seated. We're back
23 on the record in Highland.

24 Mr. Morris, you were going to call Mr. Dubel next?

25 MR. MORRIS: Yes, the Debtor calls John Dubel.

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1 THE COURT: Dubel?

2 MR. DUBEL: Your Honor, may I have just one minute to
3 -- my air conditioner.

4 THE COURT: All right. Mr. Dubel, I said your name
5 wrong. Could you say Testing 1, 2?

6 MR. DUBEL: I can do that, Your Honor. Testing 1, 2.

7 THE COURT: Okay. Very good. Please raise your
8 right hand.

9 JOHN DUBEL, DEBTORS' WITNESS, SWORN

10 THE COURT: All right. Thank you. Mr. Morris, you
11 may proceed.

12 MR. MORRIS: Thank you, Your Honor. As Mr. Pomerantz
13 previewed, Mr. Dubel's testimony is going to largely cover the
14 corporate governance-type issues concerning the evolution of
15 the motion, the discussions or the, you know, beginning of the
16 discussions, and how the proposal itself evolved.

17 If I may, Your Honor, just to perhaps move this along, I
18 might lead the witness a little bit. If it's a problem,
19 you'll let me know, okay?

20 THE COURT: Okay. I will let you know if it's a
21 problem.

22 MR. MORRIS: Okay.

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good afternoon, Mr. Dubel. You're a member of the Board

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1 of Strand today; is that right?

2 A I am.

3 Q And you've held that position since mid-January; is that
4 right?

5 A Since January 9th, yes.

6 Q Okay. And you understand that we're here today on the
7 Debtors' motion to appoint Mr. Seery as the Debtors' CEO, CRO,
8 and the Foreign Representative?

9 A I do understand that, yes, sir.

10 Q Does the Board unanimously support the motion?

11 A I think the Board does, and specifically the compensation
12 committee, because of obviously the conflict that Mr. Seery
13 might have, you know, but the Board fully supports it, and the
14 compensation committee is comprised of Mr. -- Judge -- Judge
15 Nelms and myself.

16 Q Okay. And do you believe that -- withdrawn. Does the
17 Board believe that it's in the Debtors' best interests to
18 retain Mr. Seery on the terms proposed?

19 A We do.

20 Q And why does the Board believe that?

21 A Well, as the Court has heard from the testimony of Mr.
22 Seery today, he has a tremendous amount of skills and
23 experience in the area of asset management. He's effectively
24 been serving as the CEO since -- well, in a lot of ways, since
25 January 9th, when we asked him to step up and take on some

1 additional responsibilities, but very clearly since the middle
2 of February, and specifically, the middle of March.

3 And as the Court noted, he is -- knows these assets very
4 well. He knows the operations. He's done an exemplary job of
5 handling all of the issues. He has spent a tremendous amount
6 of time working with the Committee members, trying to develop
7 good lines of communications.

8 And, you know, Russ -- having, you know, served in a C
9 Suite position for 25 years of my 30-plus years of
10 restructuring experience, and 15 years as a CEO, we need a
11 good leader, an operational leader to run the organization.
12 So we can support him because you need to have someone in
13 there who can make decisions; work quickly; obviously,
14 communicate well with the Board, which he has been doing for
15 quite some time. So, all the -- all of the reasons why we are
16 very pleased to have him take on this role.

17 Q Okay. Let's talk a little bit about what led to this
18 particular motion. Do you recall when the idea of appointing
19 a CEO first arose?

20 A I would say it was back in December, before the
21 Independent Board was put together, when we first started
22 intervening with the creditors and with the Debtor. It was
23 raised to me in my interview, would I be, you know, willing to
24 step in as a CEO if asked to? And I'm assuming it was also
25 asked of Mr. Seery. I didn't ask him that. And it was all

1 obviously coming, you know, out of the protocols that were
2 being developed where Mr. Dondero would step down as the CEO
3 and the Independent Board would basically be responsible for
4 the operations of the company. But we had the opportunity to
5 go out and seek either one of the three Independent Board
6 Members as the CEO or go outside to the marketplace and try
7 and find an independent or a third-party CEO.

8 Q And to the best of your recollection, was that flexibility
9 built into the term sheet that was part of the corporate
10 governance settlement?

11 A It was.

12 Q All right.

13 MR. MORRIS: Your Honor, this is where we're going to
14 test our technological capabilities. I'm going to ask Ms.
15 Canty to put up and to share Exhibit 1, and let's see if we're
16 able to do that.

17 THE COURT: Okay. But if anything goes wrong, I
18 actually do have the docket up on my screen. I can pull them
19 up. But, oh, even better. Even better. Okay.

20 MR. MORRIS: All right. It looks like it worked.
21 Ms. Canty, if you could turn to Page 2, please. I think
22 that's Page 1.

23 (Pause.)

24 MR. MORRIS: I think it's stuck.

25 THE COURT: Hmm.

1 THE WITNESS: If need be, I have a teenager who could
2 probably figure this out, because I sure can't.

3 MR. MORRIS: I'm impressed that La Asia got to this
4 point already. Okay. Good. Just the one on the right. Is
5 there a way to focus in on the top paragraph on the right?

6 THE WITNESS: I'll put my glasses on and I'll be able
7 to read it.

8 MR. MORRIS: Okay. Right there. Perfect.

9 BY MR. MORRIS:

10 Q Is -- are you familiar with the provisions generally in
11 the term sheet relating to the opening of CEO?

12 A I am.

13 Q And is this the provision that you were referring to
14 earlier?

15 A It is.

16 Q And does this provision, to the best of your
17 understanding, provide the Board with the flexibility, in
18 consultation with the UCC, to exercise its business judgment
19 and appoint a CEO if it determined that to be in the Debtors'
20 best interest?

21 A It does. It's consistent with the discussions had -- that
22 were had prior to our appointment, and it obviously was
23 incorporated in the term sheet that was approved by the Court
24 on January 9th.

25 Q And this also reflects the understanding that you

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1 described earlier, where one of the Independent Directors
2 could, in fact, be selected as the CEO; is that right?

3 A That is correct.

4 MR. MORRIS: All right. Let's just take that down,
5 please, Ms. Canty.

6 BY MR. MORRIS:

7 Q Mr. Dubel, has Mr. Seery, in fact, taken on day-to-day
8 operational responsibilities for the Debtor?

9 A Yeah. Yes, he has. And I think early on the Board
10 realized that, between the three Board members, we would try
11 and divvy up the responsibilities, as Mr. Seery referred to
12 earlier, and it was definitely like drinking from a fire hose
13 in the early stages of the case, where the new Board was put
14 in place. And we tried to divvy up our responsibilities,
15 taking into consideration each of the Board Members'
16 expertise.

17 But it was pretty clear that the main business operations
18 required somebody with the skill set that Mr. Seery had, and
19 it would be much more efficient, as we progressed forward, to
20 coalesce around one individual as a CEO.

21 MR. MORRIS: Ms. Canty, can you pull up Exhibit 2?

22 BY MR. MORRIS:

23 Q And while we're doing that, Mr. Dubel, do you recall early
24 on that the Board asked Mr. Seery to become involved in the
25 trading of the prime accounts?

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1 A I do, yes.

2 Q Okay.

3 MR. MORRIS: La Asia, I don't know if you can scroll
4 down just to --

5 Your Honor, these are minutes from the Board's very first
6 meeting. And if we go to the next page, right here, you'll
7 see there's a discussion in the second paragraph.

8 BY MR. MORRIS:

9 Q Mr. Dubel, does that reflect the Board's deliberation and
10 decision, really, on the first day, to give Mr. Seery, you
11 know, the responsibility for dealing and overseeing the prime
12 accounts?

13 A It does. And what I was saying is, prior to the
14 appointment, in doing all of our diligence prior to joining
15 the Board, we realized there were all these issues that needed
16 to be dealt with. And so we came in on the very first day,
17 ready to recognize that there were certain things that needed
18 sort of expertise. And they were presented to us by DSI and
19 the management of HCMLP as areas that needed some additional
20 handling and oversight. And so we asked Mr. Seery to step
21 into that role on the very first day, which he -- which he
22 agreed to and the Board approved it.

23 Q Okay. Let's get to the meat and potatoes here. Did there
24 come a time when the Board and Mr. Seery actually began
25 discussing the possibility of his serving as the CEO?

1 A Yes, there did.

2 Q And can you share with the Court your recollection of how
3 that began?

4 A So, there were informal discussions, I would say, through
5 the month of February, as we started to realize that there
6 were -- the decision-making was going to be cumbersome,
7 having, you know, three parties involved. As I said earlier,
8 having spent 15 years or so my career as a chief executive
9 officer, I understand where you really want to have one person
10 be responsible for these issues.

11 And so we were conversing with Mr. Seery to see if he
12 would take on that role. And, obviously, we had felt very
13 comfortable, Mr. Nelms and I felt very comfortable with the
14 communications that he was having with us on things that we
15 had asked him to do. There was a very free and open
16 discussion with the Board members. So we continued, you know,
17 to look at opportunities where it might make sense.

18 And then, you know, towards the beginning of March, it was
19 pretty obvious that we were going to want to coalesce around
20 the motion. We thought about whether or not that would be
21 some third party. But having, again, experience of having to
22 go out in the marketplace to find CEOs when I'd been either,
23 you know, a director or involved in companies, we realized
24 that can be very time-consuming, would take us months to find
25 somebody.

1 And so we continued to discuss it with Mr. Seery. And
2 around the middle of March or so, right around the time that
3 we had a Creditors' Committee meeting in New York, we asked
4 Mr. Seery if he would take that role on, and he agreed to, to
5 take that role.

6 Q And that's -- and is that why the Debtor is seeking
7 authority to retain Mr. Seery nunc pro tunc back to March
8 15th?

9 A We are. I mean, effectively, he really started the role
10 in the February time frame. But we officially asked him about
11 this in -- right after that meeting on March -- I think it was
12 March 11th or so.

13 Q So, is it fair to say that's when the Board had a meeting
14 of the minds with respect to not necessarily the terms but at
15 least the engagement of Mr. Seery as CEO?

16 A Yes, that is fair to say.

17 Q Okay.

18 A And that's when he really did step up and take on all of
19 those responsibilities, you know, with the acknowledgement and
20 understanding that we would work out the appropriate terms for
21 his engagement.

22 Q Okay. And a couple of weeks later, do you recall that Mr.
23 Seery made a written proposal to you and Mr. Nelms?

24 A He did make a written proposal after, you know, having
25 discussions with us orally about various issues and roles and

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1 responsibilities. I think it was around April 4th or so that
2 he presented us with a written proposal.

3 MR. MORRIS: All right. Ms. Canty, can you call up
4 Exhibit 3, please? (Pause.) Okay. If you'll scroll down.

5 BY MR. MORRIS:

6 Q Mr. Dubel, is this the April, the early April e-mail that
7 you were referring to in which Mr. Seery made a proposal for
8 the terms of his engagement as CEO?

9 A Yes. This document refreshes my recollection. It wasn't
10 April 4th. It was April (audio gap). But yes, that's the
11 document I was referring to.

12 Q Okay. What happened next, after -- after the -- after
13 this was presented to you and Mr. Nelms? What did you guys
14 do?

15 A So, what we wanted to do is understand what was our
16 responsibility as a board. So we reached out to counsel to
17 figure out how the process should work. We set up a
18 compensation committee. It's called a comp committee; it's
19 more I would call it a nomination committee or a governance
20 committee also, because it was all about retaining Mr. Seery
21 in that role.

22 We got advice from counsel on what the process should be.
23 We reached out to our compensation consultant at Mercer, who
24 had been providing us assistance in other areas of the
25 company's compensation program, to talk to them about what the

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1 various market comps, you know, compensation programs were and
2 what would be an appropriate market comp for Mr. Seery's
3 compensation, and, you know, moved forward that way.

4 MR. MORRIS: Ms. Canty, can you pull up Exhibit 4,
5 please?

6 BY MR. MORRIS:

7 Q Do you know what this document is, Mr. Dubel?

8 A Yes. This looks like the minutes from the meeting of our
9 first compensation committee on April 8th, compensation
10 committee of Strand Advisors.

11 Q And this was a meeting between you and Mr. Nelms, with
12 counsel; is that right?

13 A That is correct.

14 Q And this was precipitated by Mr. Seery's written proposal
15 that was made a few days before that; is that fair?

16 A Well, I would say it was precipitated by the advice we had
17 gotten through counsel that we should set up a compensation
18 committee and consider what would be the appropriate way of
19 retaining Mr. Seery, you know, as a chief executive officer.
20 His proposal came in a couple of days earlier than that, and
21 so this was our first official time to get together as a
22 committee and review it and discuss the issue.

23 Q And was this a contemporaneous record of the steps that
24 the compensation committee took to do its due diligence with
25 respect to the proposal?

1 A It is.

2 Q Okay. Did the compensation committee --

3 MR. MORRIS: You can take that down, Ms. Canty.

4 BY MR. MORRIS:

5 Q Did the compensation committee communicate with the
6 Creditors' Committee with respect to these matters?

7 A We did.

8 Q Can you --

9 A As a part of the protocols, one of the things I -- and I'd
10 go back and re-read the protocol language, but one of the
11 things it said was work with the UCC to determine who would be
12 an appropriate CEO. And so we realized we would do that, and
13 we started to reach out to the various members of the
14 Creditors' Committee to discuss that.

15 Q Okay. And do you recall whether the compensation
16 committee or the Debtor generally shared Mr. Seery's proposal
17 with the Committee?

18 A We did. I don't recall the exact date, but we did share
19 it with the UCC through the UCC counsel.

20 Q Do you recall if the report that was commissioned by the
21 Debtor with respect to Mercer, the Mercer Report, was that
22 shared with the Committee?

23 A It was.

24 Q Can you describe for Judge Jernigan your recollection as
25 to, you know, the Committee's reaction and, you know, position

1 with respect to the proposed retention of Mr. Seery as CEO?

2 A We shared the report from Mercer with the Committee in --
3 I think it was early May. And we spent time with them in the
4 April time frame talking about the fact that we were going to
5 be seeking Mr. Seery's appointment as CEO and telling them
6 that we were going to be commissioning a report to make sure
7 we had what we thought was market compensation.

8 The Committee was generally very supportive. They had
9 been obviously experiencing Mr. Seery taking on that role of
10 effectively the CEO for a period of time, so they understood
11 where, you know, where he was coming from and what -- how he
12 was going to operate the business.

13 They understood, to my knowledge and in my discussions,
14 they understood the benefits of having a single person as the
15 CEO rather than trying to manage the business by committee.
16 We discussed with them why it made sense.

17 And so, you know, they were supportive of it. Obviously,
18 we had to negotiate the terms of the compensation.

19 Q And did that take some time, to negotiate the compensation
20 terms?

21 A It did. Initially, it was being done through myself and
22 Mr. Nelms, working directly with the Committee. But, again,
23 having been in that position of having to negotiate with the,
24 you know, the committee on terms of my own personal
25 compensation -- not this committee, but in other cases -- we

1 recognized that it was probably more efficient for Mr. Seery
2 to speak directly with the Committee, Committee members. And
3 so we asked him to pick up that, you know, responsibility
4 also. And he did. He kept us informed every step of the way.
5 And I, as the de facto chairman of the compensation committee,
6 also spoke directly with the various members of the Committee
7 during this time frame, where there was (echoing)
8 communication about compensation.

9 Q Mr. Pomerantz mentioned it in his opening remarks, but do
10 you recall kind of what the bigger issues were with respect to
11 the proposed compensation terms with the Committee?

12 A Sure. The Committee -- well, there was always negotiation
13 going on, obviously. The Committee, at the end of it, they
14 had no problems with the monthly compensation, recognizing
15 that whatever his board compensation would be would
16 effectively be wrapped into the monthly compensation.

17 What the issues really came down to for them revolved
18 around the restructuring fee that was being proposed, success
19 fee, you know, what have you. And there was a lot of
20 different views, as you can imagine, between the four members
21 of the Committee as to how that should be set up.

22 Mr. Nelms and I were very cognizant that we did not want
23 to have Mr. Seery (echoing) -- I'm sorry. I'm getting a lot
24 of background noise here.

25 THE COURT: Yes. I'm not sure who needs to mute

1 their phone, but someone needs to mute their phone. Okay.

2 THE WITNESS: Thank you.

3 THE COURT: Uh-huh.

4 (Echoing subsides.)

5 THE WITNESS: So we were very concerned that
6 structures not be put in place that could cause the potential,
7 the appearance of a conflict between the role that Mr. Seery
8 was playing and his compensation.

9 It's always a, you know, a challenging issue here, to make
10 sure that, you know, a CEO of any company is looking out for
11 the best interests of the estate and not looking out
12 specifically for any particular creditor, equity, or group of
13 creditors, just because that's the way the compensation was
14 designed. And so that was a challenge.

15 At the end of the day, we wanted to have what we felt was
16 fair compensation for the success fee and restructuring fee
17 for Mr. Seery, because we wanted him incented to get the job
18 done, as he has alluded to in his prior testimony as to what
19 he's trying to do here. And so there did come a point where
20 we could not get to a meeting of the minds and so we chose to
21 move forward on the compensation with just the monthly agreed
22 to. Mr. Seery was good enough to agree to that for just the
23 monthly, and that we would put forward the restructuring fee
24 at a later date.

25 BY MR. MORRIS:

1 Q Okay. Thank you. In addition to the CEO title, the
2 Debtor is asking for the Court to appoint Mr. Seery as the CRO
3 and the Foreign Representative; is that right?

4 A That is correct.

5 Q And why is the Debtor seeking that relief?

6 A Well, initially, the CRO was brought in, I believe it was
7 the middle of October, when the case was filed and before the
8 Independent Board was put in place. And there were reasons
9 why, you know, the Committee had asked for the CRO to have
10 certain responsibilities. Those carried through in the
11 protocols.

12 And obviously, you know, we had no issues with those, but
13 what we also felt, Mr. Nelms and I, and in consultation with
14 Mr. Seery, was that it would be more appropriate to have one
15 person be responsible for all of the issues within the
16 company. And since there was an Independent Board, and since
17 one of those Independent Board Members was becoming the CEO,
18 the need for another individual to be the CRO might send
19 conflicting signals inside the organization. And so we
20 decided that it would be appropriate to put those
21 responsibilities into Mr. Seery's lap. And we spoke with Mr.
22 Sharp from DSI, and he agreed. And so that's the reason why
23 we moved it forward that way.

24 Q Okay. I understood you to say that the meeting of the
25 minds, at least conceptually, was somewhere around March 12th

1 in New York, or March 11th. I think the Judge may have asked
2 the question or at least implied that she wanted to know kind
3 of why it took so long to get the motion on file. I think
4 you've discussed some of the issues, but just kind of in a
5 bullet-point way, can you give the Judge an explanation as to,
6 you know, why it took several months to get this motion in
7 front of the Court if a meeting of the minds occurred back in
8 March?

9 A Sure. I believe the motion was filed on the -- I think it
10 was the 22nd or so of June.

11 Q Okay.

12 A And so we -- we asked Mr. Seery. He accepted the
13 responsibility in the middle of March. Right at that point in
14 time was when the whole pandemic issue was, you know, really
15 coming hot and heavy at the company. As Mr. Seery testified
16 earlier, he had -- he was spending a tremendous amount of time
17 just focusing on the operations of the business, focusing on
18 the assets, dealing with the prime accounts, the select
19 accounts, working with Jeff Reeves, working with the other
20 individual investments that we had, to make sure that those
21 were under control.

22 I would say I applaud him for putting the business first
23 in front of him, and then I think probably at 1:00 o'clock in
24 the morning he was able to finally sit down and put together
25 his own compensation request.

1 We did need time to go through with the Mercer folks and
2 get, you know, the market information, and that took a lot of,
3 you know, a lot of time.

4 And then, more importantly, we wanted to make sure we
5 could get something in front of the Court that was agreed to
6 by the Committee. So we did share the information with the
7 Committee. We spent a lot of time in negotiations with the
8 Committee, trying to get to a resolution. As I said earlier,
9 we asked Mr. Seery to step in and there be, you know, one-on-
10 one discussions to maybe shortcut some of that.

11 And finally, at the point in time where we realized we
12 could not get a full, you know, fully-agreed compensation
13 program, we asked him to just break it down into the monthly,
14 and then come back for a restructuring bonus at the end of the
15 case.

16 And so all of that, while trying to manage the business in
17 the COVID era, is what took such a long period of time.

18 Q Did it also take some time to obtain appropriate D&O
19 insurance for Mr. Seery as the CEO?

20 A It did. We had to, as the Board of Strand, we had to set
21 up a D&O program for the Board members when we first got
22 involved back in January. That took a tremendous amount of
23 time. It was very difficult to obtain in the marketplace, for
24 any number of reasons, but mainly because the insurance market
25 understood what Highland was all about and the various

1 players, and they were very reticent to insure Highland.

2 So, because we were Strand, because there were other
3 protections that were afforded to the Independent Directors,
4 we were able to obtain it.

5 When we asked the various carriers to add Mr. Seery on as
6 the CEO for HCMLP, it was very challenging to put folks on.
7 We were eventually able to get our first layer to sign on, the
8 first-layer insurer. The second layer would not do it, and we
9 had to go find a third carrier who would do it. And we
10 actually got that done at some time in the latter part of
11 June, right after we had filed the motion.

12 Q Okay.

13 MR. MORRIS: Your Honor, I've got just a few more
14 questions, but they're going to be devoted to the DSI motion.
15 I don't know if you wanted to ask -- if you had any questions
16 on the motion with respect to Mr. Seery or I should just
17 continue on.

18 THE COURT: I do not have questions. You can
19 continue.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Okay. So, let's just finish up, Mr. Dubel. There is a
23 second motion in front of the Court, and this one is for the
24 appointment of DSI as financial advisor. Are you familiar
25 with that motion?

1 A I am.

2 Q Does the Board unanimously support that motion?

3 A We do.

4 Q Has the Board concluded, in an exercise of its independent
5 business judgment, that the engagement of DSI as financial
6 advisor is in the Debtors' best interests?

7 A We have. Yes.

8 Q Can you explain to the Court why the Board reached that
9 conclusion?

10 A Well, we do need the services of a financial advisor.
11 It's very important in this case to have an independent, you
12 know, restructuring, you know, financial advisor to assist us.
13 As Mr. Seery testified earlier, they have been very
14 instrumental in helping him prepare the financial analysis
15 that has been part of what he's been using to start
16 negotiating and working forward on the -- putting together a
17 plan of reorganization.

18 They've also spent a tremendous amount of time acting as a
19 bridge to FTI, the Committee's financial advisors, which is
20 very common in these types of cases. And so that's been
21 extremely helpful. And that role needs to continue.

22 They also are handling all of -- all the administrative
23 bankruptcy issues, the SOFAs, the MORs. They're doing a lot
24 of work for us, not necessarily specifically on the large
25 claims, but on helping us analyze and review all of the other

1 myriad of -- I think it's two hundred something claims that
2 have been filed in the case.

3 So they've been here since -- I guess they came in pre-
4 filing. They have a lot of history and knowledge, and we want
5 to continue to utilize that knowledge as we continue to move
6 forward. So that's why. And the Board is very comfortable
7 with the job they've been doing, and so we felt it was
8 appropriate to continue to use them as the financial advisor,
9 just in a slightly different role.

10 MR. MORRIS: Your Honor, I have no more questions of
11 Mr. Dubel.

12 THE COURT: All right. Well, I'm going to just jump
13 in and ask my own questions, and then I will -- I'll, you
14 know, offer him up for cross if people will promise to
15 restrict it to employment terms.

16 EXAMINATION BY THE COURT

17 THE COURT: So, what -- my question is about Mr.
18 Sharp. As I recall, the compensation is not going to change
19 at all, even though the role is changing. He won't be CRO
20 anymore, Mr. Sharp. He won't be the Foreign Representative
21 anymore. But obviously, he and his firm will remain very
22 engaged as financial advisor.

23 What I'm getting at is there was a \$100,000 per month flat
24 fee for Mr. Sharp, and then other professionals at DSI will
25 bill by the hour. Tell me why the Board thinks that's still

1 the appropriate compensation package with the modified role of
2 Mr. Sharp. I'm getting at, \$100,000 a month, is that still
3 the right thing, or hourly compensation, did you discuss that,
4 and why is --

5 THE WITNESS: We did, Your Honor. And I'll be
6 (inaudible) with you. I don't know who negotiated that
7 originally for -- with, you know, with DSI, but I find it to
8 be a very fair-to-the-Debtor compensation package of \$100,000
9 for Mr. Sharp, but it also includes Mr. Caruso, who Mr. Seery
10 has referenced earlier. I think it was a very good
11 negotiation that was had by the Debtor.

12 So when we looked at it, we said, if we switch to a
13 straight hourly, based upon the amount of time and effort
14 that's being put in by the two of those individuals, it might
15 cost us a little bit more. So we chose to continue it at that
16 level.

17 And I know Mr. Seery will continue to lean on those two
18 folks and get his money's worth. I'm confident of that.

19 THE COURT: Okay. You just reminded me of something
20 that I did not remember, I guess. Mr. -- we're getting two
21 for the price of one, is basically the -- Mr. Caruso does not
22 bill by the hour?

23 THE WITNESS: They -- they work together. It's their
24 compensation. I would imagine they keep hours internally,
25 just to keep track of it, but what they bill us for the two

1 individuals, Mr. Caruso and Mr. Sharp, is a flat fee of
2 \$100,000 for the two of them.

3 THE COURT: Okay. All right. And do you remember,
4 by comparison, the financial advisor to the Committee -- is it
5 FDI? Whoever it is.

6 THE WITNESS: It -- it --

7 THE COURT: How are they getting compensated? Is it
8 strictly on an hourly basis, or is there also a combo flat fee
9 and hourly?

10 THE WITNESS: (echoing) on an hourly basis, and I
11 have one of their most recent charts. It was the May fee
12 application that they just filed, and they -- they bill in a
13 range from \$1,245 an hour for, you know, senior managing
14 directors, to \$875 an hour for managing directors, down to,
15 you know, \$690 an hour for directors. Yeah. A very fair and
16 appropriate marketplace compensation, but I think what we are
17 incurring under the structure that we have for DSI is below
18 that.

19 THE COURT: If those two guys were billing normal
20 market hourly fees, you think it would be busting \$100,000 a
21 month, perhaps?

22 THE WITNESS: I think it -- I think it would be well
23 in excess of \$100,000, --

24 THE COURT: Okay.

25 THE WITNESS: -- based upon the hours that we have

1 seen to date from them, Your Honor.

2 THE COURT: Okay. Now, does anyone else have
3 questions for Mr. Dubel related to these employment
4 arrangements proposed?

5 (No response.)

6 THE COURT: I guess not. I actually have one more
7 question. I think it will be for my benefit, but maybe for
8 benefit of parties in interest, I hope. You made a comment
9 about getting insurance for Mr. Seery, and you said it was a
10 bit of a challenge because insurers in the marketplace kind of
11 knew what Highland was about. I think those were your words.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Here is my question. As far as knowing
14 what Highland is about, other persons, not me, have used the
15 words that people were Mr. Dondero's puppet master, or he was
16 the puppet master, had his hands all over this, here and
17 there. And we obviously endeavored to change that with the
18 new Board in place. What would you say if people out there
19 think Dondero still might be a puppet master? What -- I mean,
20 is there any concern there that you could address?

21 THE WITNESS: Sure. And let me, let me take it in
22 two parts, because I think it's important for you to
23 understand from a third-party insurer's point of view. The
24 D&O marketplace has seen a lot of litigation surrounding the
25 Highland Capital name. And because of that, that obviously

1 causes them concern. Their business is to write insurance and
2 never pay a dime. I ran an insurance company for six years,
3 and you never want to pay a dime out, you just want to collect
4 premiums.

5 THE COURT: Yes. And I probably prefaced this in a
6 confusing way. I'm really not going back to the insurance. I
7 just said that comment, when you were talking about insurance,
8 made me want to ask, for my benefit and for other parties'
9 benefit: How much control, if any, does Dondero have? In
10 theory, he was not supposed to have any control over the
11 Debtor anymore, but can you say something to make us all feel
12 comfortable that, if he ever was a puppet master, he's not a
13 puppet master anymore?

14 THE WITNESS: Well, I won't use that terminology.
15 What I will say is, since January 9th --

16 THE COURT: Yes. It was someone else's term, not
17 mine. I'm just repeating it.

18 THE WITNESS: That's okay. Since January 9th, when
19 the Independent Board was put in place, the Independent Board
20 has had the responsibility, is responsible for the operations
21 of this business. Mr. Dondero, as Mr. Seery alluded to
22 earlier in talking about the number of people in the
23 organization, has other businesses that he's involved with
24 that operate out of the offices through shared services. But
25 it's very clear to all the employees that the Independent

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1 Board is responsible for HCMLP and that since, really, you
2 know, the early March time frame, that Mr. Seery is the CEO.

3 So there is no concern on my part that Mr. Dondero is
4 having undue influence. He is still our portfolio manager,
5 but Mr. Seery is working with him as appropriate, and I have
6 no concern that Mr. Seery is not getting the job done and
7 getting any undue influence from Mr. Dondero.

8 THE COURT: All right. Thank you.

9 Mr. Morris, do you have any redirect?

10 MR. MORRIS: I do not, Your Honor. I appreciate the
11 question, and I think Mr. Dubel answered it appropriately.

12 THE COURT: All right. Thank you, Mr. Dubel. I do
13 appreciate your testimony today. It was helpful.

14 All right. Mr. Morris, --

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: -- what else do you have? You have Mr.
17 Sharp on your witness list. Did you want to --

18 MR. SHARP: I'm here, Your Honor.

19 THE COURT: -- put him on?

20 MR. MORRIS: I'm intending to do that. If Your Honor
21 thinks it's not necessary, I don't need to ask more questions.
22 It's a relatively brief examination that will just focus on
23 the slight change in his role.

24 THE COURT: All right. Well, if you feel the need to
25 make a record, you may. I just have one question I want to

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1 ask him, to shore up the record.

2 MR. MORRIS: So perhaps, Your Honor, could we swear
3 him in, you ask your question, and then I'll see if there's
4 (echoing)?

5 THE COURT: All right. Mr. Sharp, I see you there.
6 Please raise your right hand.

7 (Echoing.)

8 BRADLEY SHARP, DEBTORS' WITNESS, SWORN

9 THE COURT: Thank you. We were getting some
10 distortion there. So, again, if you're not Mr. Sharp, please
11 put your phone on mute.

12 EXAMINATION BY THE COURT

13 THE COURT: All right. Mr. Sharp, I just wanted to
14 hear from you how many hours a month do you think that you and
15 Mr. Caruso are working on the Highland matter?

16 THE WITNESS: I don't have the hours in front of me,
17 Your Honor, but I think Mr. Dubel unfortunately alluded to
18 poor negotiating on DSI's part. That'd be my responsibility,
19 because I'm the one that did that.

20 From October through May, if you look at the time for Mr.
21 Caruso and myself, DSI has provided about a \$730,000 discount.
22 So if we were actually being paid on our hourly rate, our fees
23 would be \$730,000 more than the \$100,000 a month. We
24 typically run -- my rate is \$720 an hour. I think Mr.
25 Caruso's is about the same. The time for the two of us each

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1 month runs about \$200,000, which we then write down to
2 \$100,000.

3 THE COURT: All right.

4 THE WITNESS: (echoing) a month.

5 THE COURT: Okay. That answers my question. Mr.
6 Morris, is there anything you wanted to put on the record?

7 DIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Sharp, are you the person who was (echoing) with the
10 (echoing) CRO (echoing) Seery (echoing)?

11 A Yes, I am. I think it's much more efficient, frankly.
12 We've worked very well with Mr. Seery since the beginning,
13 since January 9th. That's going to continue. I think it
14 takes away some confusion, both internally and externally, in
15 that, you know, Mr. Seery is the CEO, the CRO, and everyone
16 knows that we are providing the analytical and support for him
17 with whatever he needs.

18 Q And I want to focus just for a second on DSI's (echoing).
19 Is DSI's responsibilities in the case changing at all?

20 A No. No. We have been working for the Board and
21 responding directly to Mr. Seery. You know, as Mr. Seery
22 testified, he works directly with myself and directly with my
23 team, and that's not going to change.

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

25 THE COURT: All right. Anyone have any questions

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1 regarding the employment terms?

2 (No response.)

3 THE COURT: All right. Well, I thank you, Mr. Sharp.
4 We appreciate it.

5 All right. Mr. --

6 MR. MORRIS: The Debtor rests, Your Honor.

7 THE COURT: Okay. Well, I presume no one else had a
8 witness to call. Again, we didn't have any responsive
9 pleadings on this.

10 So, with that, I am going to turn to the Committee counsel
11 at this point. Mr. Clemente, I know you said early on that
12 you wanted to make some comments, so this is your opportunity.

13 MR. CLEMENTE: Well, thank you, Your Honor. Matt
14 Clemente from Sidley on behalf of the Committee.

15 And just very briefly, Your Honor, as you know, we did not
16 file an objection. It sounds from what we heard today that
17 Mr. Seery and the Board are working hard, which is, frankly,
18 what I think you expect and what we expect of them.

19 We don't have an objection to the retention of Mr. Seery
20 as CEO at \$150,000 a month, which is inclusive of director
21 fees. And as Mr. Pomerantz said, the Committee does not agree
22 -- in fact, that was the source of quite a bit of the
23 negotiation of the last couple of months -- with the bonus
24 proposal. But, again, we understand that that will be
25 addressed by a separate motion.

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 6**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor's chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

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9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

1 Your Honor, we appreciate Mr. Seery's testimony to advise
2 you and to create the record for purposes of today's
3 uncontested matter. And obviously, the Committee -- there's
4 no live objection. And while the Committee may have different
5 views of what Mr. Seery said -- for example, the working of
6 the protocols, the sophistication of the advisors to the
7 Committee -- again, for purposes of the matter before the
8 Court today, we're not going to take any issue with any of
9 those statements, Your Honor, but reserve the right to do so
10 again in future if it becomes necessary.

11 So, with that, Your Honor, I have no further comments, but
12 I did want to make those couple comments for the record, to
13 make sure Your Honor understood where the Committee is coming
14 from.

15 THE COURT: Okay. Thank you. Does anyone else wish
16 to make comments about the applications before the Court?

17 (No response.)

18 THE COURT: All right. Mr. Morris, I'll turn it back
19 to you.

20 I found in my notes one question that I had. Looking at
21 your Exhibit 3 is what made me decide I have this question.
22 The Exhibit 3 was the e-mail exchange of Sunday, April 5th
23 amongst the Board members. Let me ask you this. There was
24 something in there regarding Mr. Seery, this would be a full-
25 time position, but he would be permitted to serve on outside

1 boards of directors. Is that a term that survived, or no?

2 And if it did, I want to ask how many outside board

3 memberships does he have? Again, I expect, like I think

4 everyone, that it's going to be very full-time, so I don't

5 want to hear that he's on 12 other boards. How did that --

6 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

7 Since I was the one who actually was involved in negotiations

8 more than Mr. Morris, --

9 THE COURT: Okay.

10 MR. POMERANTZ: -- maybe I can answer. I believe it

11 was something that survived. I am not aware of any other

12 boards that Mr. Seery is on. And if he has actually been able

13 to do anything meaningful while performing what is I think

14 probably 200 hours a month and being available 24/7, I take my

15 hat off to him. But I would ask him to confirm if he has any

16 other material role, but I have not seen anything.

17 THE COURT: All right. What about that, Mr. Seery?

18 MR. SEERY: I -- currently, I'm not on any other

19 outside boards except two charities.

20 THE COURT: Okay.

21 MR. SEERY: One is a foundation called the

22 (inaudible) Foundation, which is a charity for (inaudible)

23 individuals, disabled folks, and -- most of whom are abused.

24 And I'm also involved with a charity, I'm not on the board but

25 on a funding committee for Team Rubicon, which is a reference

1 -- reference service, assistance in disasters. So they don't
2 take time like this, and so I'm not going to be involved in
3 any --

4 THE COURT: Okay. Thank you. That's what I would
5 hope to hear. I didn't want to hear that you were on, you
6 know, 12 other for-profit boards.

7 So, all right. So, Mr. Morris, Mr. Pomerantz, do you have
8 anything to say before we wrap up this topic?

9 MR. POMERANTZ: Your Honor, I'm happy to give Your
10 Honor a closing statement if you think it's necessary. I
11 think you know what I would say, to summarize. But I think
12 we've been at this a while, so (inaudible).

13 So unless Your Honor has any questions for me, I would
14 just say that the evidentiary record, I believe, supports the
15 entry of an order approving both the Motion to Employ Mr.
16 Seery as the Chief Executive Officer, CRO, and Foreign
17 Representative, and the Motion to Appoint DSI as the Financial
18 Advisor.

19 THE COURT: All right. Well, I am going to grant
20 both of these motions. Again, as for Mr. Seery, it's as
21 modified per the agreements with the Committee, that
22 modification being that, as for any bonuses, we're just
23 deferring to another day whether Mr. Seery is going to get any
24 bonuses related to a plan, what kind of plan it might be, a
25 case resolution plan or a monetization vehicle plan.

1 You know, I really hope, frankly, Mr. Seery is before me
2 seeking a bonus in the very near future and we're all happy
3 about the prospect of paying him a bonus because a plan has
4 been achieved, hopefully a case resolution plan. I will just
5 tell you right now, I will have a big smile on my face and
6 will warmly consider that if we get a great result here.

7 But it's deferred to another day. So I do find it's --
8 the evidence amply shows a sound business justification and
9 reasonable business judgment on the part of the Debtor in
10 proposing that Mr. Seery be CEO and CRO, essentially, and a
11 foreign representative, where necessary, at the base pay of
12 \$150,000 per month, again, with bonuses to be considered at
13 appropriate times down the road if we feel that that is a good
14 thing for Mr. Seery to be paid.

15 And I likewise find that, under 327, 328, 363, the amended
16 application with regard to DSI Specialists and Mr. Sharp and
17 Mr. Caruso should be granted, it appearing to be reasonable
18 business judgment and in the best interests of the estate and
19 appropriate in all ways under those Code sections.

20 All right. So we are going to look for orders on those
21 two matters.

22 Now, unless you have other housekeeping matters you want
23 to talk about, I want to circle back to the mediation topic.
24 Mr. Pomerantz, Mr. Morris, anything you wanted to raise?

25 MR. POMERANTZ: There is actually one other

1 housekeeping matter that Ms. Patel and I have been speaking
2 about and we said we would raise before Your Honor.

3 As Your Honor heard at the last hearing, we had filed an
4 objection to the Acis claim. We initially set the objection
5 for August 6th. Ms. Patel reached out to us, I understand, I
6 remember at the last hearing indicated that August 6th was
7 difficult for her. And especially since we were having the
8 mediation, we had talked to her about a rescheduling. So we
9 are intending put the matter on the September 10th calendar.
10 We have also granted Acis an extension to file a response to
11 July 31st.

12 What I think we would like the Court's input on, and not
13 now, but we would suggest having it done at the next hearing,
14 which is July 21st, as I'm sure Your Honor has not yet read
15 our objection, but it's a quite lengthy objection, I think 55,
16 60 pages. There's a lot of issues there. There are some
17 factual issues, some -- there are some legal issues. There
18 are some combination of factual and legal issues.

19 We think it would be helpful to the process to set up a
20 status conference with Your Honor -- again, to be held perhaps
21 on July 21st, because discovery motions are pending -- where
22 we could walk through with Your Honor what exactly everyone
23 would intend to accomplish on September 10th. We don't
24 believe it should just be a status conference. We searched
25 other dates. On the other hand, I think both parties will

1 have different views on what exactly will be at issue. But I
2 think it would be helpful, from both sides, to hear Your
3 Honor's expectations and to get some ground rules so we can
4 make a hearing, if necessary, on September 10th as productive
5 as possible.

6 THE COURT: All right. So, in writing down dates,
7 did you tell me what -- a deadline you have given Acis, or
8 what is the deadline that would apply under the Rules versus
9 what you have agreed to? Is there something different you've
10 agreed to?

11 MR. POMERANTZ: Sure. I believe, for a hearing on
12 August 6th, based upon when we filed it, I believe their
13 objection would have been due July 23rd or thereabouts. They
14 have asked us for July 31st, and I don't want to be as
15 presumptuous, Your Honor, to say that I have given them the
16 extension. I know that's up to you, Your Honor, to do so.
17 The Debtor does not have any opposition to an extension in
18 that respect, especially given the fact that we're not going
19 to have a hearing until September, although it's obviously
20 going to be important to be able to move forward with
21 negotiations to understand what their specific position is,
22 and, of course, for a mediator to look at both as well.

23 So, again, it's July 31st, September 10th, and then
24 setting up something with Your Honor, whether it be July 21st
25 or some other date, to walk through Your Honor what that

1 hearing will look like so it could be most efficient.

2 THE COURT: All right. Well, I am agreeable to that
3 set of dates and deadlines. Ms. Patel, did you want to say
4 anything about it?

5 MS. PATEL: No, Your Honor. Mr. Pomerantz hit the
6 salient terms. Yes, July 31st is the agreed response date.
7 And that allows, frankly, parties to -- an opportunity --
8 allows Acis the opportunity to meaningfully brief the issues,
9 as Mr. Pomerantz indicated.

10 It's a 60-page objection. It's very weighty. There's a
11 lot of issues that require due consideration. So we have
12 agreed on that extended date. It's in sufficient time to
13 allow the parties time to read a response and analyze it ahead
14 of a mediation in August.

15 And as Mr. Pomerantz indicated, yes, the parties would
16 like -- effectively, I think he -- he might have referred to
17 it as a status conference. Apologies, my WebEx is cutting in
18 and out a little bit this afternoon. But I think it's
19 probably a status conference/scheduling conference so we can
20 talk about what the trial of the claim objection is going to
21 look like and how it should be structured. And I think, as
22 Mr. Pomerantz alluded to, parties may have very different
23 contexts with respect to that, but we want to just run it by
24 Your Honor, and ultimately it is going to be up to Your Honor
25 with respect to how the trial goes forward.

1 THE COURT: All right. Well, I hope that you all are
2 going to have lots of specific thoughts to share on what the
3 hearing on September 10th would look like, because, holy cow,
4 a \$70 million proof of claim that -- I haven't looked at your
5 proof of claim, but it is presumably based on the 34 counts in
6 the adversary proceeding filed in the Acis case, and maybe
7 then some.

8 So, you know, I don't know how in the world, if we had to
9 have a contested hearing on September 10th, we could get that
10 all done in one day.

11 MR. POMERANTZ: Your Honor, Jeff Pomerantz again.
12 Without getting ahead of ourselves, at least the Debtors' view
13 is there are some threshold legal issues --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- that are raised in the objection.
16 And then there are, of course, a series of issues that are
17 factual-intensive.

18 So what we intend to present is how we think we can
19 efficiently deal with it. Again, it's not our expectation to
20 have a lengthy trial on the entire claim objection. But,
21 again, Ms. Patel and I agreed that what we weren't going to do
22 is turn this into a status conference.

23 THE COURT: Okay.

24 MR. POMERANTZ: To the effect that neither party was
25 ready. I would just leave it at that --

1 THE COURT: Okay.

2 MR. POMERANTZ: -- and say we'd be prepared to talk
3 with you on the 21st.

4 THE COURT: Okay. Well, we -- we'll use that setting
5 partly as a status conference to talk about the September 10th
6 hearing. And, again, I hope you both will have some specific
7 ideas to give me.

8 So, July 21st, we have -- remind me what we have. We are
9 so busy, I haven't looked one week ahead to --

10 MR. POMERANTZ: I believe, and Mr. Morris could
11 correct me if I get ahead of ourselves. I know there's been
12 discussions between us and the Committee on two very -- two,
13 in some sense, the opposite sides of the coin -- discovery
14 motions that are pending before Your Honor. I thought July
15 21st may have been pre-obtained. Again, I could be ahead of
16 my partner there.

17 THE COURT: Okay. That sounds like something that
18 I've set on an expedited basis in the past few days. Mr.
19 Morris, Mr. Clemente -- Mr. Clemente filed a motion, or
20 someone from their shop filed a motion --

21 MR. CLEMENTE: Your Honor? Your Honor?

22 THE COURT: -- during the middle of our last hearing,
23 as I recall. And I was kind of surprised to get out of court
24 and learn about it. But you're saying you haven't gotten
25 information you've been asking for for months, and we also

1 have a motion for a protective order.

2 So, just give me a short -- I'm trying to figure out how
3 much time we're going to be in court next week on the 21st.

4 It's a discovery dispute.

5 MR. POMERANTZ: And I'll --

6 THE COURT: So, Mr. Pomerantz? Go ahead.

7 MR. POMERANTZ: Your Honor, if my colleague, Paige
8 Montgomery, is on, she's in a better position to address that.
9 I don't know if Ms. Montgomery is on.

10 MS. MONTGOMERY: I'm here. I don't -- my WebEx has
11 been cutting in and out, but I think (inaudible) hear me.

12 THE COURT: We can hear you, but we can't --

13 MR. POMERANTZ: Yes, we can.

14 THE COURT: Oh, there you are. We can now see you as
15 well. So, --

16 MS. MONTGOMERY: Yes, Your Honor. I think the amount
17 of time that might be required for the discovery motions is
18 going to be dependent on the number of third-party objections
19 that may or may not be filed tomorrow. We've been in
20 communication with a number of different parties over the last
21 couple of days, trying to resolve those.

22 But I think, if it were just the two motions and the two
23 parties that filed those, John, I don't know if you disagree,
24 but I'd say that's probably an hour. I just don't know how
25 many other people -- I don't know how many other people will

1 want to participate, Your Honor.

2 THE COURT: Okay. Well, it's going to be whatever
3 it's going to be, but we're going to have -- the main event on
4 the 21st is going to be this document discovery contest, and I
5 guess there's a related motion for protective order. But I
6 don't know how much it's going to be about resisting producing
7 documents versus we'll produce documents if we have a
8 protective order.

9 Mr. Morris, can you, in, you know, a few seconds, answer
10 that?

11 MR. MORRIS: Sure. As the Debtor, we're trying to --
12 we've got certain interests to protect. We thought we were in
13 a different place in the middle of June, and, you know, this
14 proposal that the Committee made for the first time on July --
15 on June 26th is really what, from my perspective, prompted us
16 to be here.

17 But we've made a proposal to the Committee. We haven't
18 received a response to that. We're trying to address these
19 issues. But it's not, you know, it's not contentious. I
20 think our interests are legitimate. I think the motion that
21 we made is either for a protective order or for an order
22 directing us to produce the documents. Because as the motion
23 itself sets forth, Your Honor, the Debtor has certain
24 contractual and other obligations to some third parties. We
25 have given notice to those third parties of our -- of our

1 intent to make this motion, because we are kind of between a
2 rock and a hard place. We can't produce the documents
3 without, you know, potentially violating obligations to third
4 parties.

5 And so we'd just ask the Court to be the referee here, to
6 make the decision as to how it gets resolved. And we've given
7 notice to these third parties so that they fairly have an
8 opportunity to be heard, too. And I've been in communication
9 with some of them as well, and I've encouraged them to speak
10 with the Debtor, because ultimately, you know, if the Debtor
11 and the third parties can come to an agreement on the
12 production of the documents, you know, that will resolve, you
13 know, a substantial piece of the issue.

14 MR. POMERANTZ: You mentioned the -- you meant the
15 Committee, John, not the Debtor.

16 MR. MORRIS: I apologize. Yes. Thank you.

17 MR. POMERANTZ: Thank you, John.

18 THE COURT: Okay. Well, I hope you have this largely
19 worked out. Obviously, I hope that. You know, I just
20 remember doing a very quick pass through the Committee's
21 motion, but I do remember them saying they've been trying to
22 get these documents for a very long time, and I think I recall
23 there's pressure building now because I gave you a 90-day
24 deadline to either file a lawsuit regarding the CLO Holdco
25 issues that we had a hearing on a few weeks ago, a couple of

1 weeks ago, or I'm probably going to release the money in the
2 registry of the Court. And so that's part of why you're
3 trying to get these documents as soon as possible, right, Ms.
4 Montgomery?

5 MS. MONTGOMERY: Yes, Your Honor.

6 THE COURT: Okay. All right. You all try to work
7 this out. Okay?

8 MR. CLEMENTE: Thank you.

9 THE COURT: Well, I was partly pressing the issue of
10 what's July 21st going to look like because I think we may
11 carry over the discussion about mediation. We're going to
12 start it right now, but I think we may have to carry it over
13 to the 21st, and I hope finally kind of get a game plan
14 together on that day.

15 So, I wanted Mr. Seery to be available. Mr. Seery is --
16 if you're still there somewhere. You're very important, in my
17 view, to mediation potentially being successful here -- and
18 the whole Board is, for that matter -- because -- well, let me
19 digress a minute.

20 Mediation is going to be very tough here. We all know
21 that mediation tends to be more likely to succeed if we've got
22 face-to-face, in-person participation. And as I said last
23 week, I just don't know how I can order people to be in face-
24 to-face mediation right now. I just -- we've got people
25 spread out, and I think it would be very, very bad to order

1 face-to-face mediation right now.

2 But on the topic of mediation, you know, I've heard some
3 things that, you know, we all know, but I've heard some things
4 from Mr. Seery that are important to stress today. This isn't
5 the type of case that needs to be in bankruptcy for months and
6 months and months and months. Okay? We have the issue of the
7 professional fees accruing, of course, like every case. But
8 we have a company where -- it's a strange fit for bankruptcy,
9 right, this kind of company. And it's so dependent on people
10 to provide value. And people can bolt. You know, people can
11 get weary of the bankruptcy and want to be somewhere else
12 where that taint is not there in the marketplace.

13 The issue of the UCC protocols was brought up by Mr.
14 Seery, and I know that is something that is going to be
15 cumbersome, you know, for this company to be in bankruptcy
16 long-term.

17 So, I want to go to Mr. Seery, and it may be unusual for
18 me to reach out to you and ask this, but I want to hear from
19 you: Do you think mediation is a waste-of-time pipe dream,
20 for lack of a better term? I really want mediation to happen,
21 because I don't know how we quickly get a confirmed plan if we
22 have, well, the voting issue, for one, right? We have to, at
23 a minimum, figure out what is UBS's voting claim. What's its
24 claim for voting purposes? What is Acis's claim for voting
25 purposes? A looming, huge issue in my mind. So I feel like

1 we've got to have mediation. We've got to get a strong shot
2 at getting these two claims liquidated, at least for voting
3 purposes, if not overall.

4 So, is this a pipe dream, Mr. Seery, in your view, that
5 mediation might get to resolution on these two claims? What
6 do you think about it?

7 MR. SEERY: The quick answer, Your Honor, is I don't
8 think it's a pipe dream. I think there's a legitimate shot to
9 move parties together.

10 Let me just say one thing that -- reflecting on what Mr.
11 Clemente said. I want to make clear for the record that, to
12 the extent I misspoke, and it would have been misspeaking, I
13 have no negative implication regarding the sophistication,
14 professionalism, or focus of Sidley --

15 THE COURT: Uh-huh.

16 MR. SEERY: -- or FTI or any of the professionals. I
17 know these folks. They're really good. They're very
18 sophisticated. I have the highest professional and personal
19 respect for them. So, to the extent that I misspoke, I
20 apologize.

21 THE COURT: I don't think you did, and that's not how
22 I heard it --

23 MR. SEERY: Okay.

24 THE COURT: -- and that's certainly not how I meant
25 it. It's just a fact of bankruptcy that it's expensive.

1 Okay? So, --

2 MR. SEERY: Yeah.

3 THE COURT: Right.

4 MR. SEERY: I just wanted that to be clear.

5 I think, particularly with respect, Your Honor, to the
6 Acis and UBS claims, our professionals have done a lot of work
7 on them. Obviously, the professionals for Acis and UBS have
8 done a lot of work on them. There may be things that we know,
9 the perspectives that we have, and perspectives that the other
10 side has, that may not be as well-founded as each side thinks.
11 It could be very valuable to have a third-party objective
12 observer, cajoler, somebody who's strong, to help move the
13 parties off of certain positions.

14 We would like to think, as a Board, Independent Board, and
15 I'd like to think as an Independent Director and now as a CEO,
16 I didn't really have a -- the proverbial dog in that fight for
17 either of those claims. I wasn't -- I'm not a Highland
18 employee. I don't have any animus towards any of the sides.
19 I don't have any history with any of the sides.

20 But I'm realistic that I take a perspective around certain
21 claims and how they're brought, the factual and legal basis
22 for them. And I get a lot of that information from Highland
23 employees, and we use that information to then perform the
24 analysis with our professionals.

25 Likewise, these parties have been involved in, on the

1 other side, very entrenched disputes with Highland and
2 Highland employees. And they've dug in on their positions.

3 Having a third party hear each side and start to move
4 could give us the chance to break it open. I think there's --
5 and there's two really important aspects. One is the claim
6 amount, and then, obviously, the distributions on the claims:
7 How to make those, how much are they, when are they made? We
8 can work on both of those, and I think we need some help
9 moving us both on the claim amounts and on how to make the
10 distributions.

11 We've made progress with Redeemer because even though they
12 had -- they had an arbitration award, so we knew what the
13 outside would be. Now, Redeemer and their attorneys are very
14 good and very creative. They could stretch the outside in
15 those discussions. I won't get into what they are. But we
16 were able to more easily fashion around the particulars of
17 that claim because there was that judgment from the
18 arbitrators that, while it hasn't been entered, gave us much
19 more guidelines as to where we could look. The other claims
20 are much more amorphous, at least at this stage, and having a
21 third party help us develop perhaps closer goal lines would be
22 useful, in my opinion.

23 But, again, I think it's very important that we do it
24 quickly. I think we -- you know, somebody who is focused,
25 strong. I'm sure they'll be highly intelligent and versed in

1 the field, but somebody who's got the opportunity and time to
2 do it. And then, if it's unsuccessful, then, as Mr. Pomerantz
3 and Ms. Patel alluded to, then perhaps we may need some
4 judicial help to move those goal lines a little bit.

5 But I do think that mediation -- and I apologize for the
6 length of my answer -- could be a very helpful way to do it,
7 provided we get there quickly.

8 THE COURT: All right. I guess my other question I
9 wanted your view on is structure. You know, when someone --
10 Mr. Pomerantz, I think -- told me that he or others had
11 reached out to our judges in Houston, Judge Jones and Judge
12 Isgur, my initial reaction -- and, frankly, my continued
13 thought on that -- is they just don't have meaningful time,
14 because I don't think one day of cajoling is going to be
15 enough to get -- you know, you're a billion dollars apart on
16 UBS, right? The Debtor, I guess, thinks zero is the amount of
17 their claim, and UBS thinks it's a billion, and it's been
18 litigated for 11 years. And then I personally know, you know,
19 how Acis feels about its positions.

20 So, anyway, what I'm getting at is structure. I in some
21 ways think what we need here is sort of a master statesman-
22 type person who would spend meaningful time, not just a day or
23 two, but days or even weeks trying to reach a grand
24 compromise.

25 On the other hand, in my experience -- I've never done

1 that in a case as judge. But as a lawyer, I felt like that
2 kind of person can hijack a case, and we don't need that here.
3 We have wonderful professionals, a wonderful Board, a
4 wonderful CEO. We don't need that kind of help, I worry.

5 So, I guess where I'm evolving, you know, we've got the
6 two-sitting-judge option that would be free mediators that
7 could give you a day or two. Maybe. And then we have kind of
8 the master statesman who might be in there for weeks, trying
9 to help you reach a grand compromise.

10 Another option, I think, is one or two mediators who just
11 zero in, you know, on the UBS claim versus -- and the Acis
12 claim. And I have a couple of private mediators in mind that
13 have very good video capabilities to have a sophisticated
14 video mediation.

15 So, all of this rambling to say, Do you think we need to
16 just zero in on Acis and UBS and maybe have one or two people
17 to do formal video mediation with those two parties, or do we
18 need sort of more of a grand pooh-bah, grand compromise-type
19 person?

20 MR. SEERY: My view, Your Honor, is that we should
21 focus on the claims, but they're not just going to be two-
22 party, because we do have other active constituents. I think
23 Redeemer, with their party in interest status, is going to
24 want to be part of it.

25 I think if we can focus on those, we have the

1 professionals to help drive the grander bargain that I've
2 alluded to in some of those discussions we've been having. So
3 they haven't progressed as far as I would like, but they have
4 progressed. We do need the bottom line number for where
5 claims are going to come out. But also that will help frame a
6 little bit as to what parties expect in terms of distributions
7 on their claims.

8 And I think the reason that we had some impetus behind a
9 sitting judge -- frankly, I didn't know that sitting judges
10 couldn't be paid. I think that's -- there should be a
11 standard rate, because we shouldn't take people's time for
12 free in these cases, and I know judges work extremely hard and
13 if they're going to put in extra time, then they should maybe
14 be compensated, but that's a whole different issue.

15 I don't think we should get too hung up on the cost. We
16 are -- the costs of this case are extremely high, and we are,
17 with best intents, sometimes getting ourselves wrapped up in
18 things that should be, I think, more swiftly and economically
19 dealt with and dispatched.

20 So, if we can get a good mediator, and I think the reason
21 folks think about a judge is -- a sitting judge, it's not just
22 the vast experience that folks -- judges like yourself have,
23 Your Honor, and in particular with these issues, but also the
24 requirement that all the participants, notwithstanding the
25 professionals and -- that you see here, the requirement that

1 all the participants know that they're dealing with a sitting
2 judge, there's a certain decorum that's required. But that, I
3 think we get anyway. But there's also a -- there's less
4 willingness to go to the furthest reaches of your argument
5 when you have someone who's on the bench who sees those types
6 of positions taken frequently and can dispatch with them more
7 readily.

8 So, I think there are a number of individuals that I've
9 dealt with in the past who would have the ability, the
10 gravitas, for lack of a better term, to be able to help push
11 the parties in the right direction. And I think it's a matter
12 of finding somebody, as you said, with both the capabilities,
13 which we'll find, but also the capacity in terms of the time
14 to do it. And then, in the video age, maybe some facility in
15 being able to make that happen both rapidly and effectively on
16 screen.

17 THE COURT: Okay.

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
19 And I'd just make a couple of comments.

20 THE COURT: Okay.

21 MR. POMERANTZ: You know, as Mr. Seery said, we were
22 predisposed towards a sitting judge. And while we did share
23 the same concerns about the timing of Judge Jones and Isgur,
24 we understand you've probably been in communication with them,
25 and if that's not going to work, we appreciate it. We want

1 this mediation to be effective and we want someone to spend
2 the time with it. And if you didn't feel that they, you know,
3 could commit to that, we totally appreciate that.

4 We thought long and hard about the people that you
5 identified at the last hearing, former Judge Peck and Sylvia
6 Mayer. We've done our diligence. The Debtor would be willing
7 to mediate before Sylvia Mayer. We think that, based upon our
8 diligence, the people we've spoken to, that she, if she
9 otherwise had the time and the abil... the time to devote to
10 it, that being a former big-firm lawyer in permanent practice
11 now as a mediator, that the Debtor would find her acceptable.

12 THE COURT: All right. Does anyone else wish to
13 comment? Because I have a very positive view of Sylvia Mayer,
14 and certainly her video capabilities, I think, are far and
15 away better than a few other people I've chatted with.

16 MS. PATEL: Your Honor?

17 MR. CLEMENTS: Your Honor? Oh, I'm sorry.

18 MS. PATEL: Go ahead.

19 MR. CLEMENTE: Your Honor, --

20 THE COURT: Not that I would ever, you know, put that
21 ahead of, you know, overall abilities, but it just is an added
22 plus, a huge plus right now during COVID.

23 Go ahead.

24 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
25 the Committee. Just a couple observations, building a little

1 bit on what Mr. Seery said.

2 We had consensus among the Committee around Judge Isgur
3 and Judge Jones. I think the view, the consensus view -- and,
4 again, I use the word consensus and not unanimity because I
5 want Your Honor to understand that -- is that having a sitting
6 judge, ideally, given the personalities as you've expressed
7 and I think as Mr. Seery has expressed, provides the best
8 possibility for a successful mediation. It may not be that
9 overlord that spends three weeks, but, you know, it is a
10 strong personality that -- not that any of the names that have
11 been raised aren't tremendously to be respected, but that
12 would be respected by all of the parties simply by the fact
13 that they're a sitting judge.

14 With that said, Your Honor, and, again, the speed. Again,
15 I don't have unanimity from the Committee, but there is
16 consensus to see if Sitting Judge Green from the Southern
17 District of New York would have the time and the capability to
18 spend. And I know Your Honor has concerns about the time. I
19 think Judge Isgur and Judge Jones occupy a special place in
20 terms of how busy they are, but at least among the Committee
21 members, there's been discussion that that may be a suitable
22 approach in terms of identifying a mediator and accomplishing
23 the objectives of having a very strong mediation, mediator, on
24 a timely basis, that has the best possibility of success.

25 That being said, Your Honor, based on what Mr. Pomerantz

1 said, if Mr. Green is not acceptable or if Your Honor doesn't
2 wish for us to go in that direction, I do have consensus among
3 the Committee members to move forward with Ms. Mayer as
4 mediator.

5 So, a little -- maybe a little convoluted in my comments
6 there, Your Honor, but the main thrust is I think there is
7 consensus among the Committee to consider a sitting judge, and
8 Judge Green would be someone who would be satisfactory. And
9 if he's not acceptable, or I should say acceptable but not
10 able to do it, Ms. Mayer would be acceptable to the Committee.

11 THE COURT: All right. Well, let me put this out
12 there. I talked on a no-names basis with Ms. Mayer last
13 Friday. And it was actually more in the nature of making
14 inquiries about how an organization she's connected with, the
15 AAA -- you've heard of the American Arbitration Association;
16 they, of course, do mediation -- what their experience and
17 capabilities were with many, many parties and video mediation.
18 And as you might guess, they have a lot of experience already
19 -- you know, a number well in excess of a hundred; I can't
20 remember -- of doing video mediations with many parties and
21 having the different constituencies in this caucus room and
22 that caucus room. And, very importantly, having lots of IT
23 staff to give instructions, to give help, to, you know, tackle
24 technology problems.

25 But in that discussion, I learned that there is a panel

1 that AAA has put together of 12 mediators that have bankruptcy
2 expertise. And, of course, Sylvia Mayer is one of those
3 people. But Retired Bankruptcy Judge Gropper -- is it Groper
4 or Gropper from the Southern District of New York? I always
5 forget which way he pronounces his name. Anyway, he is on
6 that. He is on that panel of 12.

7 Mr. Seery, you're grinning like you want to say something
8 about this.

9 MR. SEERY: No. Only on the Gropper/Groper, because
10 there's a professional that I know that is similarly named,
11 and I believe -- and I believe Judge Groper -- I may have it
12 wrong, but I think it's -- it's Judge Groper and Dan Gropper.
13 But that's the best I --

14 MR. NEIER: It's Dan Groper and Judge Gropper. I
15 actually had a mediation with the two of them when they argued
16 about the pronunciation of their name.

17 THE COURT: Okay. Well, Gropper. So we -- it's
18 Gropper. Okay.

19 A VOICE: Yes.

20 THE COURT: My point was, without -- I've not talked
21 to him at all. And by the way, I haven't personally reached
22 out to Jim Peck, but we'll stop that discussion about him.
23 But after getting off the call with Sylvia Mayer and a couple
24 of other people at the AAA Friday, I put together in my brain,
25 maybe we could have a Sylvia Mayer/Allan Gropper tag team, two

1 mediators. Okay? I don't know how that would affect the
2 cost, but that might be the way to go in such a complex case.
3 You know, maybe they could divvy up among themselves. One
4 would be the primary mediator on Acis, one would be the
5 primary mediator on UBS, but they would both work together.

6 If you all want to think on that, digest that a little,
7 and we, you know, decide definitely next week on the 21st, we
8 could do that. Or we could just all say, yeah, that's a good
9 game plan, and I can get on the phone after this. Or it
10 actually may be tomorrow, because I have a terrible hearing
11 that I've got to prepare for at 9:30 in the morning tomorrow.
12 It may be tomorrow.

13 But do people want to let that soak in a little bit, or
14 shall -- I mean, --

15 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

16 THE COURT: -- frankly, I can order it either way. I
17 can order it. But I just really want to be conciliatory to
18 the parties who are owed the money and have to pay the money,
19 if you want to think on it some.

20 MR. POMERANTZ: Your Honor, it's Jeff Pomerantz.
21 Having my newly-minted CEO on the phone, Mr. Seery, I would
22 ask him, and if he says that it would be okay, then it would
23 be okay with me.

24 MR. SEERY: Be fine with me.

25 THE COURT: Okay.

1 MR. SEERY: Yeah, I think the key is moving forward.
2 I know it's much harder with a Committee, and I respect, you
3 know, Matt Clemente's job there of having to get consensus.
4 But from our perspective, if we were to push it off, you know,
5 on the 21st, Your Honor, we -- we would request you to order
6 something, because I don't want this to delay.

7 THE COURT: Okay.

8 MR. CLUBOK: Your Honor, if I may, speaking for UBS,
9 it's Andrew Clubok. You'll be happy to know I think that
10 we're in agreement with Mr. Seery, and I guess, derivatively,
11 Mr. Pomerantz. We think the most important thing is to move
12 it along quickly, and we trust -- you know, we're familiar
13 with Judge -- or, with Mayer, and whether it's Groper or
14 Gropper, I lost track, but I'm sure he is also going to be
15 equally capable. We do kind of think that two is probably
16 necessary, given, you know, the sort of multi-layer
17 (inaudible).

18 But, really, our position has simply been we'll happily
19 mediate with any, you know, effective mediator as quickly as
20 possible, because we do think the sooner we do that, the
21 sooner we might have a chance to get to yes. So, I'm -- we're
22 prepared to just say yes to the idea.

23 THE COURT: All right. Does anyone else want to
24 comment?

25 MS. PATEL: Your Honor? And can you hear me? I'm

1 sorry. It's --

2 THE COURT: Yes.

3 MS. PATEL: Again, I'm still having WebEx problems.

4 THE COURT: Yes.

5 MS. PATEL: Your Honor, again, for the record, Rakhee
6 Patel.

7 Acis is fine with the proposal, Your Honor. We've been
8 amenable to virtually every proposal, and have been trying to
9 hopefully be helpful with respect to getting this moved to
10 mediation as quickly as possible. We equally think that we
11 should get to mediation as quickly as we can.

12 And, you know, the only -- the only -- and I appreciate
13 Your Honor's contemplativeness on this. As you know, at least
14 in connection with the Acis case, you know, we've been through
15 two unsuccessful mediations so far. So we're really hoping
16 that the third time will go much better than the prior two.

17 So, anyway, this is my very long way of saying we're fine
18 with the proposal and are happy to kind of sign off on it. We
19 don't need until July 21st to respond on that.

20 THE COURT: Okay. Anyone else?

21 (No response.)

22 THE COURT: All right. Well, very good. I'm going
23 to move ahead on this and will confirm to you, hopefully
24 before the 21st, through my courtroom deputy. And, again,
25 given the late hour, I think it's going to be tomorrow before

1 I pick up the phone and reach out to Sylvia Mayer and former
2 Judge Gropper.

3 But, again, I did, in speaking generically with Sylvia
4 Mayer, asking her, Have you ever done like a two-mediator
5 mega-mediation, and she said, Oh, sure. You know, that's --
6 she acted like it was quite common. It's not something that I
7 have seen very often, but I think we'll be in business with
8 this game plan.

9 Because, you know, I know everyone on this call knows
10 this, but maybe not everyone's client knows this: If we don't
11 -- if we don't have a successful mediation of both of these
12 claims, or at least one of these claims, it's going to be
13 years and years and years. I mean, I know it's already been
14 years for UBS, but it will -- it will be many, many more
15 years. And that's not what we're supposed to do in
16 bankruptcy. We're supposed to stop burdensome litigation and
17 solve problems. And I can't imagine your clients want to go
18 on with three or four more years of litigation. But that's
19 exactly what it will be, it's exactly what it will be, many
20 more years of litigation, if we don't have mediated
21 settlements.

22 So, all right.

23 MS. PATEL: Your Honor, if I may very quickly. I
24 just wanted to make sure the Court was aware of something. In
25 the context of mediation and as it relates to Acis's claim,

1 yesterday counsel for Mr. Dondero filed a joinder in the
2 Debtors' objection to Acis's claim. So, again, just thinking
3 about this in the context of mediation, I think, with that
4 joinder, they will be a necessary party. So, going back to
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing
12 further, we'll see you on the 21st. And, again, my courtroom
13 deputy may be reaching out before then if we've got things
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oOo--

17

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19

20

CERTIFICATE

21

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

23

24 **/s/ Kathy Rehling**

07/16/2020

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 3

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, February 2, 2021
) 9:30 a.m. Docket
Debtor.)
) CONFIRMATION HEARING [1808]
) AGREED MOTION TO ASSUME [1624]
)

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

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Official Committee of Unsecured Creditors: Matthew A. Clemente
SIDLEY AUSTIN, LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

1 APPEARANCES, cont'd.:

2 For Redeemer Committee of Terri L. Mascherin
3 the Highland Crusader JENNER & BLOCK, LLP
4 Fund: 353 N. Clark Street
Chicago, IL 60654-3456
(312) 923-2799

5 For Acis Capital Rakhee V. Patel
6 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
7 Dallas, TX 75201
(214) 745-5250

8 For UBS Securities, LLC: Andrew Clubok
9 LATHAM & WATKINS, LLP
555 Eleventh Street, NW,
10 Suite 1000
Washington, DC 20004
11 (202) 637-2200

12 For Patrick Daugherty: Jason Patrick Kathman
13 PRONSKE & KATHMAN, P.C.
2701 Dallas Parkway, Suite 590
14 Plano, TX 75093
(214) 658-6500

15 For HarbourVest, et al.: Erica S. Weisgerber
16 DEBEVOISE & PLIMPTON, LLP
919 Third Avenue
17 New York, NY 10022
(212) 909-6000

18 For James Dondero: Clay M. Taylor
19 John Y. Bonds, III
D. Michael Lynn
20 Bryan C. Assink
BONDS ELLIS EPPICH SCHAFER
21 JONES, LLP
420 Throckmorton Street,
22 Suite 1000
Fort Worth, TX 76102
(817) 405-6900

23 For Get Good Trust and Douglas S. Draper
24 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
650 Poydras Street, Suite 2500
25 New Orleans, LA 70130
(504) 299-3300

1 APPEARANCES, cont'd.:

2 For Certain Funds and
3 Advisors:

Davor Rukavina
Julian Vasek
MUNSCH, HARDT, KOPF & HARR
500 N. Akard Street, Suite 3800
Dallas, TX 75201-6659
(214) 855-7587

5 For Certain Funds and
6 Advisors:

A. Lee Hogewood, III
K&L GATES, LLP
4350 Lassiter at North Hills
Avenue, Suite 300
Raleigh, NC 27609
(919) 743-7306

8 For the NexPoint
9 Parties:

Lauren K. Drawhorn
WICK PHILLIPS
3131 McKinney Avenue, Suite 100
Dallas, TX 75204
(214) 692-6200

11 For Scott Ellington,
12 Isaac Leventon, Thomas
13 Surgent, and Frank
Waterhouse:

Frances A. Smith
ROSS & SMITH, P.C.
Plaza of the Americas
700 N. Pearl Street, Suite 1610
Dallas, TX 75201
(214) 593-4976

15 For Scott Ellington,
16 Isaac Leventon, Thomas
Surgent, and Frank
17 Waterhouse:

Debra A. Dandeneau
BAKER & MCKENZIE, LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4875

18 For CLO Holdco, Ltd.:

John J. Kane
KANE RUSSELL COLEMAN LOGAN, P.C.
901 Main Street, Suite 5200
Dallas, TX 75202
(214) 777-4261

21 For Davis Deadman, Todd
22 Travers, and Paul Kauffman:

Jason Patrick Kathman
PRONSKE & KATHMAN, P.C.
2701 Dallas Parkway, Suite 590
Plano, TX 75093
(214) 658-6500

25

1 APPEARANCES, cont'd.:

2 For the United States
3 of America (IRS):

David G. Adams
U.S. STATES DEPARTMENT OF JUSTICE,
TAX DIVISION
717 N. Harwood Street, Suite 400
Dallas, TX 75201
(214) 880-2432

4
5
6 For Highland CLO Funding,
7 Ltd.:

Rebecca Matsumura
KING & SPALDING, LLP
500 West 2nd Street, Suite 1800
Austin, TX 78701
(512) 457-2024

8
9 For Crescent TC
10 Investors:

Michael S. Held
JACKSON WALKER, LLP
2323 Ross Avenue, Suite 600
Dallas, TX 75201
(214) 953-5859

11
12 For the Issuer Group:

Amy K. Anderson
JONES WALKER, LLP
811 Main Street, Suite 2900
Houston, TX 77002
(713) 437-1866

13
14
15 Recorded by:

Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

16
17
18 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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transcript produced by transcription service.

1 DALLAS, TEXAS - FEBRUARY 2, 2021 - 9:38 A.M.

2 THE COURT: Good morning. Please be seated. All
3 right. We are ready to get started now in Highland Capital.
4 We have a confirmation hearing as well as a motion to assume
5 the non-residential real property lease at the headquarters.
6 All right. This is Case No. 19-34054. I know we're going to
7 have a lot of appearances today. I think we're just down to a
8 handful of objections, but I'm nevertheless going to go ahead
9 and get formal appearances from our key parties that we've had
10 historically in this case.

11 First, for the Debtor team, do we have Mr. Pomerantz and
12 your crew?

13 MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff
14 Pomerantz, along with John Morris, Ira Kharasch, and Greg
15 Demo, on behalf of the Debtor-in-Possession, Highland Capital.

16 THE COURT: All right. Good morning. All right.
17 For the Unsecured Creditors' Committee team, do we have Mr.
18 Clemente and others?

19 MR. CLEMENTE: Yes. Good morning, Your Honor.
20 Matthew Clements; Sidley Austin; on behalf of the Official
21 Committee of Unsecured Creditors.

22 THE COURT: All right. I'm actually going to call a
23 roll call for the Committee members who have obviously been
24 very active during this case. For the Redeemer Committee and
25 Crusader Fund, do we have Ms. Mascherin and her team?

1 (Pause.) Okay. We're -- if -- you must be on mute.

2 MS. MASCHERIN: Your Honor, I apologize.

3 THE COURT: Okay. Go ahead.

4 MS. MASCHERIN: I apologize, Your Honor. I was on
5 mute and could not figure out how to unmute myself quickly.

6 Terri Mascherin; Jenner & Block; on behalf of the Redeemer
7 Committee.

8 THE COURT: All right. Good morning.

9 All right. What about Acis? Do we have Ms. Patel and
10 others for the Acis team?

11 MS. PATEL: Good morning, Your Honor. Rakhee Patel
12 on behalf of Acis Capital Management.

13 THE COURT: Good morning.

14 All right. Mr. Clubok, I see you there for the UBS team,
15 correct?

16 MR. CLUBOK: Yes. Good morning, Your Honor.

17 THE COURT: Good morning.

18 All right. For Patrick Daugherty, I think I see Mr.
19 Kathman out there, correct?

20 MR. KATHMAN: Good morning, Your Honor. Jason
21 Kathman on behalf of Patrick Daugherty.

22 THE COURT: All right. Good morning.

23 All right. What about HarbourVest? Anyone on the line
24 for HarbourVest?

25 MS. WEISGERBER: Good morning, Your Honor. Erica

1 Weisgerber for HarbourVest.

2 THE COURT: All right. Very good.

3 All right. Well, I'll now, I guess, turn to some of the
4 Objectors that I haven't hit yet. Who do we have appearing
5 for Mr. Dondero this morning?

6 MR. TAYLOR: Good morning, Your Honor. Clay Taylor
7 of the law firm of Bonds Ellis Eppich Schaefer & Jones
8 appearing on behalf of Mr. Dondero. I have with me, of
9 course, Mr. Dondero, who is in the room with me. Dennis
10 Michael Lynn, John Bonds, and Bryan Assink are also appearing
11 on behalf of Mr. Dondero.

12 THE COURT: All right. Thank you, Mr. Taylor.

13 All right. For the Dugaboy Trust and Get Good Trust, do
14 we have Mr. Draper and others?

15 MR. DRAPER: Yes, Your Honor. This is Douglas Draper
16 on the line.

17 THE COURT: All right. Good morning.

18 MR. DRAPER: Good morning, Your Honor.

19 THE COURT: All right. What about what I'll call
20 Highland Fund, the Highland Funds and Advisors? Do we have
21 Mr. Rukavina this morning, or who do we have?

22 MR. RUKAVINA: Your Honor, good morning. Davor
23 Rukavina and Julian Vasek for the Funds and Advisors. I can
24 make a full appearance, but it's the parties listed on Docket
25 1670.

1 THE COURT: All right. Thank you, Mr. Rukavina.

2 All right. What about --

3 MR. HOGWOOD: Your Honor?

4 THE COURT: Go ahead.

5 MR. HOGWOOD: Your Honor, Lee Hogewood. I'm sorry,
6 Your Honor. Lee Hogewood is also here on behalf of the same
7 parties.

8 THE COURT: All right. Thank you, sir.

9 All right. What about NexPoint Real Estate Partners, HCRE
10 Partners?

11 MS. DRAWHORN: Good morning, Your Honor. Lauren
12 Drawhorn with Wick Phillips on behalf of NexPoint Real Estate
13 Partners, LLC. I'm also here on behalf of the NexPoint Real
14 Estate entities which are listed on Docket 1677, and NexBank,
15 which is -- their objection is 1676.

16 THE COURT: All right. Thank you.

17 All right. Let's cover some of the employees. I think I
18 see Ms. Smith out there. Are you appearing for Mr. Ellington
19 and Mr. Leventon?

20 MS. SMITH: Yes, Your Honor. Frances Smith with Ross
21 & Smith, along with Debra Dandeneau of Baker McKenzie, on
22 behalf of Scott Ellington, Isaac Leventon, Thomas Surgent, and
23 Frank Waterhouse.

24 THE COURT: All right. Could you spell the last name
25 of your co-counsel from Baker McKenzie? I didn't clearly get

1 that.

2 MS. SMITH: Yes, Your Honor. It's Debra Dandeneau,
3 D-A-N-D-E-N-N-A-U [sic].

4 THE COURT: Okay. Thank you.

5 All right. CLO Holdco, do we have you appearing this
6 morning?

7 MR. KANE: Your Honor, John Kane on behalf of CLO
8 Holdco.

9 THE COURT: Thank you, Mr. Kane.

10 All right. I know we had a different group of current or
11 former employees -- Brad Borud, Jack Yang -- and some joining
12 parties: Kauffman, Travers, Deadman. Who do we have
13 appearing for those? (Pause.) Anyone? If you're appearing,
14 we're not hearing you. Go ahead.

15 MR. KATHMAN: Good morning, Your Honor. Jason
16 Kathman. I represent Mr. Deadman, Mr. Travers, and Mr.
17 Kauffman as well.

18 THE COURT: Okay. Thank you. And I can't remember
19 who represents Mr. Borud and Yang. Someone separately.

20 MR. KATHMAN: It's Mr. Winikka, Your Honor.

21 THE COURT: Oh, Mr. Winikka.

22 MR. KATHMAN: And I haven't scrolled through to see
23 whether he's with -- in the 120 people signed in this morning.
24 But I believe that objection has been resolved. I think Mr.
25 Pomerantz will probably address that later. So Mr. Winikka

1 may not be appearing.

2 THE COURT: Okay. All right. Well, anyone for the
3 IRS?

4 MR. ADAMS: Good morning, Your Honor. David Adams,
5 Department of Justice, on behalf of the United States and its
6 agency, the Internal Revenue Service.

7 THE COURT: Thank you, Mr. Adams.

8 For the U.S. Trustee, who do we have appearing this
9 morning? (No response.) I'm not hearing you. If you're
10 trying to appear, you must be on mute. (No response.) All
11 right. Well, I suspect at some point we'll hear from the U.S.
12 Trustee, even though I don't hear anyone now.

13 At this point, I will open it up to anyone else who wishes
14 to appear who I failed to call.

15 MS. MATSUMURA: Your Honor, this is Rebecca Matsumura
16 from King & Spalding representing Highland CLO Funding, Ltd.
17 Thank you.

18 THE COURT: All right. Thank you, Ms. Matsumura.
19 HCLOF.

20 Anyone else?

21 MR. HELD: Your Honor, this is Michael Held with the
22 law firm of Jackson Walker, LLP on behalf of the office
23 landlord, Crescent TC Investors, LP.

24 THE COURT: All right. Thank you, Mr. Held.

25 MR. HELD: Thank you, Your Honor.

1 THE COURT: Okay. Any other lawyer appearances?

2 All right. Well, again, if there's anyone out there who
3 did not get to appear, maybe we'll hear from you at some point
4 as the day goes on.

5 All right. Mr. Pomerantz, this is an important day,
6 obviously. How did you want to begin things?

7 MR. POMERANTZ: So, Your Honor, I have a brief
8 opening to talk about what I plan to do, and a little more
9 lengthy opening, and it'll be come clear. So if I may
10 proceed, Your Honor?

11 THE COURT: You may.

12 MR. POMERANTZ: Your Honor, we're here to request
13 that the Court confirm the Debtor's Fifth Amended Plan of
14 Reorganization, as modified. The operative documents before
15 Your Honor are the Fifth Amended Plan, as modified, that was
16 filed along with our pleadings in support of confirmation on
17 January 22nd and the minor amendments that we filed on
18 February 1st.

19 Here is my proposal on how we can proceed this morning. I
20 would intend to provide the Court with an opening statement
21 that would last approximately 20 minutes. And then after any
22 other party who desires to make an opening statement, I would
23 propose that the Debtor put on its evidence that it intends to
24 rely on in support of confirmation. The evidence consists of
25 the exhibits that the Debtor filed with its witness and

1 exhibit list on January 22nd and certain amendments that we
2 filed yesterday.

3 We would also put on the testimony of the following
4 witnesses: Jim Seery, the Debtor's chief executive officer,
5 who Your Honor is very familiar with, and also a member of
6 Strand's board of directors; John Dubel, a member of Strand's
7 board of directors; and Mark Tauber, a vice president with Aon
8 Financial Services, the Debtor's D&O broker.

9 We have also submitted the declaration of Patrick Leatham,
10 who is with KCC, the Debtor's balloting agent. And we don't
11 intend to put Mr. Leatham on the stand, but he is available on
12 the WebEx for cross-examination, to the extent necessary.

13 I propose that I would leave the bulk of my argument,
14 which includes going through the Section 1129 requirements for
15 plan confirmation, as well as responding to the remaining
16 outstanding objections, until my closing argument.

17 With that, Your Honor, I will pause and ask the Court if
18 Your Honor has any questions before I proceed.

19 THE COURT: I do not have questions, so your method
20 of going forward sounds appropriate. You may go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 OPENING STATEMENT ON BEHALF OF THE DEBTOR

23 MR. POMERANTZ: As I indicated, Your Honor, we stand
24 here side by side with the Creditors' Committee asking that
25 the Court confirm the Debtor's plan of reorganization.

1 As Your Honor is well aware, this case started in December
2 in -- October 2019, was transferred to Your Honor's court in
3 December 2019, and has been pending for approximately 15
4 months.

5 On January 9, 2020, I stood before Your Honor seeking the
6 approval of the independent board of directors of Strand, the
7 general partner of the Debtor, pursuant to a heavily-
8 negotiated agreement with the Committee. And as the Court has
9 remarked on occasions throughout the case, the economic
10 stakeholders in this case believed that the installation of a
11 new board consisting of highly-qualified restructuring
12 professionals and a bankruptcy judge, a former bankruptcy
13 judge, was far more attractive than the alternative, which was
14 appointment of a trustee. And upon approval of the
15 settlement, members of the board -- principally, Mr. Seery --
16 testified that one of the board's goals was to change the
17 culture of litigation that plagued Highland in the decade
18 before filing and threatened to embroil the Debtor in
19 continued litigation if changes were not made.

20 And as Your Honor is well aware, the last 14 months have
21 not been easy. The board took its role as an independent
22 fiduciary extremely seriously, much to the consternation of
23 the Committee at times, and more recently, to the
24 consternation of Mr. Dondero and his affiliated entities.

25 And what has the Debtor, under the leadership of the

1 board, been able to accomplish during this case? The answer
2 is a lot more than many parties believed when the board was
3 installed.

4 The Debtor reached a settlement with the Redeemer
5 Committee, resolving disputes that had been litigated for many
6 years, in many forums, and that resulted in an arbitration
7 award that was the catalyst for the bankruptcy filing.

8 Participating in a court-ordered mediation at the end of
9 August 2020 and September, the Debtor reached agreement with
10 Acis and Josh Terry. The Court is all too familiar with the
11 years of disputes between the Debtor and Acis and Josh Terry,
12 which spanned arbitration proceedings and an extremely
13 combative Chapter 11 that Your Honor presided over.

14 The Debtor next reached an agreement with HarbourVest
15 regarding their assertion of over \$300 million of claims
16 against the estate. The HarbourVest litigation stemmed from
17 its investment in the Acis CLOs and would have resulted in
18 complex, fact-intensive litigation which would have forced the
19 Court to revisit many of the issues addressed in the Acis
20 case.

21 And perhaps most significantly, Your Honor, the Debtor was
22 able to resolve disputes with UBS, disputes which took the
23 most time of any claim in this case, through a contested stay
24 relief motion, a hotly-contested summary judgment motion, and
25 a Rule 3018 motion.

1 While the Debtor and UBS hoped to file a 9019 motion prior
2 to the commencement of the hearing, they were not able to do
3 so. However, I am now in a position to disclose to the Court
4 the terms of the settlement, which is the subject of
5 documentation acceptable to the Debtor and UBS. The
6 settlement provides for, among other things, the following
7 terms:

8 UBS will receive a \$50 million Class 8 general unsecured
9 claim against the Debtor.

10 UBS will receive a \$25 million Class 9 subordinated
11 general unsecured claim against the Debtor.

12 UBS will receive a cash payment of \$18.5 million from
13 Multi-Strat, which was a defendant and the subject of
14 fraudulent transfer claims.

15 The Debtor will use reasonable efforts to assist UBS to
16 collect its Phase I judgment against CDL Fund and assets CDL
17 Fund may have.

18 The parties will also agree to mutual and general
19 releases, subject to agreed carve-outs.

20 And, of course, the parties will not be bound until the
21 Court approves the settlement pursuant to a 9019 motion we
22 would hope to get on file shortly.

23 I am also pleased to let the Court know -- breaking news
24 -- that this morning we reached an agreement to settle Patrick
25 Daugherty's claims. I would now like to, at the request of

1 Mr. Kathman, read into the record the Patrick Daugherty
2 settlement.

3 Under the Patrick Daugherty settlement, Mr. Daugherty will
4 receive a \$750,000 cash payment on the effective date. He
5 will receive an \$8.25 million general unsecured claim, and he
6 will receive a \$2.75 million Class 9 subordinated claim.

7 The settlement of all claims against the Debtor and its
8 affiliates -- and affiliates will be defined in the documents
9 -- with the exception of the tax claim against the Debtor, Mr.
10 Dondero, and Mr. Okada -- and for the avoidance of doubt,
11 except as I describe below, nothing in the settlement is
12 intended to affect any pending litigation Mr. Daugherty has
13 against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc
14 Katz, Michael Hurst, and Hunton Andrew Kurth.

15 Mr. Daugherty will release the Debtor and its affiliates
16 and current employees for all claims and causes of action,
17 except for the agreements I identify below, and dismiss all
18 current employees as to pending actions. We believe this only
19 applies to Thomas Surgent and no other employee is implicated.

20 Mr. Surgent and other employees, including but not limited
21 to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon,
22 and Matt Diorio, will receive releases similar to the covenant
23 in Paragraph 1D of the Acis settlement agreement, which
24 essentially provided the release would go away if they
25 assisted anyone in pursuing claims against Mr. Daugherty.

1 Highland and the above-mentioned parties will accept
2 service of any subpoenas and acknowledge the jurisdiction of
3 the Delaware Chancery Court for the purposes of accepting any
4 subpoenas. And for the avoidance of doubt, Highland will
5 accept service on behalf of the employees only in their
6 capacity as such.

7 Highland will also use material -- will use reasonable
8 efforts at no material cost to assist Daugherty in vacating a
9 Texas judgment that was issued against him. We've also looked
10 at a form of the motion and believe we have agreed on the form
11 of the motion.

12 Highland, its affiliates, and current employees will
13 covenant and agree they will not pursue or seek to enforce the
14 injunction and the Texas judgment against Daugherty.

15 And lastly, Daugherty will not be able to settle any
16 claims for negligence or other claims that might be subject to
17 indemnification by the Debtor or any successor.

18 Accordingly, Your Honor, other than the claims of Mr.
19 Dondero and his related entities, and the unliquidated claims
20 of certain employees, substantially all claims have been
21 resolved in this case, a truly remarkable achievement.

22 Separate and apart, Your Honor, from the work done
23 resolving the claims, the Debtor, under the direction of the
24 independent board, has worked extremely hard to develop a plan
25 of reorganization.

1 After the independent board got its bearings, it started
2 to work on various plan alternatives. And the board received
3 a lot of pressure from the Committee to go straight to a plan
4 seeking to monetize assets like the one before Your Honor
5 today. However, the board believed that before proceeding to
6 do so and go down an asset monetization path, it should
7 adequately diligence all alternatives, including a
8 continuation of the current business model, a reorganization
9 sponsored by Mr. Dondero and his affiliates, a sale of the
10 Debtor's assets, including a sale to Mr. Dondero.

11 In June 2020, plan negotiations proceeded in earnest, and
12 the Debtor started to negotiate an asset monetization plan
13 with the Committee, while still pursuing other alternatives.

14 Preparation of an asset monetization plan is not typically
15 a complicated process. However, creating the appropriate
16 structure for a business like the Debtor's was extremely
17 complicated, because of the contractual, regulatory, tax, and
18 governance issues that had to be carefully considered.

19 At the same time the Committee negotiations were
20 proceeding down that path, Mr. Seery continued to spend
21 substantial time trying to negotiate a grand bargain plan with
22 Mr. Dondero. It is not an exaggeration to say that over the
23 last several months Mr. Seery has dedicated hundreds of hours
24 towards a potential grand bargain plan.

25 And why did he do it? Because he has always believed that

1 a global restructuring among all parties was the best
2 opportunity to fully and finally resolve the acrimony that
3 continued to plague the Debtor.

4 Notwithstanding Mr. Seery's and the independent board's
5 best efforts, they were not able to reach consensus on a grand
6 bargain plan, and the Debtor filed the plan, the initial plan,
7 on August 12th, which ultimately evolved into the plan before
8 the Court today.

9 The Court conducted an initial hearing on the disclosure
10 statement on October 27th, and then ultimately approved -- the
11 Court approved the disclosure statement at a hearing on
12 November 23rd.

13 While the Debtor continued to work towards resolving
14 issues with the Committee with the filed plan, Mr. Dondero,
15 beginning to finally see that the train was leaving the
16 station, started to do whatever he could to get in the way of
17 plan confirmation.

18 He objected to the Acis settlement. When his objection
19 was overruled, he filed an appeal.

20 He objected to the HarbourVest settlement. When his
21 objection was overruled, he had Dugaboy file an appeal.

22 He started to interfere with the Debtor's management of
23 its CLOs, stopping trades, refusing to provide support, and
24 threatening Mr. Seery and the Debtor's employees.

25 He had his Advisors and Funds that he owned and controlled

1 file motions that Your Honor said was a waste of time.

2 He had those same Funds and Advisors threaten to terminate
3 the Debtor as a manager, in blatant violation of the Court's
4 January 9, 2020 order.

5 His conduct was so egregious that it warranted entry of a
6 temporary restraining order and preliminary injunction against
7 him. And of course, he has appealed that ruling as well.

8 But that was not all. He brazenly threw out his phone, in
9 what the Court has remarked was spoliation of evidence, and he
10 violated the TRO in other ways, actions for which he will
11 answer for at the contempt hearing scheduled later this week.

12 And, of course, he and his pack of related entities have
13 filed a series of objections. We have received 12 objections
14 to the plan, Your Honor, excluding three joinders. And as I
15 mentioned, we have been pleased to report that we've been able
16 to resolve six of them: those of the Senior Employees, those
17 of Patrick Daugherty, those of CLO Holdco, those of the IRS,
18 those of Texas Taxing Authorities, and those of Jack Young and
19 Brad Borud.

20 The CLO Holdco objection was withdrawn in connection with
21 the settlement reached with them in connection with the
22 preliminary injunction hearing that the Court heard -- started
23 to hear last week.

24 The Taxing Authorities' objections have been resolved by
25 the Debtor agreeing to make certain modifications to the plan

1 that were included in our filing yesterday and to include
2 certain provisions in the confirmation order to address other
3 concerns.

4 The group of employees who are referred to as the Senior
5 Employee are comprised of four individuals -- Frank
6 Waterhouse, Thomas Surgent, Scott Ellington, and Isaac
7 Leventon -- although Mr. Ellington and Mr. Leventon are no
8 longer employed by the Debtor.

9 On January 22nd, Your Honor, we filed executed
10 stipulations with Frank Waterhouse and Thomas Surgent. These
11 stipulations were essentially the Senior Employee stipulations
12 that were referred to in the plan and the disclosure
13 statement.

14 And as part of those stipulations, the Debtor, in
15 consultation with and agreement from the Committee, agreed to
16 certain modifications of the prior version of the Senior
17 Employee stipulation with both Mr. Waterhouse and Mr. Surgent
18 that effectively reduced the compensation they needed to
19 provide for the release from 40 percent to five percent of
20 their claims.

21 The Debtor and the Committee believed the resolution with
22 Mr. Surgent and with Mr. Waterhouse was fair, given the
23 importance of these two people to the transition effort and
24 the increased reliance upon them that the Debtor would have
25 with the departure of Mr. Ellington and Mr. Leventon. And as

1 a result of that agreement, Your Honor, on January 27th, Mr.
2 Waterhouse and Mr. Surgent withdrew from the Senior Employee
3 objection.

4 Subsequently, we reached agreement with Mr. Ellington and
5 Mr. Leventon to resolve the objections they raised with
6 confirmation. And at Ms. Dandeneau's request, I would like to
7 read into the record the agreement reached with both of them,
8 and I know she will correct me if I get anything wrong.

9 THE COURT: Okay.

10 MR. POMERANTZ: Among other things, Mr. Ellington and
11 Mr. Leventon asserted in their objection that they were
12 entitled to have their liquidated bonus claims treated as
13 Class 7 convenience claims under the plan, under their reading
14 of the plan, and their understanding of communications with
15 Mr. Seery. The Debtor disputed the entitlement to elect Class
16 7 based upon the terms of the plan, the disclosure statement,
17 and applicable law. But as I said, the parties have resolved
18 this dispute.

19 Mr. Ellington asserts liquidated bonus claims in the
20 aggregate amount of \$1,367,197, which, to receive convenience
21 class treatment under anybody's analysis, would have had to be
22 reduced to a million dollars.

23 Mr. Leventon asserts a liquidated bonus claim in the
24 amount of \$598,198.

25 If Mr. Ellington and Mr. Leventon were entitled to be

1 included in the convenience class, as they claimed, they would
2 be entitled to receive 85 percent of their claim as and when
3 the claims were allowed under the plan.

4 To settle the dispute regarding whether, in fact, they
5 would be entitled to the convenience class treatment, they
6 have agreed to reduce the percentage they would otherwise be
7 entitled to receive from 85 percent to 70.125 percent. And as
8 a result, Mr. Ellington's Class 7 convenience claim would be
9 entitled to receive \$701,250 if allowed, and Mr. Leventon's
10 Class 7 convenience claim would be entitled to receive
11 \$413,175.10 if allowed.

12 Mr. Ellington and Mr. Leventon would reserve the right to
13 assert that a hundred percent of their liquidated bonus claims
14 are entitled to administrative priority, and the Debtor, the
15 Committee, the estate and their successors, would reserve all
16 rights to object.

17 If anyone did object to the allowance of the liquidated
18 bonus claims and Mr. Ellington and/or Mr. Leventon prevailed
19 in such disputes, then the discount that was previously agreed
20 to -- 85 percent to 70.125 percent -- would go away and they
21 would be entitled to receive the full 85 percent payout as
22 essentially a penalty for litigating against them on their
23 allowed claims and losing.

24 As an alternative to the estate preserving the right to
25 object to the allowance of Mr. Ellington and Mr. Leventon's

1 liquidated bonus claims, the Debtor and the Committee have an
2 option to be exercised before the effective date to just agree
3 that both their claims will be allowed, and allowed as Class 7
4 convenience claims. And if that agreement was reached, then
5 the amount of such liquidated bonus claims, they would receive
6 a payment equal to 60 percent of their allowed convenience
7 class claim.

8 In exchange, Mr. Ellington and Mr. Leventon would waive
9 their right to assert payment of a hundred percent of their
10 liquidated bonus claims as an administrative expense.

11 So, under this circumstance, Mr. Ellington would receive
12 an allowed claim of \$600,000, which is 60 percent of a million
13 dollars, and Mr. Leventon will receive a payment on account of
14 his Class 7 claim of \$358,918.80.

15 Under both scenarios, Mr. Ellington and Mr. Leventon would
16 preserve their paid time off claims that are treated in Class
17 6, and they would preserve their other claims in Class 8,
18 largely unliquidated indemnification claims, subject to the
19 rights of any party in interest to object to those claims.

20 Mr. Ellington will change his vote in Class 8 from
21 rejecting the plan to accepting the plan, and Mr. Leventon
22 would change his votes in Class 8 and Class 7 from rejecting
23 the plan to accepting the plan. And Mr. Ellington and Mr.
24 Leventon would withdraw any remaining objections to
25 confirmation of the plan, and we intend to put this settlement

1 in the confirmation order.

2 Your Honor, six objections to the plan remain outstanding.
3 One objection was filed by the Office of the United States
4 Trustee, and the remaining five objections are from Mr.
5 Dondero and his related entities. And I would like to put up
6 a demonstrative on the screen which shows how all of these
7 objections lead back to Jim Dondero.

8 THE COURT: All right.

9 MR. POMERANTZ: You see on the top left, Your Honor,
10 there's a box in white that says A through E, which are the
11 five remaining objections. And you can see how they relate.
12 But all of it goes back to that orange box in the middle, Jim
13 Dondero.

14 These objections, which I will address in my closing
15 argument in detail, are not really focused on concerns that
16 creditors are being treated unfairly, and that's because Mr.
17 Dondero and his entities don't really have any valid claims.
18 Mr. Dondero owns no equity in the Debtor. He owns the
19 Debtor's general partner, Strand, which in turn owns a quarter
20 percent of the total equity in the Debtor. Mr. Dondero's only
21 other claim is a claim for indemnification. And as Your Honor
22 would expect, the Debtor intends to fight that claim
23 vigorously.

24 Dugaboy and Get Good have asserted frivolous
25 administrative and unsecured claims, which I will discuss in

1 more detail later.

2 Dugaboy does have an equity interest in the Debtor, but it
3 represents eighteen-hundredths of a percent of the Debtor's
4 total equity.

5 And Mr. Rukavina's clients similarly have no general
6 unsecured claims against the Debtor. Either his clients did
7 not file proofs of claim or filed claims and then agreed to
8 have them expunged. The only claims that his clients assert
9 is a disputed administrative claim filed by NexPoint Advisors.

10 And the objections aren't legitimately concerned about the
11 post-confirmation operations of the estate, to preserve equity
12 value, how much people are getting, whether Mr. Seery is
13 really the right person to run these estates. That's because
14 Mr. Dondero has repeatedly told the Court that he believes his
15 offer, which doesn't come close to satisfying claims in full
16 in this case, is for fair value and that creditors, who are
17 owed more than \$280 million, will not receive anywhere close
18 to the amount of their claims.

19 Rather, Mr. Dondero and his entities are concerned with
20 one thing and one thing only: how to preserve their rights to
21 continue their frivolous litigation after confirmation against
22 the independent directors, the Claimant Trustee, the
23 Litigation Trustee, the employees, the Claimant Trust
24 Oversight Board, and anyone who will stand in their way. For
25 Mr. Dondero, the decision is binary: Either give him what he

1 wants, or as he has told Mr. Seery, he will burn down the
2 place.

3 Your Honor will hear a lot of argument today about how the
4 -- and tomorrow, in closing -- about how the injunction, the
5 gatekeeper, and the exculpation provisions of the plan are not
6 appropriate under applicable law. The Debtor, of course,
7 disagrees with these arguments, and I will address them in
8 detail in my closing argument.

9 But I do think it's important to focus the Court at the
10 outset on the January 9, 2020 order that the Court entered
11 which addressed some of these issues. This order, which has
12 not been appealed, which was actually agreed to by Mr.
13 Dondero, has no expiration by its terms and will continue
14 post-confirmation, did some things that the Objectors just
15 refuse to recognize and accept.

16 It approved an exculpation for negligence for the
17 independent directors and their agents. It provided that the
18 Court would be the gatekeeper to determine whether any claims
19 asserted for them -- against them for gross negligence and
20 willful misconduct could be pursued, and if so, provided that
21 this Court would have exclusive jurisdiction to adjudicate
22 those claims. And it prevented Mr. Dondero and his related
23 entities from causing any related entity to terminate any
24 agreements with the Debtor.

25 I also note, Your Honor, that the Court's July 16, 2020

1 order approving Mr. Seery as chief executive officer and chief
2 restructuring officer included the same exculpation and
3 gatekeeping provision as contained in the January 29th --
4 January 9th order.

5 Your Honor, we have all come too far to allow Mr. Dondero
6 to make good on his promise to Mr. Seery to burn down the
7 place if he didn't get what he wanted. The Debtor deserves
8 better, the creditors deserve better, and this Court deserves
9 better.

10 That concludes my opening argument, Your Honor.

11 THE COURT: All right. Thank you. I had one follow-
12 up question about the Daugherty settlement. You did not
13 mention, is it going to be reflected in the confirmation
14 order, is it going to be the subject of a 9019 motion, or
15 something else?

16 MR. POMERANTZ: It'll be subject to a -- it'll be
17 subject to a 9019 motion, Your Honor.

18 THE COURT: All right.

19 MR. POMERANTZ: I apologize for leaving that out.

20 THE COURT: All right. Thank you. Well, --

21 MR. KATHMAN: Your --

22 THE COURT: -- I appreciate that you stuck closely to
23 your 20-minute time estimate.

24 As far as other opening statements today, I'm going to
25 start with the objections that were resolved. Mr. Kathman, I

1 see you there. Who will speak on behalf of Patrick Daugherty
2 and the announced settlement?

3 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

4 MR. KATHMAN: Good morning, Your Honor. Jason
5 Kathman on behalf of Mr. Daugherty.

6 Mr. Pomerantz correctly recited the bullet points of the
7 settlement that we agreed to in principle this morning. There
8 was one that he did leave off that I do want to make sure that
9 I mention and that it's read into the record. And he read at
10 the top end that Mr. Daugherty does maintain his ability to
11 pursue his 2008 tax refund bonus claim, or tax refund
12 compensation claim. If the Court will recall, there's a
13 contingent liability out there based on how compensation was
14 paid back in 2008 that's the subject of an IRS audit. And so
15 the settlement expressly contemplates that those -- that that
16 claim will be preserved and Mr. Daugherty may pursue that
17 claim. Should the IRS have an adverse ruling and we have to
18 pay money back, we get to preserve that claim.

19 And so the one thing that is preserved, Your Honor -- and
20 the same way that Mr. Pomerantz read verbatim the words, I'm
21 going to read verbatim the words that we've agreed to:
22 Daugherty maintains and may pursue the 2008 tax refund
23 compensation portion of his claim that is currently a disputed
24 contingent liability. The Debtor and all successors reserve
25 the right to assert any and all defenses to this portion of

1 the Daugherty claim. The litigation of this claim shall be
2 stayed until the IRS makes a final determination, provided,
3 however, Daugherty may file a motion with the Bankruptcy Court
4 seeking to have the amount of his tax claim determined for
5 reservation purposes as a "disputed claim" under the Debtor's
6 plan. The Debtor and all successors reserve the right to
7 assert any and all defenses to any such motion.

8 So the Debtor's plan says that they can make estimations
9 for disputed claims. There is not currently something
10 reserving this particular claim, so we wanted to make sure we
11 reserve our rights to be able to have that amount reserved
12 under the Debtor's plan. And the Debtor obviously preserves
13 their ability to object to that.

14 With that, Your Honor, it is going to be papered up in a
15 9019, and we'll have some further things to say at the 9019
16 hearing, but didn't want to derail the Debtor's confirmation
17 hearing this morning.

18 THE COURT: All right. And --

19 MR. POMERANTZ: And Mr. Kathman is -- Mr. Kathman is
20 correct. I neglected to mention that provision, but he is --
21 he read it, and that's agreed to.

22 THE COURT: All right. And I did not hear anything
23 about Mr. Daugherty's vote on the plan. Is there an agreement
24 to change or a motion to change the vote from no to yes?

25 MR. KATHMAN: Your Honor, that wasn't, I think,

1 directly -- and Mr. Pomerantz can correct me if I'm wrong, or
2 Mr. Morris, actually, probably more could -- that wasn't
3 directly addressed, but I think the answer to that is probably
4 they don't need our vote.

5 THE COURT: Okay.

6 MR. KATHMAN: I think they have enough votes in that
7 class to carry.

8 THE COURT: Okay.

9 MR. KATHMAN: But the answer directly is that that
10 wasn't specifically addressed one way or the other.

11 THE COURT: All right.

12 MR. POMERANTZ: That is correct, Your Honor. We
13 would, of course, not oppose Mr. Daugherty changing his vote,
14 but as Your Honor saw in the ballot summary, we are way over
15 the amount in dollar amounts of claims. But if they wanted to
16 change their vote, we wouldn't oppose.

17 THE COURT: All right. Well, --

18 MR. KATHMAN: Your Honor, I have -- I have the
19 benefit of Mr. Daugherty. He is on -- I should note, Mr.
20 Daugherty is on the hearing this morning. He just let me know
21 that he is willing to change his vote. If the Debtor were to
22 so make a motion, we're fine changing our vote to in favor of
23 the plan.

24 THE COURT: All right. All right. Well, we'll get
25 the ballot agent declaration or testimony later. At one time

1 when I had checked, there was a numerosity problem but not a
2 dollar amount problem. And it sounds like that is no longer
3 an issue, perhaps because of the employee votes, or I don't
4 know.

5 But, all right. Well, thank you.

6 MR. POMERANTZ: Your Honor, there is still a
7 numerosity problem.

8 THE COURT: Okay.

9 MR. POMERANTZ: There's not a dollar amount problem.

10 THE COURT: Okay.

11 MR. POMERANTZ: But we'll address that and cram-down
12 in closing.

13 THE COURT: All right. Very good.

14 All right. Well, I want to hear from the -- what we've
15 called the Senior Employee group. Is Ms. Dandeneau going to
16 confirm the announcement of Mr. Pomerantz?

17 MS. DANDENEAU: Yes, Your Honor. I confirm that Mr.
18 Pomerantz's recitation of the terms to which we've agreed is
19 accurate.

20 THE COURT: All right. Very good.

21 All right. I suppose I should circle back to UBS. We've,
22 of course, heard in prior hearings the past few weeks that
23 there was a settlement with UBS, but Mr. Clubok, could I get
24 you to confirm what Mr. Pomerantz announced earlier about the
25 UBS settlement?

1 MR. CLUBOK: Yes. Good morning again, Your Honor.

2 Yes, we have reached a settlement, and it's just -- and
3 it's been approved internally at UBS and obviously by the
4 Debtor. It's just subject to the final documentation. And we
5 are working very closely with the Debtor to try to do that as
6 quickly as possible.

7 THE COURT: All right. Thank you.

8 All right. Well, let me go, then, to other opening
9 statements. Is there anyone else who at this time wishes to
10 make an opening statement? And, you know, for the pending
11 objectors, please, no more than 20 minutes.

12 MR. CLEMENTE: Your Honor? Your Honor, if I may,
13 it's Matt Clemente on behalf of the Committee.

14 THE COURT: Okay.

15 MR. CLEMENTE: I'd be very brief, but I would like to
16 make some remarks to Your Honor. It'll be less than five
17 minutes.

18 THE COURT: All right. Go ahead.

19 MR. CLEMENTE: Thank you, Your Honor.

20 OPENING STATEMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

21 MR. CLEMENTE: Again, for the record, Matt Clemente;
22 Sidley Austin; on behalf of the Official Committee of
23 Unsecured Creditors.

24 Your Honor, to be clear, the Committee fully supports
25 confirmation of the Debtor's plan and believes the plan is

1 confirmable and should be confirmed.

2 Although it has taken us quite some time to get to this
3 point, Your Honor, and as Mr. Pomerantz referred, the Debtor's
4 business is somewhat complex, the plan is remarkably
5 straightforward, Your Honor, and has only been made
6 complicated by the various objections filed by Mr. Dondero's
7 tentacles.

8 At bottom, Your Honor, the plan is designed to recognize
9 the reality of the situation that the Committee has
10 continually been expressing to Your Honor, and that is the
11 overwhelming amount of creditors in terms of dollars are
12 litigation creditors, creditors who are here entirely because
13 of the fraudulent and other conduct of Mr. Dondero and his
14 tentacles.

15 The other third-party creditors, Your Honor, by and large
16 are those collateral to these litigation claims in terms of
17 true trade creditors and service providers.

18 Recognizing this fact, Your Honor, the plan contains an
19 appropriate convenience class, which, in the Committee's view,
20 provides a fair way to capture a large number of claims and
21 appropriately recognizes the distinction between those claims
22 and the large litigation claims. And the holders of these
23 large litigation claims, including now Mr. Daugherty, have
24 voted in favor of allowing this convenience class treatment.

25 Your Honor, after distributions are made to the

1 administrative creditors, the priority creditors, the secured
2 creditors, and the convenience creditors, the remainder goes
3 to general unsecured creditors who will control how this value
4 is realized. These are the large litigation creditors.

5 Additionally, Your Honor, recognizing the possibility of
6 recovery in excess of general unsecured claims plus interest,
7 and to thwart, from the Committee's perspective, what would
8 have undoubtedly been an argument by one of the Dondero
9 tentacles that the general unsecured creditors could be paid
10 more than they are owed, the plan provides for a contingent
11 interest to kick in after payment in full for interests of all
12 prior claims.

13 Your Honor, this is the sum and substance of the plan. At
14 bottom, fairly straightforward. And the true creditors, Your
15 Honor, have voted overwhelmingly in favor of the plan. Class
16 8 has voted to support the plan. Class 7 has voted to accept
17 the plan. And now I believe, with Mr. Daugherty's settlement,
18 one hundred percent in amount of Class 8, non-insider, non-
19 Dondero-controlled or (audio gap) have voted in favor of the
20 plan.

21 To be clear, as Your Honor pointed out and as Mr.
22 Pomerantz referenced, there is not numerosity in Class 8, Your
23 Honor, but that is driven, as Your Honor will see, from
24 approximately 30 no-votes of current employees who the
25 Committee believes are not owed any amounts and therefore they

1 will not be receiving payments under the plan, yet they voted
2 against the plan. So although we have a technical cram-down
3 plan from the Class 8 perspective, Your Honor, the plan voting
4 reflects the reality that the economic parties in interest
5 overwhelmingly support the plan.

6 So, Your Honor, cutting through the machinations of the
7 Dondero tentacles, we do have a fairly straightforward plan
8 and a plan that the Committee believes is confirmable and
9 should be confirmed.

10 Your Honor, since I've been in front of you for over a
11 year now, I've referred to the goals of the Committee in this
12 case, and the goals are straightforward in terms of expressing
13 them but can be difficult in reality to implement them. The
14 Committee's goals have been two-fold: to maximize the value
15 of the estate and therefore the recoveries for its
16 constituency, and to disentangle from the Dondero (audio gap).

17 As with all things Highland, although these goals are
18 straightforward, they're remarkably difficult to achieve,
19 given the Dondero tentacles. However, the Committee strongly
20 believes the plan achieves these two goals.

21 First, the plan provides a credible path to maximize
22 recovery with Mr. Seery, who has gotten to know the assets and
23 who has performed skillfully and credibly throughout this very
24 difficult process. It is a difficult set of assets and
25 complex set of assets, as Your Honor knows very well.

1 To be sure, there is uncertainty associated with the
2 Debtor's projections, but that is inherent in the nature of
3 the assets of the Debtor, and frankly, is inherent in the
4 nature of projections themselves. And Mr. Dondero and his
5 tentacles will point to the downside, potentially, in those
6 projections, but the Court will be reminded that there is also
7 potential upside in those projections, an upside that would
8 inure to the benefit of the general unsecured claims.

9 Second, Your Honor, although it is seemingly impossible to
10 free yourself from the Dondero web until every single one of
11 the 2,000 barbed tentacles is painfully removed, if that's
12 even possible, Your Honor, the Reorganized Debtor, the
13 Claimant Trust, the Claimant Trustee, the Litigation Sub-
14 Trust, the Litigation Trustee, and the Oversight Board
15 construct and mechanisms is a structure that the Committee
16 believes provides the creditors with the best possibility to
17 do so, and that is to deal with what will undoubtedly be a
18 flurry of attacks from Mr. Dondero and his tentacles.

19 This is a virtual certainty, Your Honor. The creditors
20 have seen this movie before and Your Honor has seen this movie
21 before. They have seen Mr. Dondero make and break promises.
22 They have seen Mr. Dondero attempt to bludgeon adversaries
23 into submission in order to accept his offerings, and they
24 have heard Mr. Dondero say that which he has said in this
25 court during the preliminary injunction hearing --

1 specifically, that the Debtor's plan "is going to end up in a
2 myriad of litigation."

3 The creditors are steeled in their will to be rid of Mr.
4 Dondero, and they're confident in this structure to do so.

5 To be clear, Your Honor, what is before the Court today
6 for confirmation is the Debtor's plan, not some other plan
7 that no one supports other than Mr. Dondero and his tentacles.
8 The question isn't whether Mr. Dondero has a better proposal
9 -- and footnote, Your Honor, the answer is he does not, both
10 from a qualitative and quantitative perspective -- but whether
11 the plan before the Court is in the best interest of creditors
12 and should be confirmed. The Committee strongly believes it
13 is, and should, and all the Committee members support
14 confirmation of the Debtor's plan.

15 Recognizing Mr. Dondero's behavior, Your Honor, and
16 threats regarding how he will behave in the future, there are
17 certain provisions in the plan that are of critical importance
18 to the creditors. Of course, all provisions in the plan are
19 extremely important, Your Honor, but as Mr. Pomerantz
20 referenced, the creditors need the gatekeeper, exculpation,
21 and injunction provisions.

22 The reason is obvious, and is emphasized by the
23 supplemental objection filed just yesterday by some of Mr.
24 Dondero's tentacles -- namely, the Dugaboy and the Get Good
25 Trusts. And I quote, Your Honor: "It is virtually certain

1 that, under the Debtor's plan, there will be years of
2 litigation in multiple adversary proceedings, appeals, and
3 collection activities, all adding substantial uncertainty and
4 delay."

5 Additionally, Your Honor has seen from the proceedings in
6 this case and has expressed frustration at numerous times at
7 the myriad and at times baseless and borderline frivolous and
8 out of touch with reality suits and objections and proceedings
9 that the Dondero tentacles bring. The creditors need the
10 gatekeeper, exculpation, and injunction provisions to preserve
11 and protect value. And the record, I think, to this point is
12 clear, and will be further made clear through the confirmation
13 proceedings, that the protections are appropriate and entirely
14 within this Court's authority to grant.

15 In sum, Your Honor, the Committee fully supports
16 confirmation of the plan. The Committee believes it is
17 confirmable and should be confirmed, and two classes of
18 creditors and the overwhelming amount of creditors in terms of
19 dollars agree.

20 That's it, Your Honor. Unless you have questions for me,
21 I have nothing further at this time.

22 THE COURT: All right. Thank you, Mr. Clemente.

23 MR. CLEMENTE: Thank you, Your Honor.

24 THE COURT: All right. Who else wishes to be heard?

25 MR. DRAPER: Your Honor, this is Douglas Draper. I'd

1 like to be heard. I have a few -- I'll take five minutes, at
2 most --

3 THE COURT: All right. Go ahead.

4 MR. DRAPER: -- and just focus on a few things.

5 OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY
6 INVESTMENT TRUST

7 MR. DRAPER: I'm going to focus my opening remarks on
8 the releases, the exculpations, and channeling injunctions in
9 the plan. I'm not waiving my other objections, but, rather,
10 trying not to subject the Court to hearing the same argument
11 from multiple lawyers.

12 The good thing about the law is that it's absolute in
13 certain respects. It does not matter who is asserting a legal
14 protection, the law applies it. For example, a serial killer
15 is entitled to a *Miranda* warning and a protection against
16 unlawful search and seizure. The law does not allow tainted
17 evidence or an unlawful admission into evidence,
18 notwithstanding the fact that the lack of admission of that
19 evidence may lead to the freeing of that serial killer.

20 Today, you must make an independent evaluation as to
21 whether the plan complies with 1129 and applicable law. The
22 decision must be made notwithstanding the fact that it is
23 being made by a Dondero entity. It's not being -- it must be
24 applied notwithstanding the fact that it's being made by me.

25 We contend that the plan does not meet the hurdle and

1 confirmation should be denied, notwithstanding the fact that
2 the infirmity with the plan is asserted by me and
3 notwithstanding the fact that Mr. Pomerantz and the unsecured
4 creditors have overwhelming support.

5 We all know 1141, the Barton Doctrine, and 544 -- 524
6 provide injunctions and protections for certain parties
7 associated with the Debtor. Had the plan merely referenced
8 these sections and stated that the injunction, et cetera,
9 shall not exceed those allowed pursuant to *Pacific Lumber*, I
10 would not be making this argument.

11 Instead, we see a plan that has a definition of Exculpated
12 Parties, Released Parties, Related Parties, that exceed the
13 protections afforded by the Bankruptcy Code, the Barton
14 Doctrine, and 524.

15 We have a grant of jurisdiction and oversight that exceeds
16 that allowed under *Craig's Store*, the *Craig's Store* line of
17 cases.

18 We have releases of claims against non-debtor parties,
19 such as Strand, who is, under the Bankruptcy Code, under 723,
20 liable for the debts of the Debtor.

21 The plan, with its expansive releases, released parties,
22 grant of injunctions, exculpations and channeling injunctions,
23 are impermissible under Fifth Circuit case law. And I would
24 ask the Court to look closely at those definitions, who is --
25 who the law allows to be exculpated and released and who the

1 law specifically prohibits being exculpated and released, and,
2 in fact, apply the *Pacific Lumber* line of -- case, as well as
3 524 and the Bankruptcy Code when you look at these issues.

4 Notwithstanding the overwhelming so-called support by the
5 creditors at issue, the law must be applied, and it must be
6 applied pursuant to what the Fifth Circuit requires.

7 THE COURT: All right. Thank you, Mr. Draper.

8 Other Objectors with opening statements?

9 MR. RUKAVINA: Your Honor, Davor Rukavina. Briefly?

10 THE COURT: Okay.

11 OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

12 MR. RUKAVINA: Your Honor, I represent various funds,
13 including three of which have independent boards. The Debtor
14 manages more than \$140 million of those funds, and the Debtor
15 manages around a billion dollars in CLOs.

16 Whether I am a tentacle of Mr. Dondero or not -- I'm not,
17 since there's an independent board -- the fact remains that
18 the Debtor wants to manage these assets and my clients' money
19 post-assumption and post-confirmation with effective judicial
20 immunity. So our fundamental problem with this plan is the
21 assumption of those contracts under 365(c) and (b). I think
22 we'll have to wait for the evidence to see what the Debtor
23 proposes and has, and I will reserve, I guess, the balance of
24 my arguments on that to closing, depending on what the
25 evidence is.

1 But I don't want the Court to lose sight of the fact that
2 what the Debtor wants to do is, in contravention of our
3 desires, continue managing our assets post-confirmation, even
4 as it liquidates, just to make a buck. It's our money, Your
5 Honor, and whether we're Dondero or not, we're a couple
6 hundred million, probably, or more, of third-party investment
7 professionals, pension funds, et cetera, and we should not be
8 all tainted without evidence as a tentacle of someone whom,
9 I'll remind everyone here, built a multi-billion dollar
10 company and made a lot of money for people.

11 The second objection, Your Honor, goes to the Class 8
12 rejection. It sounds like there's still a problem with the
13 number of creditors, even though certain creditors have
14 switched their votes. That raises now the fair and equitable
15 standard, together with the undue discrimination and the
16 absolute priority rule. I think we'll have to let the
17 evidence play out, and I'll reserve the balance of my closing
18 or the balance of my remarks to closing on that issue.

19 The third issue, Your Honor, is the same exculpation and
20 release and injunction provisions that Mr. Draper raised.
21 Those are legal matters that I'll discuss at closing, but I do
22 note that the Debtor purports to prevent my clients from
23 exercising post-assumption post-confirmation rights, period.
24 And that's just inappropriate, because if the Debtor wants the
25 benefits of these agreements, well, then of course it has to

1 comply with the burdens. And to say *a priori* that anything
2 that my clients might do post-confirmation would be the result
3 of a bad-faith Mr. Dondero strategy, there's no basis for that
4 and that's not the basis on which my clients' rights in the
5 future, when there is no bankruptcy estate and there is no
6 bankruptcy jurisdiction, can be enjoined.

7 And the final point, Your Honor, entails this channeling
8 injunction. I'll talk about it during closing. It is
9 inappropriate under 28 U.S.C. 959. This is not a Barton
10 Doctrine trustee issue, this is a debtor-in-possession, and a
11 channeling injunction, the Court will have no jurisdiction
12 post-confirmation.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 Does Mr. Dondero's counsel have an opening statement?

16 MR. TAYLOR: I do, Your Honor. I'll keep it brief.
17 This is Clay Taylor on behalf of Mr. Dondero.

18 THE COURT: Okay.

19 OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

20 MR. TAYLOR: Your Honor, the plan is clear in some
21 respects, and I'm not going to belabor these points, as other
22 objecting counsel have already addressed this. But the plan
23 does provide for non-debtor releases, and it provides for non-
24 debtor releases for parties beyond that which is allowed by
25 *Pacific Lumber* and under the Code.

1 It also provides for exculpations of non-debtor parties in
2 excess of that which is allowed under the Code and applicable
3 case law.

4 Finally -- or, not finally, but third, it requires this
5 Court to keep a broad retention of post-confirmation
6 jurisdiction that could go on for years, and that is improper.

7 Finally, it requires the parties to submit to the
8 jurisdiction of this Court via a channeling injunction, which
9 we believe is beyond that which is allowed under applicable
10 Fifth Circuit precedent.

11 What is clear, what the evidence will show -- and I
12 thought it was interesting that none of the proponents of plan
13 confirmation ever talk about what the evidence is going to
14 show. They testified a lot before Your Honor, but they didn't
15 ever talk about what the evidence would show. What the
16 evidence will show is this plan was solicited via a disclosure
17 statement that told all the unsecured creditors, we project
18 that you're going to receive 87 cents on the dollar on your
19 claim.

20 About two months later, and this was Friday of this past
21 week, they changed those projections, and those projections
22 then showed unsecured creditors, under a plan analysis, that
23 they were going to receive 62 cents on the dollar. That is in
24 contrast to the liquidation analysis that had been prepared
25 just two months prior showing that, under a hypothetical

1 Chapter 7 liquidation analysis, that the unsecured creditors
2 would receive 65 cents on the dollar. Obviously, 62 cents is
3 less than 65 percent.

4 Realizing they had a problem, I guess, over the weekend,
5 they changed last night, the night before confirmation, and
6 sent us some new projections that now show that the unsecured
7 creditors under a plan would receive 71 cents on the dollar.

8 Your Honor, what the evidence will show, and it is
9 Highland's burden to show this, is that -- that they meet the
10 best interests of the creditors. And part of that is that
11 they will do better under a plan rather than under a
12 hypothetical Chapter 7.

13 Quite simply, they don't have the evidence, nor have they
14 done the analysis to be able to prove that to this Court.

15 What the evidence will also show is clear is that Mr.
16 Seery, under the plan analysis, is scheduled to receive at
17 least \$3.6 million over just the first two years of this plan
18 if it doesn't go any further. And that's just for monthly
19 payouts of \$150,000 per month. That's not including a to-be-
20 agreed-upon success fee structure, which hasn't been
21 negotiated yet. And if it hasn't been negotiated yet, it
22 can't be analyzed yet to see if those costs would exceed their
23 benefits and therefore drive the return down such that a
24 hypothetical Chapter 7 trustee could do better.

25 There is also going to be additional costs for the

1 Litigation Trustee and the fees that they are going to charge.
2 There's going to be an Oversight Committee, and those fees are
3 also to be negotiated. There's also U.S. Trustee fees, which
4 Mr. Seery tells us that he has calculated within the
5 liquidation and plan analysis numbers, albeit both myself and
6 Mr. Draper, as the evidence will show, have asked for the
7 rollups that come behind the liquidation and plan analysis in
8 each instance of the three iterations that have been done in
9 two months, and we have been denied that information. That
10 evidence is not going to come in before this Court, and
11 without that rollup information, this Court can't make an
12 independent verification that this meets the best interests of
13 the creditor and better than a hypothetical Chapter 7 trustee.

14 What the evidence will also show, make an assumption that,
15 under a plan analysis, that Mr. Seery will be able to generate
16 higher returns on the sale of the assets of the Highland
17 debtor and its subsidiaries, to the neighborhood of \$60
18 million higher. There is no independent verification of this.
19 There has been no due diligence done. It was merely an
20 assumption done by Mr. Seery and his advisors, and we submit
21 that they will not have the evidence to show that they can
22 beat a Chapter 7 trustee.

23 This Court does have an alternative before it. There is
24 an alternative plan that has been filed under seal. The Court
25 is aware of it. And it guarantees that creditors will receive

1 at least 65 cents on the dollar. Moreover, those claims are
2 guaranteed -- and they're going to be secured that they will
3 be paid that money.

4 MR. POMERANTZ: Your Honor, this is under -- this is
5 under seal. And I never interrupt somebody's argument, but
6 this plan is under seal for a reason, Your Honor, and I object
7 to any description of the terms of a plan that's not before
8 Your Honor and is under seal.

9 THE COURT: Okay. I sustain that objection.

10 MR. TAYLOR: Your Honor has a means to cut the
11 Gordian knot of the litigation and appeals before it and to
12 ensure that there is certainty for creditors. It would
13 massively reduce the administrative fee burn that is
14 contemplated under the proposed plan before the Court. As
15 I've mentioned, it's at least \$3.6 million just in monthly
16 fees for Mr. Seery alone. All of the rest of the fees are yet
17 to be determined and to be negotiated. I don't see how any
18 analysis could have been done regarding the administrative fee
19 burn that is going to happen over the two years and
20 potentially much further as this case draws on.

21 For those reasons alone, Your Honor, we believe that the
22 plan confirmation should be denied and this Court should look
23 at the alternatives before it.

24 MR. KATHMAN: Can I say something before --

25 MR. TAYLOR: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 All right. Have I missed any Objectors?

3 MR. KATHMAN: Your Honor?

4 MS. DRAWHORN: Yes, Your Honor.

5 THE COURT: Okay. Ms. --

6 MR. KATHMAN: Your Honor, if I could spend just one
7 minute, and I -- we -- I -- we filed a joinder on behalf of
8 Mr. -- or, Jason Kathman on behalf of Davis Deadman, Todd
9 Travers, and Paul Kauffman.

10 THE COURT: Uh-huh.

11 OPENING STATEMENT ON BEHALF OF DAVIS DEADMAN, TODD TRAVERS,
12 AND PAUL KAUFFMAN

13 MR. KATHMAN: Mr. Pomerantz had noted, I think, at
14 the front end that the Debtor amended their plan that resolved
15 those objections. I just want to say for the record that
16 those had been resolved.

17 And with that, Your Honor, may I be dismissed?

18 THE COURT: Yes, you may. Thank you.

19 MR. KATHMAN: Thank you, Your Honor.

20 THE COURT: All right. Was Ms. Drawhorn speaking up
21 to make an opening statement?

22 MS. DRAWHORN: Yes.

23 THE COURT: Go ahead.

24 MS. DRAWHORN: Yes, Your Honor.

25 THE COURT: Go ahead.

1 OPENING STATEMENT ON BEHALF OF THE NEXPOINT PARTIES

2 MS. DRAWHORN: Just very briefly, Lauren Drawhorn on
3 behalf of NexPoint Real Estate Partners, the NexPoint Real
4 Estate entities, and NexBank.

5 Just a very brief opening. Just wanted to note that it
6 seems that the Debtor's and the Committee's position seems to
7 be if there's some way, any way, to connect an entity to Mr.
8 Dondero, then they don't need to perform any true evaluation
9 of potential claims or that party's rights or their concerns,
10 and that results in ignoring not only the merits of many
11 claims but also the basic requirements of due process and the
12 statutes, the Bankruptcy Code, and the case law.

13 We filed objections that were focused largely on the
14 injunctions and the releases, and then also the proposed
15 subordination provisions.

16 Two of my clients, one of them has a proof of claim, and
17 while it is being disputed, that claim is out there and should
18 get -- be entitled to be pursued and defended, and many of the
19 injunctions appear to prevent my client from doing so.

20 Similarly, it was mentioned that NexBank, in the
21 demonstrative, had a terminated service agreement, but there's
22 periods of time for which no services were provided but
23 payment was made, and that's a potential admin claim that has
24 been raised. And the injunction, again, appears to prevent my
25 clients from pursuing these claims.

1 So I think, despite the general response to any connection
2 to Dondero means there's no merit, that's not what we're here
3 for today. We need to really look at the merits of all
4 potential claims and all -- the rights of all parties and the
5 -- how the injunction and release provisions prevent that and
6 how they don't comply with the required law.

7 And, of course, we join in with many of the other
8 objections, but that's my main point for the opening today.

9 THE COURT: All right. Thank you.

10 All right. I think I have covered all of the at least
11 pending objections except the U.S. Trustee. I'll check again
12 to see if someone is out there for the U.S. Trustee. (No
13 response.) All right. If you're there, we're not hearing
14 you. You're on mute.

15 Okay. Any other attorneys out there who wish to make an
16 opening statement?

17 All right. Well, I'll turn back to Mr. Pomerantz. You
18 may call your first witness.

19 MR. POMERANTZ: Okay. I will turn the virtual podium
20 over to my partner, John Morris, who will be putting on our
21 witnesses.

22 THE COURT: All right. Mr. Morris, you may call your
23 first witness.

24 MR. MORRIS: Good morning, Your Honor. John Morris
25 from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

1 Can you hear me okay?

2 THE COURT: I can.

3 MR. MORRIS: Okay. Thank you very much.

4 The Debtor calls James Seery as its first witness.

5 THE COURT: All right. Mr. Seery, if you could say,
6 "Testing, one, two," please.

7 MR. SEERY: Testing, one, two.

8 THE COURT: All right. Hmm, I've not picked up your
9 video yet. Let's try it again.

10 MR. SEERY: Testing, one, two. Testing.

11 MR. MORRIS: We have the audio.

12 THE COURT: We have the audio.

13 MR. SEERY: Oh.

14 MR. MORRIS: There we go.

15 THE COURT: There you are.

16 MR. SEERY: The video should be working.

17 THE COURT: All right.

18 MR. POMERANTZ: Yeah. Actually, one -- Your Honor,
19 one thing before we start. We have Patrick Leatham from KCC.
20 He is prepared to sit on the line for the whole day until his
21 time comes. I would just like to know if anyone intends to
22 cross-examine him or object to his declaration. Because if
23 they don't, we could excuse Mr. Leatham.

24 THE COURT: All right. What about that? Anyone
25 want to cross-examine the balloting agent?

1 MR. RUKAVINA: Your Honor, Davor Rukavina. I do not.
2 If the Debtor would just state, with the change of votes in
3 Class 8, what the final tally is, I see no reason to dispute
4 that, and then we can dismiss this gentleman. But I do think
5 that we should all know, with the change of votes, what it now
6 is.

7 THE COURT: All right.

8 MR. POMERANTZ: We will -- we will work on that, Your
9 Honor, with the changes as a result of the settlements today,
10 and including Mr. Daugherty's client. We can get that
11 information sometime today.

12 THE COURT: All right. So, Mr. Rukavina, do you
13 agree that he can be excused with that representation, or do
14 you want --

15 MR. RUKAVINA: Yes, Your Honor.

16 THE COURT: Okay. All right. So, it's Mr. Leatham?
17 You are excused if you want to drop off this video.

18 All right. Mr. Seery, please raise your right hand.

19 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

20 THE COURT: All right. Thank you. Mr. Morris, go
21 ahead.

22 MR. MORRIS: Thank you, Your Honor.

23 If I may, I'd like to just begin by moving my exhibits
24 into evidence so that it'll make this all go a little bit
25 smoother.

1 THE COURT: All right.

2 MR. MORRIS: And if you'll indulge me just a little
3 patience, please, because the Debtor's exhibits are found in
4 three separate places.

5 THE COURT: Uh-huh.

6 MR. MORRIS: And I would just take them one at a
7 time.

8 First, at Docket No. 1822, the Court will find Debtor's
9 Exhibits A through what I'm referring to as 6Z. Six Zs. So
10 the Debtor respectfully moves into evidence Exhibits A through
11 6Z on Docket No. 1822.

12 THE COURT: All right. Are there any objections?

13 MR. RUKAVINA: Your Honor, I have a number of
14 targeted objections to all of the exhibits. Did I hear Mr.
15 Morris say 6Z?

16 THE COURT: Yes.

17 MR. MORRIS: Yes.

18 MR. RUKAVINA: Or six -- then, Your Honor, I can go
19 through my limited objections, if that pleases the Court.

20 THE COURT: All right. Go ahead.

21 MR. RUKAVINA: Your Honor, Exhibit B, a transcript, B
22 as in boy. Exhibit D, an email, D as in dog. Exhibit E as in
23 Edward. Moving on, Your Honor, 4D as in dog. 4E as in
24 Edward.

25 MR. MORRIS: Slow down, please.

1 THE COURT: Okay.

2 MR. RUKAVINA: I'm sorry.

3 THE COURT: You said 4D as in dog, correct?

4 MR. RUKAVINA: Then -- yes, Your Honor. Then 4E as
5 in Edward.

6 THE COURT: Okay.

7 MR. RUKAVINA: 4G as in George. Your Honor, one,
8 two, three, four, five T. 5T as in Tom. And then, Your
9 Honor, one, two -- 6R. 6S. 6T as in Tom. And 6U as in
10 under. That's it.

11 THE COURT: All right. Well, Mr. Morris, do you want
12 to carve those out for now and just offer them the old-
13 fashioned way and I can rule on the objections then?

14 MR. MORRIS: Why don't we do that? I may just deal
15 with it at the end of the case. But subject to those
16 objections, the Debtor then moves into evidence the balance of
17 the exhibits on Docket 1822.

18 THE COURT: All right. So, for the record, the Court
19 will admit all exhibits at Docket No. 1822 at this time except
20 B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U.

21 (Debtor's Docket 1822 exhibits, exclusive of Exhibits B,
22 D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U, are received into
23 evidence.)

24 THE COURT: All right. Mr. Morris, continue.

25 MR. MORRIS: Thank you, Your Honor.

1 Next, at Docket 1866, you'll find Debtor's Exhibits 7A
2 through 7E, and the Debtor respectfully moves those dockets --
3 documents into evidence.

4 THE COURT: All right. Any objection? (No
5 response.) Are there any objections?

6 MR. RUKAVINA: Your Honor, not from -- not from me.

7 THE COURT: All right. Hearing no objections, the
8 Court will admit all Debtor exhibits appearing at Docket Entry
9 No. 1866.

10 MR. MORRIS: Thank you, Your Honor.

11 (Debtor's Docket 1866 exhibits are received into
12 evidence.)

13 MR. MORRIS: And finally, at Docket 1877, the Court
14 will find Debtor's Exhibits 7F through 7Q, and the Debtor
15 respectfully moves for the admission of those documents into
16 evidence.

17 THE COURT: All right. Any objection?

18 MR. RUKAVINA: Your Honor, I might have to talk about
19 this with Mr. Morris, but I have 7F as any document entered in
20 the case, 7G as any document to be filed, et cetera. Mr.
21 Morris, am I wrong about that?

22 MR. MORRIS: I don't have that list in front of me.
23 So I'll reserve on those documents and we can talk about them
24 at a break, Your Honor.

25 THE COURT: All right.

1 MR. DRAPER: Your Honor, this is Douglas Draper. I
2 object, and I don't have the number in front of me, it's the
3 liquidation analysis and the plan summary. It's a summary
4 exhibit, and we've not been given the underlying documentation
5 with respect to them. I'd ask Mr. Morris to deal with that
6 separately also.

7 MR. MORRIS: All right. Well, we're certainly going
8 to be moving that into evidence, so we can deal with that at
9 the time, Your Honor.

10 THE COURT: Okay. Which documents are they? Which
11 exhibits are those?

12 MR. DRAPER: I don't have the number in front -- Mr.
13 Morris, do you have the number for that exhibit?

14 MR. MORRIS: I do, but why don't we just deal with it
15 when I -- when I get into --

16 THE COURT: Okay.

17 MR. MORRIS: -- into the testimony?

18 THE COURT: I just wanted the record clear what I am
19 admitting at this time at Docket Entry No. 1877. Or do you
20 want to just --

21 MR. MORRIS: Okay.

22 THE COURT: -- hold all those --

23 MR. MORRIS: Mr. Rukavina, other than F and G, which
24 you noted, is there any objection to any of the other
25 documents on that witness and exhibit list?

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1 MR. RUKAVINA: Well, I also have H as impeachment/
2 rebuttal, I as any document offered by any other party. So I
3 would suggest, Mr. Morris, that I have my associate confirm
4 that I have the right -- the right stuff here, and we can take
5 it up maybe during a break. But I have F, G, H, I as so-
6 called catchalls, not any discrete exhibits.

7 MR. MORRIS: All right. All right, Your Honor.
8 Let's, let's just proceed. We've got -- we took care of
9 Docket No. 1822 and 1866, and the balance we'll deal with at a
10 break, --

11 THE COURT: All right.

12 MR. MORRIS: -- unless they come up through
13 testimony.

14 THE COURT: All right. That sounds good.

15 MR. MORRIS: Okay. Thank you very much. May I
16 proceed?

17 THE COURT: You may.

18 MR. MORRIS: Okay.

19 DIRECT EXAMINATION

20 BY MR. MORRIS:

21 Q Good morning, Mr. Seery.

22 A (no response)

23 Q Can you hear me?

24 A Apologies. I went on mute. Can you hear me now? I
25 apologize.

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1 Q Yes. Good morning.

2 MR. MORRIS: So, let's begin, Your Honor, with just a
3 little bit of background of Mr. Seery and how he got involved
4 in the case.

5 BY MR. MORRIS:

6 Q Mr. Seery, what's your current position with the Debtor?

7 A I am the CEO, the CRO -- the chief restructuring officer
8 -- as well as an independent director on the Strand Advisors
9 board of directors.

10 Q Okay.

11 MR. MORRIS: Your Honor, I'm going to ask Mr. Seery
12 to describe a bit for his background. For the record, you'll
13 find that Exhibits 6X, 6Y, and 6Z, on the Debtor's exhibit
14 list at Docket 1822, the resumes and C.V.s of the three
15 independent members of the board. If Your Honor has any
16 question about their qualifications and their experience, that
17 evidence is already in the record.

18 THE COURT: Okay.

19 BY MR. MORRIS:

20 Q But Mr. Seery, without going into the detail of everything
21 that's on your C.V., can you just describe for the Court
22 generally your professional background, starting, well, with
23 your time as a lawyer?

24 A I've been involved in the restructuring, finance,
25 investing and managing of assets and banking-type assets for

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1 over 30 years.

2 I began in restructuring in real estate. Became a lawyer,
3 and was a lawyer in private practice dealing with
4 restructuring and finance for approximately ten years, in
5 addition to time before that on the real estate side.

6 I joined Lehman Brothers on the business side in 1999,
7 where I immediately began working on the -- with a distress
8 team as a team member investing off the balance sheet, Lehman
9 Brothers assets in various types of distressed financing
10 investments. Bonds, loans, equities. In addition, then I
11 became the head of Lehman's loan business globally. I ran
12 that business for the number of years. Was one of the key
13 players in selling Lehman Brothers to Barclays in a very
14 difficult situation and structure.

15 After that, joined some of my partners, we formed a hedge
16 fund called RiverBirch Capital, about a billion and a half
17 dollar hedge fund in -- operating in -- globally, but mostly
18 U.S. stressed/distressed assets that we invested in.
19 Oftentimes, though, we would run from high-grade assets all
20 the way down to equities, different types of investors,
21 different types of investments.

22 Thereafter, I left -- was -- joined Guggenheim. I left
23 Guggenheim, and shortly thereafter became a director at
24 Strand.

25 Q Prior to acceptance of the positions that you described

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1 earlier, were you at all familiar with Highland or Mr.
2 Dondero?

3 A Yeah. I was, yes.

4 Q Can you just describe for the Court how you became
5 familiar with Highland and Mr. Dondero?

6 A Highland was a customer of Lehman Brothers, and it was --
7 particularly in the loan business. And the CLO businesses.
8 Highland was run by Mr. Dondero, and I knew of that business
9 through that --

10 (Interruption.)

11 MR. MORRIS: Can somebody please put their device on
12 mute?

13 A VOICE: That's Mr. Taylor.

14 THE COURT: Mr. Taylor, you were off mute,
15 apparently, for a moment. Make sure you're staying on mute.
16 Thank you.

17 MR. TAYLOR: Yes. Sorry, Your Honor. I thought we
18 might have a hearsay objection. I wasn't sure what the answer
19 was going to be, so I wanted to be prepared to object.

20 THE COURT: All right. Thank you.

21 BY MR. MORRIS:

22 Q Did you know or meet Mr. Dondero in the course of what you
23 just described?

24 A Yes, I did. I believe we met once or twice over the
25 years. There was a senior team member who handled the

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1 Highland relationship. He was quite good, quite experienced,
2 and he handled most of the Highland relationship issues. But
3 Highland, we came across a number of times, whether it be in
4 -- I came across a number of times, whether it be in specific
5 investments we had where they would be either a competing
6 party or holding a similar interest, whether they were a
7 customer purchasing loans or securities, whether they were a
8 potential CLO customer where we were structuring some assets
9 for them.

10 Q Okay. And who are the two other members of the
11 independent board at Strand?

12 A John Dubel and Russel Nelms.

13 Q And had you had any personal experience with either of
14 those gentleman prior to this case?

15 A I knew of Mr. Nelms and his experience as a bankruptcy
16 judge in the Northern District of Texas, and I had worked on
17 one matter with Mr. Dubel, but very, very briefly, while he
18 was the CEO of FGIC, which is a large insurer in the financial
19 insurance space that he was responsible for reorganizing and
20 ultimately winding down.

21 Q Okay. How did you learn about this particular case? How
22 did you learn about the opportunity or the possibility of
23 becoming an independent director?

24 A Initially, I was contacted by some of the creditors and
25 asked whether I was interested, and I indicated that I was.

1 Subsequently, I received a call from the Debtor's
2 representatives as well meeting the counsel as well as the
3 financial advisor as well as specific members of the Debtor's
4 senior management.

5 Q Do you know how long in advance of the January 9th
6 settlement you were first contacted?

7 A Probably four, four or five days at the most, but started
8 working immediately at that time because it was a pretty
9 complicated matter and the interview process would be quick
10 because of the hearing date that was coming up.

11 Q Do you recall the names of any of the creditors who
12 reached out to you?

13 A I spoke to counsel for UBS. Certainly, Committee counsel.
14 I don't recall if I spoke to anybody from Jenner Block in the
15 initial interview. And then I spoke to representatives from
16 your firm as well as Mr. Leventon and ultimately Mr.
17 Ellington.

18 Q Did you do any due diligence before accepting the
19 appointment?

20 A I did, yes.

21 Q Can you describe for the Court the due diligence you did
22 before accepting your appointment as independent director?

23 A Well, I got the petition, I read the petition, as well as
24 the first day, as well as the venue-changing motion. In
25 addition, I went through the schedules. Ultimately, I took a

1 look at and examined the limited partnership agreement of the
2 Debtor, with particular focus on the indemnity provisions. I
3 then sat down with the Committee to get their views as part of
4 the interview process, as well as the Debtor's counsel and
5 Debtor's representatives.

6 Q Did you -- in the course of your diligence, did you come
7 to an understanding or did you form a view as to why an
8 independent board was being sought at that time?

9 A Yes, I did.

10 Q And what view or understanding did you come to?

11 A There was extreme antipathy from the creditors, as
12 evidenced by the venue motion and the documents around that
13 venue motion.

14 In addition, in the first day order, or affidavit, you
15 could see the issues related to Redeemer and the length of
16 time that litigation has been gone on, going on.

17 The creditors became extremely concern with Mr. Dondero
18 having any control over the operations of the Debtor and
19 wanted to make sure that either he was removed from that or
20 that -- and someone else was brought in, or that the case was
21 somehow taken over by a trustee.

22 Q Did you form any views as to the causes of the Debtor's
23 bankruptcy filing?

24 A The initial cause was the entry or the soon-to-be-entered
25 order related to the arbitration with Redeemer, but it was

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1 pretty clear from looking at the first day that there was a
2 number of litigations. The bulk of the creditor body was made
3 up of -- on the liquidated side was made up of litigation
4 creditors. And then the other creditors, the Committee
5 members, other than Meta-e, were significant litigation
6 creditors.

7 MR. MORRIS: Your Honor, I think Mr. Seery was sworn
8 in, but unless -- unless you -- if you think there's a need,
9 I'm happy to have you swear Mr. Seery in again just to make
10 sure his testimony is under oath.

11 THE WITNESS: I was sworn in.

12 THE COURT: Yes, I swore him in.

13 MR. MORRIS: That's what I thought. That's what I
14 thought. Somebody had made the suggestion to me, so I was
15 just trying to make sure, because I didn't want any unsworn
16 testimony here today.

17 THE COURT: We did.

18 MR. MORRIS: Okay.

19 THE COURT: We did.

20 MR. MORRIS: Thank you. Thank you.

21 BY MR. MORRIS:

22 Q Ultimately, sir, just to move this along a little bit, do
23 you recall that an agreement was reached with the UCC and Mr.
24 Dondero and the Debtor concerning governance issues?

25 A Yes, I do.

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1 Q And did you accept your position as an independent
2 director at Strand as part of that corporate governance
3 settlement?

4 A That, that was part of the appointment. We -- the
5 independent directors were brought in to take -- really, to
6 take control of the company as independent fiduciaries. And
7 the idea, I think, was that there was a Chapter 7 motion that
8 was about to be filed by the Committee, or at least that was
9 the representation, and the Debtor had a choice, they could
10 either accept the independent directors or they could face the
11 motion.

12 What actually happened was a little bit more complicated.
13 The creditors and the Debtor agreed on the selection of Mr.
14 Dubel and myself. And then because they couldn't agree on the
15 third member of the independent board, they left it to Mr.
16 Dubel and myself to actually come up with a process, interview
17 candidates, and make that selection, which we did, which
18 ultimately became Mr. Nelms.

19 Q And did all of this take place during that four- or five-
20 day period prior to January 9th?

21 A It did, yes.

22 Q Okay. And let's talk about the makeup of the board.
23 You've identified the other individuals. How would you
24 characterize the skillset and the capability of the
25 individual?

1 A Well, on paper, I think it's a pretty uniquely-constructed
2 board for this type of asset management business with the
3 diversity of these types of assets and the diversity of issues
4 that we had.

5 So, former Judge Nelms, obviously skilled in bankruptcy
6 and the law around bankruptcy, but also very skilled in
7 mediation, conflict resolution, and in particular his
8 prepetition or maybe pre-judicial experience in litigation and
9 litigation involving fiduciary duties we thought could be
10 very, very important because of the myriad of interrelated
11 issues that we could see that might arise.

12 John Dubel is an extremely well-known and respected
13 restructuring professional. He has been dealing these kinds
14 of assignments as an independent fiduciary for, gosh, as long
15 as I can recall, but at least going back 15 to 20 years. He
16 had experience in accounting, but he's also been the leader of
17 these kinds of organizations going through restructuring in
18 many operational type roles, and so he was a perfect fit.

19 And my experience in both restructuring as well as asset
20 management and investment I think dovetailed nicely with the
21 experience that Mr. Nelms and Mr. Dubel have.

22 Q Okay. Let's talk for just a moment at a high level of the
23 agreement that was reached. Do you remember that there were
24 several documents that embodied the terms of the agreement?

25 A Yes, I do.

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1 Q And do you remember one of them was an order that the
2 Court entered on January 9th?

3 A Yes.

4 MR. MORRIS: All right. Your Honor, just for the
5 record, and we'll be looking at this, but that would be
6 document Exhibit 5Q as in queen, and that's at Docket No.
7 1822.

8 BY MR. MORRIS:

9 Q Do you remember there was a separate term sheet, Mr.
10 Seery, that was also part of the agreement among the
11 constituents?

12 A Yes. There were -- I think there were a couple of term
13 sheets and stipulations, but I do recall that there was some
14 very specific term sheets with the terms.

15 MR. MORRIS: All right. And we'll look at that one
16 as well, Your Honor, but that can be found at Exhibit 50 as in
17 Oscar.

18 BY MR. MORRIS:

19 Q And then, finally, do you recall that Mr. Dondero signed a
20 stipulation that was also part of the agreement?

21 A Yes. That was absolutely key to the agreement for the
22 creditors and perhaps the Court. But it was really -- it
23 needed to be clear that he was signed on to this transaction.

24 MR. MORRIS: Okay. And we'll look at that as well.
25 That's Exhibit 7Q. And remind me, we'll move that one into

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1 evidence.

2 BY MR. MORRIS:

3 Q Did you and the other prospective independent directors
4 actually participate in the negotiation of any aspect of this
5 agreement that you've generally described?

6 A Absolutely. Although we hadn't been appointed yet, these
7 agreements were going to be the structure with which -- or
8 under which we would come in as independent fiduciaries. They
9 would govern a lot of our relationships. They would provide
10 for the protections that we required and that I required. So
11 they were exceedingly important to me.

12 Q Can you describe for the Court at a general level your
13 understanding of the overall structure of the corporate
14 governance settlement?

15 A From a very high level, the settlement was -- Highland
16 Capital Partners is a limited partnership. It's managed by
17 its general partner, Strand Advisors. Although Strand is the
18 GP, its effective interest in Highland is minimal, about .25
19 percent of the effective partnership interest. But it is the
20 general partner. So it does govern the -- the partnership.

21 We came in as an independent board that would oversee and
22 control Strand Advisors and thereby, through the general
23 partner position, oversee and control HCMLP, the Debtor.

24 In addition, the Committee then overlaid what we could do
25 with respect to how we operated the business in the ordinary

1 course in Chapter 11 with a specific set of protocols that
2 governed certain transactions that we would have to get
3 permission from either the Committee or the Court to engage
4 in.

5 And in addition, Mr. Dondero, notwithstanding the
6 insertion of the independent board at Strand, also had a set
7 of restrictions around him, because, of course, not only was
8 he the former control entity at Highland and Strand, he also
9 had a hundred percent of the ownership -- indirectly, of
10 course -- of Strand and could have removed the board. So
11 there were restrictions around what he could do with respect
12 to the board. There were also restrictions around what he
13 could do through various entities to terminate contracts and
14 --

15 Q All right. We'll look at some of those in detail. Did,
16 to the best of your recollection, did Mr. Dondero give up his
17 position as president or CEO of the Debtor?

18 A He did, yes.

19 Q And did he nevertheless stay on as an employee of the
20 Debtor and retain a position as portfolio manager?

21 A He did. At the last second, I believe it was the night
22 before, when we were actually in Dallas preparing for the
23 hearing, but Mr. Ellington raised the concern that if Dondero
24 was removed from not only the presidency but also the
25 portfolio management position, potentially there would be some

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1 agreements that might or might not be subject to Court
2 approval that could be terminated and value would be lost. So
3 this was a very last-second provision. Obviously, the -- as
4 new estate fiduciaries, we didn't want value to be lost
5 instantly for key man or some other reason. And the Committee
6 ultimately, or I guess you'd say reluctantly, agreed to that
7 because we just didn't have time to look at any of -- any such
8 agreements.

9 MR. MORRIS: All right. Let's -- can we put up on
10 the screen, Ms. Canty, Debtor's Exhibit 5Q?

11 And this is in evidence, Your Honor. This is the January
12 9th order.

13 And can we please go to Paragraph 8?

14 BY MR. MORRIS:

15 Q Mr. Seery, you had mentioned just a few minutes ago that
16 there were certain restrictions that were placed on Mr.
17 Dondero. Does Paragraph 8, to the best of your recollection,
18 provide for the substance of at least some of those
19 restrictions?

20 A It does, yes.

21 Q And can you just describe for the Court your understanding
22 of the restrictions that were imposed on Mr. Dondero pursuant
23 to Paragraph 8?

24 A Well, as I recall, when Mr. Ellington came in with the
25 last-minute request, the Committee was extremely upset about

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1 it. We talked about it. Obviously, we, as an independent
2 board that was going to come in, didn't know the underlying
3 contracts and couldn't really render any judgment as to
4 whether there would be value lost. So, the Committee agreed,
5 but they wanted to make sure that Mr. Dondero still reported
6 to -- directly to the board, and if the board asked Mr.
7 Dondero to leave, he would do so.

8 Q Okay. Just looking at this paragraph, is it your
9 understanding that the scope and responsibilities of Mr.
10 Dondero would be determined by the board?

11 A Yes.

12 Q And was it your understanding that Mr. Dondero would serve
13 without compensation?

14 A Yes.

15 MR. DRAPER: Objection. Leading, Your Honor.

16 THE COURT: Overruled.

17 BY MR. MORRIS:

18 Q Was it your understanding that Mr. Dondero's role would be
19 subject to the direct supervision, direction, and authority of
20 the board?

21 A That's, you know, that's what the order says and that's
22 what the agreement was. In practice, that was really going to
23 have to evolve because we were coming in very cold and
24 obviously he'd been there for --

25 (Interruption.)

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1 THE COURT: All right. Someone needs to put their
2 phone on mute. I don't know who it is.

3 BY MR. MORRIS:

4 Q Was it also part of the agreement that Mr. Dondero would
5 (garbled) upon the board's request?

6 A I think I got you, but yes, that's contained in this
7 paragraph, and Mr. Dondero agreed to that.

8 THE COURT: All right. Whoever LC is, your phone
9 needs to be put on mute. Okay. Please be sensitive to
10 keeping your device on mute except for Mr. Morris and Mr.
11 Seery.

12 All right. Go ahead.

13 BY MR. MORRIS:

14 Q Do you recall, Mr. Seery, whether there were any
15 restrictions placed on Mr. Dondero's ability to terminate
16 agreements with the Debtor?

17 A Yes. That was a very specific provision as well.

18 Q Can we take a look at Paragraph 9 below? Is that the
19 provision that you're referring to?

20 A That's the provision in the order. I believe there were
21 other agreements -- certainly, discussion around it -- because
22 it was an important provision because it had been borne out of
23 some experience that Acis and Mr. Terry had had in particular.
24 So it was supposed to be broad and prevent both direct and
25 indirect termination of agreements.

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1 Q Okay. And do you know, do you recall that the definition
2 of related entity is contained within the term sheet that you
3 referred to earlier?

4 A It's a pretty extensive -- I recall the definition not
5 specifically, but it's a pretty extensive definition. It
6 includes any of the entities that he owns, that Mr. Dondero
7 owns, that Mr. Dondero controls, that Mr. Dondero manages,
8 that Mr. Dondero owns indirectly, that Mr. Dondero manages
9 indirectly, and it really covers a wide swath of those
10 entities in which he has interests and control.

11 MR. MORRIS: All right. Let's see if we could just
12 look at the definition specifically at Exhibit 50 as in Oscar.
13 And if we could just scroll down to the next page.

14 Now, this was -- this is part of the term sheet that was
15 filed at Docket 354.

16 BY MR. MORRIS:

17 Q At Definition I(d), is that the definition of related
18 entity that you were referring to?

19 A That's correct.

20 Q Okay. In addition to what you've described, I think you
21 also mentioned that there was a separate stipulation that Mr.
22 Dondero entered into as part of the corporate governance
23 settlement. Do I have that right?

24 A That's my recollection, yes. And I believe he signed it,
25 and that was a key gating issue to the hearing that we had on

1 January 9th.

2 Q And what do you recall about that document as being a key
3 gating issue?

4 A The key gating issue that I recall is that it had to be
5 signed. And I don't believe it was signed until that very
6 morning.

7 MR. MORRIS: All right. Can we call up Exhibit 7Q as
8 in queen?

9 BY MR. MORRIS:

10 Q All right. Is this the stipulation that you were
11 referring to? We can scroll down to any portion you want.

12 A I believe that is, yes.

13 MR. MORRIS: Okay. Can we just scroll down to see
14 Mr. Dondero's signature? Yeah. That's -- okay.

15 So, that's dated January 9th. This was filed at Docket
16 338. It's on the Debtor's exhibit list as Exhibit 7Q. And
17 the Debtor would respectfully move Exhibit 7Q into evidence.

18 THE COURT: Any objection? All right. 7Q is
19 admitted.

20 (Debtor's Exhibit 7Q is received into evidence.)

21 MR. MORRIS: Okay. And if we could just scroll up a
22 page or two to the four bullet points. Yeah, right there. A
23 little more.

24 BY MR. MORRIS:

25 Q Okay. So, do you see Paragraph 10 contains the

1 stipulation?

2 A Yes.

3 Q And as you recall, Mr. Seery, in the events leading up to
4 the entry of the order approving the settlement, was this one
5 of the documents that was being negotiated among -- among the
6 parties?

7 A Yes, it was.

8 Q Okay. You mentioned that there were certain provisions of
9 the January 9th order that were important to you and the other
10 independent directors. Do I have that right?

11 A Yes.

12 MR. MORRIS: Let's see if we can back to Exhibit 5Q,
13 please, Paragraph 4.

14 BY MR. MORRIS:

15 Q Okay. Paragraph 4, can you tell me what Paragraph -- what
16 Paragraph 4 is and why it was important to you?

17 A Well, there really were four key, I guess I'll use the
18 term gating items again, for my involvement, and ultimately in
19 discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their
20 involvement in the matter.

21 Because of the litigious nature of the Highland operations
22 and the expectations we had for more litigation after taking a
23 look at the Acis case, we wanted to make sure that, as
24 independents coming into a situation with really no stake in
25 the particular outcome, other than trying to achieve a

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1 successful reorganization, that we were protected. So, number
2 one, I looked at the limited partnership agreement. I wanted
3 to make sure that the LPA contained broad and at least
4 standard indemnification provisions and that they would apply
5 to the board.

6 Number two, because -- that then requires you to look at
7 the indemnification provisions at Strand, because you're a
8 director of Strand, the GP. So then we looked at those. I
9 took a close examination of those. They looked okay, except
10 Strand didn't have any assets other than its equity interest
11 in Highland, and if that equity interest turned out to be
12 zero, that indemnity wouldn't be very valuable.

13 So I wanted to make sure that Highland, the Debtor,
14 guaranteed the indemnity (garbled) on a postpetition basis, so
15 that if there were a failure of D&O, which I'll get to in a
16 second, or it wasn't enough, that we would have a senior claim
17 in the case, an admin claim in the case.

18 I then, of course, wanted to make sure that we had D&O
19 insurance. This was very difficult to get, because, frankly,
20 there's a Dondero exclusion in some of the markets, we've been
21 told by our insurance brokers, and so getting the right policy
22 that would cover the independent board was difficult. We did
23 get that.

24 And then ultimately there'll be another provision in the
25 agreement here -- I don't see it off the top of my head -- but

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1 a gatekeeper provision. And that provision --

2 Q Hold on one second, Mr. Seery, because we'd want to
3 scroll. So Paragraph 4 and Paragraph 5, were those, were
4 those provisions put in there at the insistence of the
5 prospective independent directors?

6 A Yes. And remember, so the Paragraph 4, as I said, is the
7 guarantee of Strand's obligations for its indemnity. Again,
8 Strand didn't have any money, so the Debtor had to be the one
9 purchasing the D&O for the directors and for Strand. So those
10 are the two provisions that really worked to address my
11 concerns about the indemnities and then the D&O.

12 MR. MORRIS: Okay. Can we go to Paragraph 10,
13 please? There you go.

14 BY MR. MORRIS:

15 Q Is this the other provision that you were referring to?

16 A This is. It's come to be known as the gatekeeper
17 provision, but it's a provision that I actually got from other
18 cases. Again, another very litigious case that I thought it
19 was appropriate to bring in to this case.

20 And the concept here is that when you're dealing with
21 parties that seem to be willing to engage in decade-long
22 litigation in multiple forums, not only domestically but even
23 throughout the world, it seemed important and prudent for me
24 and a requirement that I set out that somebody would have to
25 come to this Court, the court with jurisdiction over these

1 matters, to determine whether there was a colorable claim.
2 And that colorable claim would have to show gross negligence
3 and willful misconduct, *i.e.*, something that would not
4 otherwise be indemnified.

5 So it basically sets an exculpation standard for
6 negligence. It exculpates the directors from negligence. And
7 if somebody wants to bring a cause against the directors, they
8 have to come to this Court first and get a finding that
9 there's a colorable claim for gross negligence or willful
10 misconduct.

11 Q Would you have accepted the engagement as an independent
12 director without the Paragraphs 4, 5, and 10 that we just
13 looked at?

14 A No. These were very specific requests. The language here
15 has been 'smithed, to be sure, but I provided the original
16 language for 10 and insisted on the guaranty provision above
17 to assure that the indemnity would have some support.

18 Q And ultimately, did the Committee and the Debtor agree to
19 provide all of the protection afforded by Paragraphs 4, 5, and
20 10?

21 A Yes.

22 Q Okay.

23 MR. MORRIS: Your Honor, we're going to move on now
24 to good faith, Section 1129(e)(3), just to give you a little
25 bit of a roadmap of where we're going.

1 BY MR. MORRIS:

2 Q Let's talk about the process that led to the plan that the
3 Debtor is asking the Court to confirm today. Real basic stuff
4 at the beginning. Can you tell me your understanding of the
5 makeup of the UCC, of the Creditors' Committee?

6 A The Creditors' Committee in this case has four members.
7 It's UBS, the Redeemer Committee, which are former holders of
8 interests in a fund called the Crusader Fund, which was a
9 Highland fund, who had redeemed and then had a dispute with
10 Highland.

11 And the next creditor is Mr. Terry and Acis. We generally
12 group them as one, but the creditor is Acis.

13 And the fourth creditor is an entity called Meta-e, and
14 they provide litigation support and technical support and
15 discovery support in litigations for the Debtor, including in
16 this case now.

17 Q All right. Just focusing really on the early period, the
18 first few months, can you describe the early stages of the
19 negotiations with the UCC as best as you can recall?

20 A Well, I think the early stage of the case wasn't directly
21 a negotiation; it was really trying to understand as best we
22 could the myriad of assets that we had here, the various
23 businesses that the Debtor either owned, controlled, or
24 managed, as well as the claims.

25 We went through a process of trying to understand each of

1 the claims that the Debtor -- or against the Debtor that were
2 represented by the Committee, as well as some other claims
3 that were not on the Committee.

4 Q Was the Debtor -- I mean, was the Committee initially
5 pushing the independent board to go to a monetization plan, an
6 asset monetization plan?

7 A Very quickly and early on, the Debtor -- the Committee
8 took a pretty aggressive approach with the Debtor and the
9 independent board. I think the Committee's perspective, as
10 articulated to me, and where -- at least how we took it, was
11 that they'd been litigating for years and they sort of knew
12 the situation and the value of their claims, that the Debtor
13 was insolvent, in their view, and that we should be operating
14 the estate in essence for the benefit of the creditors.

15 Q And what was the board's view in reaction to that?

16 A We disputed it. And the reason we disputed it was very
17 straightforward. Save for the Redeemer claim, which at least
18 had an arbitration award, Acis and Mr. Terry didn't have any
19 specific awards, notwithstanding the results of the Acis
20 bankruptcy, and UBS, while it had a judgment, that judgment
21 was not against the Debtor.

22 So our view was, until we have our hands around these
23 claims and we determine what the validity is in our estate,
24 that we would treat the Debtor as if it were solvent. We also
25 wanted to assess the value of the assets. So, looking at the

1 assets not just from a book value but what they might be
2 really worth in the market.

3 Q And did the board in the early portion of the case
4 consider all strategic alternatives?

5 A I don't know if we considered every strategic alternative,
6 but we certainly considered a lot of alternatives.

7 Q Can you describe for the Court the alternatives that were
8 considered by the board before settling on the asset
9 monetization plan?

10 A Well, early on, you know, we looked at each of the -- what
11 we would think of the large category types of ways to resolve
12 a case. Number one, could we go through a very traditional
13 reorganization with either stretching out claims to creditors
14 after settlement or converting some of those to equity,
15 getting new equity infusions? We considered those
16 alternatives.

17 Number two, we considered whether we should simply sell
18 the assets. That's one of the things that the Committee was
19 pushing for. They could be sold to third parties. They could
20 be sold individually. Mr. Dondero potentially could buy some
21 of the assets. That'd be a reasonable reorganization in this
22 case.

23 We also considered whether that, you know, we would just
24 do a straight liquidation. Is there some value to doing --
25 converting the case to a 7 and doing a straight liquidation?

1 We also considered a grand bargain plan, and this was
2 something that I worked on quite a bit. The phrase is mine,
3 although no pride of authorship, certainly, since it didn't
4 work out. But that perhaps we could come to an agreement with
5 the major creditors and with Mr. Dondero and then shift some
6 of the expenses in the case out further to litigate some of
7 the other claims while reorganizing around the base business.

8 And then, finally, we considered the asset monetization
9 plan, and ultimately that evolved into what we have today.

10 Q Were there guiding principles or factors that the board
11 was focused on as it assessed these different options?

12 A Well, the number one guiding principle was overall
13 fairness and equitable treatment of the various stakeholders.
14 So, again, at that point, we didn't know exactly what, if
15 anything, we would owe to claimants like UBS or HarbourVest or
16 even Mr. Terry and Acis. We had a good sense of where we
17 would end up with Redeemer, I think, but we still had some
18 options and wanted to negotiate the issues related to
19 potential appeal rights that we had. So I think that was the
20 number one overall concern.

21 But that did evolve over time. Costs of the case were
22 exceptionally high. And the reason they're so high is that
23 Highland was run for a long time, at least from what we can
24 tell, at an operating deficit. Typically, what it would do is
25 run at a deficit and then sell assets to cover the shortfall,

1 and it would defer a whole bunch of employee -- potential
2 employee compensation. And because of the way the environment
3 was going, particularly in the first half of the year, it
4 didn't look to us like there was going to be any great asset
5 increase that would somehow save us from the hole that was
6 being dug, the considerable amount of expenses to run the
7 case.

8 Q Did changing the culture of litigation factor into the
9 path that the board considered?

10 A Well, we certainly looked at the way the company had run
11 and why it got to where it is in terms of litigating. And not
12 just litigating valid claims, but litigating any claim to the
13 *nth* degree. And stories are legion, I won't talk about them,
14 but of Highland taking outrageous positions and then pursuing
15 them, hoping that the other side caves.

16 We determined that this estate couldn't bear that kind of
17 expense, and it wasn't fair and equitable to do that anyway.
18 So we wanted to attack the claims that we could -- and I say
19 attack; try to resolve them as swiftly as we could --
20 protecting the Debtor's interests but trying to find an
21 equitable resolution.

22 I'm not averse to litigating. And I think when there are
23 claims that are legitimate, the Debtor should pursue them.
24 There's always -- a good settlement is always better than a
25 bad litigation. But if there (indecipherable) to resolve

1 them, we should -- we should pursue those. And if we have
2 defenses, we should pursue those, and not just be held up
3 because someone else is willing to, you know, take a more
4 difficult position than we are.

5 But in this case, it really did cry out for some sort of
6 resolution on many of these cases because they were far beyond
7 -- far beyond the facts and far beyond the dollars. There was
8 personal antipathy involved in virtually every one of the
9 unlitigated or unliquidated Committee cases.

10 Q Did the board, as it was assessing the various strategic
11 alternatives, consider maximization of the value?

12 A Always number one was, can we maximize value? But that
13 has to be done within the context of the risk you're taking
14 and the time it takes. So, not all wine ages well in a cave
15 and not all investments get to be more valuable over time. We
16 wanted to look at each individual asset that the Debtor had,
17 each claim that the Debtor had, each defense that the Debtor
18 had, and consider the time and the costs and then try to find
19 the best way to maximize value with those multiple
20 considerations.

21 Q How about the role and support of the UCC, how did that
22 factor into the decision-making, the Debtor's decision-making
23 as to what plan to pursue?

24 A Well, you know, the decision-making with the UCC was
25 cumbersome and oftentimes difficult. Sometimes our relations

1 were very contentious, and sometimes they continue to be. But
2 the Committee had significant oversight because of the
3 protocols that had been agreed to. Some of the disputes we
4 had with the Committee found their way into the court. Those
5 time and that cost, some of which we won, some of which we
6 lost, but those factored into our analysis.

7 But eventually we knew that we were going to need to get,
8 you know, some significant portion of the Committee to agree,
9 because, at minimum, Meta-e had a liquidated claim, and
10 Redeemer was very close to fully liquidated, so we were going
11 to need support from the Committee with whatever we tried to
12 push through. And so that's how we negotiated with the
13 Committee from that perspective.

14 Q Is it fair to say that the Debtor and the Committee's
15 interests became aligned upon approval of the disclosure
16 statement back at the end of November?

17 A I don't think they became perfectly aligned, because we
18 still have, you know, some disputes around, you know,
19 implementation and things like the employee releases, which
20 were very important to me. But I think we're largely aligned
21 and that the Committee is supportive, as Mr. Clemente said at
22 the start of this hearing, of the plan. We negotiated at
23 arm's length with them about most of the provisions. I would
24 say virtually everything was a relatively significant
25 negotiation, or at least there was a good faith exchange of

1 views on each side and assessment of legal and financial
2 risks. And I think at this point they're largely in support
3 of the plan.

4 Q All right. Let's -- you mentioned the grand bargain, and
5 I just want to spend a few minutes talking about that, how
6 that evolved. Focusing your attention in the kind of late
7 spring/early summer, can you tell me what efforts you and the
8 board made in trying to achieve a grand bargain in that early
9 part of the case?

10 A Well, we had -- at that point, we had reached agreement,
11 at least in principle, with Redeemer. And the thought was --
12 my thought was that we could construct a plan, understanding
13 what the cash flows looked like and what we thought the base
14 value of the asset looked like -- and those are not just the
15 assets that are tangible assets, but the notes that are
16 collectible by the Debtor as well -- and then engage with UBS
17 in particular. Redeemer. To some degree, Mr. Terry. We had
18 not yet reached any agreement with him. But UBS, we thought
19 of as a slightly -- I don't mean this to be disparaging -- but
20 a slightly more commercial player than Acis because of the
21 history that Acis had to deal with and endure.

22 And we were hoping that we could get some sort of
23 coalescence around an agreed distribution that would require
24 those creditors to take a lot less than they might have
25 otherwise agreed, Mr. Dondero to put in more than he otherwise

1 thought he could put in or would be willing to put in, and
2 then we would get out to Acis and the other creditors with a
3 plan.

4 And so I built, with the team at DSI, a detailed model on
5 how the distributions could work and what the potential timing
6 could be, trying to, each time, move in a multidimensional way
7 with UBS, Redeemer, Mr. Dondero, and to some degree Acis,
8 around the respective issues for their claims.

9 Again, UBS and Acis had not been resolved and weren't
10 close, but the thought was if we could get dollar agreements
11 for distribution, perhaps we could then figure out how to
12 construct settlements of their claims.

13 Q During this time period, did you work directly with Mr.
14 Dondero in the formulation of a potential grand bargain?

15 A I did, yes.

16 Q And the model that you described, did that go through a
17 number of iterations?

18 A It went through multiple iterations. I don't believe I
19 ever shared the model with anybody. One of the reasons for
20 that is I didn't want -- I felt I had -- if I was going to
21 share it with Mr. Dondero, for example, I'd have to share it
22 with UBS and I'd have to share it with Redeemer. And I wanted
23 it to be -- I wanted it to be a working model with the team at
24 DSI. In particular, we would make, you know, adjustments on
25 an almost-daily basis.

1 Mr. Dondero had -- remember, he was still portfolio
2 manager at that time. He also had a related-party interest,
3 as people have seen from some of the litigation around the
4 sales of securities. He had access and was receiving emails
5 from the team as well as from the finance team. So he had
6 access to the information at that point and had a view around
7 the value. And this was more trying to adjust what those
8 distributions would look like depending on the amounts that he
9 would be willing to contribute.

10 Q Moving on in time, did there come a time when the Debtor
11 participated in a mediation with certain of the major
12 constituents in the case?

13 A Yes. That was towards the end of the summer.

14 Q And during that mediation, did the concept of a grand
15 bargain, was that put on the table? Without discussing any
16 particulars about it, just as a matter of process, was the
17 grand bargain subject to the mediation discussions?

18 A Well, the mediation had multiple components, so the answer
19 to the question in short is yes, but I'll go longer because I
20 tend to. The grand bargain plan stayed in place, and that was
21 going to be an overall settlement. The mediation was
22 initially, I think, as a main course, focused on Acis, UBS,
23 and then the third piece being the grand bargain. And if you
24 could settle one of those claims, perhaps -- obviously, if you
25 could settle both of them, you could get to then focusing on

1 the grand bargain.

2 But even before we got to mediation, the idea of the
3 monetization plan had also been put forth. Notwithstanding
4 that it wasn't my idea, I actually thought that it was a good
5 idea, ultimately. Didn't initially. And the reason for that
6 is that it set a marker for what a base expectation could be
7 for the creditors and just for Mr. Dondero. And knowing that
8 that was out there, at least with them, that could hopefully
9 be a catalyst in the mediation for folks to say, let's see if
10 we can get our claims done and get a grand bargain done,
11 because if we don't we have this Debtor monetization plan.
12 And by that -- at that point, I don't think we had much
13 agreement with the Committee on anything, and certainly with
14 Mr. Dondero, on -- on a monetization plan.

15 Q All right. And let's just bring it forward from the fall,
16 post-mediation, to the present. Has -- has -- have you and
17 the board continued discussing with Mr. Dondero the
18 possibility of a grand bargain?

19 A Well, it's shifted. So, the grand bargain discussions
20 really -- you had multiple phases. So, you had pre-mediation.
21 There was the grand bargain discussions that I just described
22 previously that also involved UBS and Redeemer, and to some
23 degree Acis and Mr. Terry. Then you have the mediation, which
24 is much more focused on the claims and whether they can fit
25 into the grand bargain with Mr. Dondero.

1 And the way that was conducted was a little bit more
2 separated, meaning the parties would talk to the mediator, the
3 mediator would then go and talk to other parties and try to
4 work a settlement on each of those components.

5 Subsequent to the mediation where we reached the agreement
6 with Acis and Mr. Terry, and we ultimately in that timeframe
7 banged out the final terms of our agreement with Redeemer, we
8 engaged with Mr. Dondero around -- I wouldn't call it the
9 grand bargain, but a different plan. By that point, the
10 monetization plan had started to gain some traction with the
11 creditor group, and Mr. Dondero and his counsel, I believe,
12 focused on the potential of what was referred to as a pot
13 plan. And while it has the -- it could have the ability of
14 being a resolution plan, it wasn't the grand bargain plan that
15 I had initially envisioned. And pot plan was really a
16 misnomer, because it didn't have a whole pot, so -- so it's a
17 little bit of a hybrid.

18 Q Did the board spend time during its meetings discussing
19 various pot plan proposals that had been put forth by Mr.
20 Dondero?

21 A Oh, absolutely. And not only the board. I mean, we did
22 our own work as an independent board and then brought in our
23 professional advisors, both your firm and the DSI folks, to go
24 through analytics around the pot plan, and even before that,
25 the other plan alternatives, but we had direct discussions

1 with Mr. Dondero and his counsel.

2 Q And in the last couple of months, has the board listened
3 to presentations that were made by Mr. Dondero and his counsel
4 concerning various forms of the pot plan?

5 A Yes. At least two or three.

6 Q And during this time, has the board and the Debtor
7 communicated with the Committee concerning different
8 iterations of the proposed pot plan?

9 A Yes. We've had continual discussions with the Committee
10 regarding the various iterations of the potential grand
11 bargain all the way through the pot plan.

12 Q And during this process, did the Debtor provide Mr.
13 Dondero and his counsel with certain financial information
14 that had been requested?

15 A Yes. As I said, up 'til the point where he resigned and
16 was then ultimately, at the end of the year, removed from the
17 office, he had access to financial information related to the
18 Debtor and even got the information from the financial group.
19 Subsequent to that, we've provided him with requests -- with
20 financial information that was requested by his counsel.

21 Q Okay. Were your efforts at the grand bargain or the
22 pursuit of the pot plan successful?

23 A No, they were not.

24 Q Do you have an understanding as to -- just, again, without
25 going into -- into details about any particular proposal, do

1 you have an understanding as to what the barrier was to
2 success?

3 A The grand bargain, we just never got the traction that we
4 needed to get that going and the sides were just far -- too
5 far apart. And the pot plan, similarly. Our discussions with
6 Mr. Dondero and the Committee, they're -- they're very far
7 apart.

8 Q And is it fair to say that the Committee's lack of support
9 in either the grand bargain or the pot plan is the principal
10 cause as to why we're not talking about that today?

11 A Well, it's -- it -- right now, we've got the plan that's
12 on file, the monetization plan. The monetization plan has
13 gone out for creditor vote and has received support. It
14 distributes, we think, equitably, as well as a significant
15 amount of distributions to unsecured creditors. And there
16 really isn't an alternative that we see, based upon the
17 numbers I've seen, that competes with it or has any traction
18 with the largest creditors.

19 Q All right. So, now we've talked about various proposals
20 or alternatives that were considered by the board, including
21 the grand bargain and the pot plan. Let's spend some time
22 talking about the plan that is before the Court today and how
23 we got here. And I'd like to take you really back to the
24 beginning, if I may.

25 Tell us, tell the Court just what the board was doing in

1 the early months after getting appointed, because I think
2 context is important here. What were you all doing the first
3 few months of the case?

4 A Well, the first few months, we really were drinking from
5 the proverbial fire hose, trying to get an understanding of
6 the business, how it had been managed previously, what the
7 issues related to the different parts of the business were.
8 And then an understanding of each of the employees that were
9 working under us, what their roles were, how they performed
10 them, who sat where with respect to each of the assets, what
11 the contracts looked like, whether they be shared service or
12 management agreements. And then we started looking at the
13 individual assets in terms of value.

14 At the same time, we were trying to get up to speed on the
15 complex nature of the claims that were in the case. The
16 liquidated claims were relatively easy, but there had been a
17 significant amount of transfers in and out of the Debtor, and
18 then there's a myriad of relationships involving related
19 entities that we had to understand, both with respect to the
20 claims as well as with respect to the assets.

21 And so that -- those were the main things we were doing
22 for those first few months in the case.

23 Q Just a couple months into the case, the COVID pandemic
24 reared its head. Do you recall that?

25 A Yes. We had been in Dallas every day working up 'til the

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1 time of the COVID and some of the shutdown orders,
2 particularly in the Northeast, and so that changed the dynamic
3 of how we could function every day.

4 Notwithstanding that, we -- we were able to manage from
5 afar, and ultimately, when there were some cases in the office
6 of COVID, we -- on the Highland side, not the related entity
7 side, but on the Highland side -- we determined that the staff
8 and the team should work from home, which they were able to do
9 quite well.

10 Q Okay. In those early months, do you recall that there was
11 a substantial erosion of value, at least as of the time you
12 were appointed in those first three or four months?

13 A There was. And I think we've heard some -- some noise
14 about what that value was and the drop in the asset value as
15 opposed to net value. But the asset value did, did drop
16 significantly.

17 Q Can you describe for the Court your recollection as to the
18 causes of the drop in the value that you just described?

19 A Yes. The number one drop was a reservation that the board
20 took for a receivable from an entity called Hunter Mountain.
21 The quick version of this is that Hunter Mountain owns
22 Highland. As I mentioned, while Strand is the GP, it only has
23 a quarter-percent interest in Highland. The vast majority of
24 the interests are owned by an entity called the Hunter
25 Mountain Investment Trust in a very complicated, tax-driven

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1 structure.

2 Dondero and Okada transferred their interests in Highland
3 at a high valuation to Hunter Mountain. Hunter Mountain then
4 didn't have the money, so it, in essence, borrowed the money
5 from the Debtor in a note to pay for those interests. There's
6 a circular running of the cash, but we were not sure where, if
7 any, where any assets are, if they would be sufficient. So we
8 took a reservation of \$58 million for that note.

9 The second biggest piece of the reduction in value was the
10 equity that was lost in the Select Equity account. This is a
11 Debtor trading account that was managed by Mr. Dondero. \$54
12 million was lost in that account. Basically, it was really
13 highly margined, very high leverage in that account when the
14 market volatility came in. As it grew through January,
15 February, March, more and more margin calls. Ultimately,
16 Jefferies, which had Safe Harbor protections -- technically,
17 the account was not a Debtor account, but they would have had
18 it anyway -- they seized that account. \$54 million in equity
19 was lost in that account.

20 The next highest amount is about \$35 million, but it's
21 higher now. That's just the bankruptcy costs, where we have
22 spent cash and Debtor assets in the case. It was about \$36 to
23 \$40 million through the end of the year. That's now higher.

24 About \$30 million was lost in paying back Jefferies on the
25 asset side of the ledger in the Highland internal equity

1 account. This was similar to the equity -- the Select Equity
2 account, also managed by Mr. Dondero. Extremely highly-
3 levered coming into the market volatility of the first
4 quarter, which was exacerbated, obviously, by the COVID. That
5 was about \$30 million that was repaid in margin loan in that
6 account.

7 In addition, \$25 million of equity was lost in that
8 account while Mr. Dondero was managing it. I took over
9 effectively managing it in mid-March and worked with Jefferies
10 to keep them from seizing the account. We've since gotten a
11 bunch of value coming back from that account, but that was the
12 amount that was lost.

13 About \$10 million was lost in the Carey Limousine loan
14 transaction. That is a -- an interesting little company. Has
15 done a nice job -- management did a very good job coming into
16 the year, and it actually had real value, notwithstanding the
17 changeover to Uber in people's preferences. But with the
18 COVID, it really relied on events, airport travel, executive
19 travel, and that really took a bite out of it, although, you
20 know, we're hoping to be able to restructure, we have
21 restructured it to some degree, and we're hoping that there
22 could be value there.

23 And then about \$7 million was lost in equity in an entity
24 called NexPoint Hospitality Trust. This is another extremely
25 highly-levered hospitality REIT that NexPoint manages. It

1 trades on the Toronto Stock Exchange. And I think likely that
2 -- it's got a lot of issues with respect to its mortgage debt.
3 And because it was hospitality, it was really hurt by the
4 COVID.

5 And I think that's probably -- those numbers add up to
6 north of \$200 million of the loss.

7 Q All right. Thank you for that recitation, Mr. Seery. So,
8 turning to the spring, after all of those issues were
9 addressed, at the same time you were working on the grand
10 bargain, did the Debtor and its professionals begin
11 formulating the monetization plan that we have today?

12 A I'm sorry, in the spring? I lost that question. I
13 apologize.

14 Q That's okay. After you dealt with everything that you
15 just described, were you doing two things at once? Were you
16 working on the grand bargain and the asset monetization plan
17 at the same time?

18 A Yes, that's correct.

19 Q All right. Can you just describe for the Court kind of,
20 you know, how the asset monetization plan evolved up until the
21 point of the mediation?

22 A Yes. I alluded to it earlier, but because the Debtor was
23 running an operating deficit, we were very concerned about
24 liquidity. Highland typically runs, from a liquidity
25 perspective and a cash perspective, very close to the edge. I

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1 don't feel particularly comfortable helping lead an
2 organization that's running that close to the edge. And I was
3 very focused on the burn that we had on an operating basis, as
4 well as the professional cost burn, because for a case this
5 size it was significant.

6 The rest of the board felt similarly, and one of the
7 directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel,
8 came up with the idea that we needed an alternative to
9 continuing to just burn assets while we were in this case.
10 There had to be some sort of catalyst to get the parties, both
11 Mr. Dondero as well as the creditors -- at that point, as I
12 said, we weren't settled with Acis or UBS, and we weren't,
13 frankly, close with either of them. And so we needed what --
14 what I think the -- the idea was that we needed a catalyst to
15 have people focus on what the alternative was. Because
16 continuing to run the case until we ran out of money was not
17 an acceptable alternative.

18 What I didn't like about the plan was it didn't have
19 anybody's support, and so I wasn't sure how we made progress
20 with it without having some Committee member or Mr. Dondero in
21 support of it. I was outvoted, although maybe I came around
22 in the actual vote. But ultimately, I think it was actually a
23 quite smart idea, because it did set the basis for what the
24 case would be. Either there would be some resolution or it
25 would push towards the monetization plan, and parties could

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1 then assess whether they liked the monetization plan or not.

2 That if I was going to be the Claimant Trustee or the --

3 defending the, you know, against the claims, they would have

4 the pleasure of litigating with me for some period of time.

5 Or they could come to some either grand bargain or ultimately

6 some other resolution.

7 And as we started to develop a plan and put more of a

8 framework -- more flesh around the framework, it actually

9 started to look more and more like a real viable alternative

10 to either long-term litigation or some other grand bargain if

11 we couldn't get there.

12 Q And ultimately, did the board authorize the Debtor to file

13 its initial version of the asset monetization plan at around

14 the time of the mediation?

15 A Yeah. We developed it over the summer and really fleshed

16 it out in terms of how the structure would work, what the tax

17 issues were, what the governance issues were. We did that

18 largely negotiating with ourselves, so we -- we were extremely

19 successful. And then we filed, we filed that plan right

20 before the mediation.

21 And my recollection is that there was some concern from

22 the mediators that they thought that putting that plan out in

23 the public could upset the possibility of a grand bargain, so

24 we ended up filing that under seal.

25 Q Do you recall what the Committee's initial reaction was to

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1 the asset monetization plan that you filed under seal?

2 A Well, initially, they -- the Committee didn't like it.
3 They didn't like the governance. They didn't like the fact
4 that it set up for those creditors who didn't litigate the
5 prospect of litigations to try to resolve their claims. It
6 effectively cut out some of the advisory that the Committee
7 currently had. The -- one of the driving forces behind the
8 asset monetization plan and how we initially started it is we
9 can't continue these costs, as I said. Well, an easy way to
10 get rid of -- to reduce the costs is to get rid of half of
11 them.

12 So if you could get rid of the Committee, effectively, and
13 coalesce around an asset monetization vehicle, then if folks
14 wanted to resolve their claim, you could. If you had to
15 litigate it, you could, but you'd have one set of lawyers that
16 the estate was paying for, one set of financial advisors the
17 estate was paying for, as opposed to multiple sets.

18 Q In addition to the corporate governance issues that you
19 just described, did the Committee and the Debtor quickly reach
20 an agreement on the terms of the treatment of employee claims
21 and the scope of the releases for the employees?

22 A No. Not very quickly at all.

23 Q Yeah.

24 A You know, again, one of the issues in this case that
25 drives perspectives is the history that creditors have in

1 dealing with Highland and in dealing with many of the
2 employees at Highland, you know, who had worked for Mr.
3 Dondero and served at his pleasure for a long time, and how
4 they had been treated in various of their attempts to collect
5 their claims. So the idea of giving any sort of releases to
6 the employees was anathema to -- to many of the Committee
7 members.

8 From my perspective, you know, releases are particularly
9 important because there's a *quid pro quo* leading up to the
10 confirmation of a plan, particularly with a monetization plan
11 where it's clear that the employees are all going to be or
12 largely going to be either transitioned or terminated. If
13 they're going to keep working towards that, we either have to
14 have some sort of financial incentive or some sort of
15 assurance that their actions which are done in good faith to
16 try to pursue this give them the benefit of more than just
17 their paycheck.

18 And so we thought we were setting up the *quid pro quo* in
19 terms of work towards the monetization, bring the case home,
20 and you're entitled to a release, so long as you haven't done
21 something that was grossly negligent or willful misconduct.
22 And the Committee, I think, wanted to have a more aggressive
23 posture.

24 Q And did those disagreements over corporate governance and
25 the employee releases kind of spill out into the public at

1 that disclosure statement hearing in October?

2 A I think they spilled out at that hearing as well as in the
3 hearing either the next day or two days later around Mr.
4 Daugherty's claim. And again, it was -- it was contentious.
5 I tend to try to reach resolution, but I tend to hold firm
6 when I think that there's a good reason, an equitable reason
7 to do so, and compromising that issue was very difficult for
8 me.

9 Q But in the weeks that followed, did the Committee and the
10 Debtor indeed negotiate to resolve to their mutual
11 satisfaction the issues surrounding corporate governance and
12 employee releases?

13 A We did, yes.

14 Q And were -- was the Debtor able to get its disclosure
15 statement approved with Committee support in late November?

16 A We did, yes.

17 Q Can you describe for the Court generally kind of the
18 process by which the Debtor negotiated with the Committee?
19 I'll ask it as broadly as I can, and I'll focus if I need to.

20 A Yeah. The process was usually in group settings with the
21 independent directors, professionals, and the Committee
22 members and their professionals. Oftentimes, then, there
23 would be certain one-off conversations if there was a
24 particular issue that was more important to one Committee
25 member or another, or if they were designated by the Committee

1 to be the point on that. And so I negotiated on behalf of the
2 Debtor, both collectively and individually, around these
3 points.

4 The biggest issues related to governance of the Claimant
5 Trust, the separation of the Claimant Trust and the Litigation
6 Trust, which was important to me, the treatment of employees
7 between the filing -- the time we came up with the case and
8 when we were going to exit, and then how that release
9 provision would work.

10 Q Is it fair to say that numerous iterations of the various
11 documents that embodied the plan were exchanged between the
12 Debtor and the Committee?

13 A Yes. There were -- there were dozens.

14 Q Fair to say that the negotiations were arm's length?

15 A Absolutely. Often contentious, always professional, but I
16 do think that there were, you know, well -- good-faith views
17 held by folks on both sides. And I think we were fortunate to
18 be able to get resolution of those, because they were
19 strongly-held views.

20 Q Okay. And ultimately, I think you've already testified,
21 and Mr. Clemente certainly made it clear: Is the Debtor --
22 does the Debtor have the Committee on board for their plan
23 today?

24 A My understanding is again -- and you heard Mr. Clemente --
25 both the Committee and each of the individual members are

1 supportive of the plan.

2 Q All right. Let's switch to Mr. Dondero and his reaction
3 to the asset monetization plan. Can you describe for the
4 Court based on your experience and your interaction with him
5 what you interpreted Mr. Dondero's position to be?

6 A VOICE: Objection, hearsay, or --

7 MR. DRAPER: Objection, hearsay. Calls for
8 speculation, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah. I had direct discussions with
11 Mr. Dondero regarding the plan, the asset monetization plan,
12 as I mentioned, direct discussions regarding a potential grand
13 bargain. The initial view from Mr. Dondero was, and he told
14 me, that if he didn't get a plan that he agreed to, if he
15 didn't have a specific control or agreement around what got
16 paid to Acis and Mr. Terry and what got paid to Redeemer
17 specifically, that he would, quote, burn the place down. I
18 know that because it is, excuse the pun, seared into my mind,
19 but I also wrote it down. And that was, you know, in the
20 early summer.

21 We had subsequent discussions around the plan, and as we
22 were talking about the -- about the grand bargain or -- the
23 pot plan hadn't come out at that point -- even on a large call
24 -- the plan initially called for a transition, and still does,
25 of employees of the Debtor to a related entity to continue

1 performing services that were under the prior shared service
2 agreements that we were going to terminate.

3 But that transition is wholly dependent on Mr. Dondero.
4 And we had a call with at least five to seven people on it
5 where I said to Mr. Dondero, look, this is going to be in your
6 financial interest to agree to a smooth transition. These
7 people have worked for you for a long time. It's for their
8 benefit. You portfolio-manage these funds. It's to the
9 benefit of those funds to do this smoothly. And if there's
10 litigation between you and the estate later, then those chips
11 will fall where they may.

12 And he told me to be prepared for a much more difficult
13 transition than I envisioned.

14 And I specifically said to him, and this one sticks in my
15 mind because I recall it, I said, don't worry, Mr. Dondero --
16 I think I used Jim -- I will be prepared. I was a Boy Scout
17 and we spend time preparing for these kinds of things. So
18 we're -- we would love to get done the best transition we can,
19 but we will be prepared for a difficult one.

20 So, from the start, the idea of the monetization plan was
21 not something that obviously he supported. We did agree with
22 -- after his inquiry or request with the mediators, to file it
23 under seal while we went into the mediation.

24 BY MR. MORRIS:

25 Q And after, after that was filed in September, early

1 October, did Mr. Dondero start to act in a way that the board
2 perceived to be against the Debtor's interests?

3 A Certainly. I mean, he previously had shown inclinations
4 of that, but that -- it got very aggressive as he interfered
5 with the trades we were trying to do in terms of managing the
6 CLO assets. He took a position that postpetition, which was
7 really one of his entities taking a position, that
8 postposition a sale of life policy assets was somehow not in
9 the best interests of the funds and that we had abused our
10 position, notwithstanding that he turned it over to us with no
11 liquidity to maintain those life policies. There were several
12 other instances. And those led to the decision to, one, have
13 him resign, and then ultimately, after the text to me that I
14 perceived as threatening, and we've had subsequent hearings on
15 it, we asked him to leave the office.

16 Q Okay. Let's move back to the plan here. Can you
17 describe, you know, generally, if you can, the purpose and
18 intent of the asset monetization plan?

19 A Well, very simply, the main purpose is to maximize value.
20 This is not a competition between Mr. Dondero and myself. I
21 have no stake in getting more money out of the maximization
22 other than my duty to do the job that I was hired to do.

23 So our goal is to manage the assets in what we think is
24 the best way to do that over time, and find opportunities
25 where the market is right to monetize the assets, primarily

1 through sales. There may be other instances, depending on the
2 type of asset, whether a sale makes sense, if we can structure
3 it through some kind of distribution that's more structured.

4 Q We've used the phrase a bunch of times already. Can you
5 describe in your own words what an asset monetization plan is
6 in the context of the Debtor's proposal?

7 A Well, it may be slightly an awkward moniker, but I think
8 it's not completely different than what you'd see, in some
9 respects, to a regular plan, where you equitize debt and you
10 operate the business for the benefit of the equitized debt.
11 Here, it's a little different in that we know exactly how
12 we're going to move forward. We've effectively -- we'll
13 effectively turn the debt obligations into trust interests and
14 we will pay those as we sell down assets. So we've got it
15 structured in a way where we can pivot depending on market
16 conditions and we'll be managing certain funds that the assets
17 sit in.

18 So there's really four assets where the assets sit, and
19 we'll manage those. First are the ones that the Debtor owns
20 directly. Second will be the ones that are in Restoration
21 Capital -- Restoration Capital Partners. Third are the assets
22 in a fund called Multi-Strat. Fourth is the direct ownership
23 interest in Cornerstone, and technically (garbled) would be
24 the -- would be the next one.

25 So we have the ability to manage these individual assets

1 and then be able to sell them in what we determine to be the
2 best way to maximize value, depending on the timing.

3 Q And when you say that you're going to continue to operate
4 the business, do you mean that the Debtor will continue to
5 manage the assets you've just described in the same way that
6 it had prior to the petition date?

7 A It'll be a smaller team, but that's the Debtor's business.
8 So what we won't be doing are the shared services anymore.
9 That was part of the Debtor's business. But we will be
10 managing the assets. So the 1.0 CLOs, we'll manage those
11 assets. The RCP assets, we'll manage those assets. The
12 Trussway Holdings assets, we'll managing those assets. Each
13 of them is a little bit different. There's things as diverse
14 as operating companies to real estate. We'll operate, subject
15 to final agreement, but the Longhorn A and B, which are
16 separate accounts that are -- were funded and are controlled
17 by the largest -- one of the largest investors in the world.
18 And so they have agreed that we should manage those assets for
19 them.

20 So we're -- that's the business that the Debtor is in. It
21 won't be doing all of the businesses that the Debtor was in
22 before, like the shared services, but the management of the
23 assets will be very similar.

24 Q And why do these funds and these assets need continued
25 management? Why aren't you just selling them?

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1 A Well, in some respects, they could just be sold, but the
2 -- we believe that the value would be a lot lower. So, a lot
3 of them are complex. The time to sell them may not be now.
4 Some will require restructuring in some way, whether -- not
5 through a reorganization process, but some sort of structural
6 treatment to how the obligations at the individual asset are
7 treated, or the equity at the individual asset. So we're
8 going to manage each of them and look for market opportunities
9 where we think the value can be maximized.

10 MR. MORRIS: Your Honor, I'm about to switch to
11 another topic. We have been going for a little bit more than
12 two and a half hours. I'm happy to just continue if you and
13 the witness are, but I just wanted to give you a head's up
14 that I'm about to switch topics. If you wanted to take a
15 short break, we could. If you want me to continue, I'm happy
16 to do that, too.

17 THE COURT: Well, let me ask you, how much longer do
18 you think you're going to take overall with Mr. Seery?

19 MR. MORRIS: I think I'll probably have another hour
20 to an hour and a half, Your Honor. We want to make a complete
21 factual record here.

22 THE COURT: All right. Well, it's 12:07 Central
23 time. Why don't we take a 30-minute lunch break, okay? Can
24 everybody do their lunch snack that fast?

25 MR. MORRIS: Sure.

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1 THE COURT: I think that would probably be the way to
2 go. So we'll come back -- it's now 12:08. We'll come back at
3 12:38 Central time and resume --

4 MR. MORRIS: Okay.

5 THE COURT: -- resume this direct testimony, okay?
6 So, see you in 30 minutes.

7 MR. MORRIS: Thank you very much.

8 THE COURT: Okay.

9 THE CLERK: All rise.

10 (A recess ensued from 12:08 p.m. to 12:44 p.m.)

11 THE COURT: We are going back on the record in the
12 Highland confirmation hearing. It's 12:44 Central time. I
13 took a little bit longer break than I said we would.

14 Mr. Morris and Mr. Seery, are you ready to resume?

15 MR. MORRIS: I am, Your Honor.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Okay, good. A couple of things. I'm
18 required to remind you you're still under oath, Mr. Seery.
19 And also, just for people's planning purposes, what I intend
20 to do is, when the direct examination of Mr. Seery is
21 finished, I'm going to allow cross-examination of the
22 Objectors in the same amount of time in the aggregate that the
23 Debtor got, okay? So, Objectors, in the aggregate, you can
24 spend as long cross-examining as the Debtor spent examining.
25 I can figure out this is the most significant witness, so I'm

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1 assuming that Debtor's other witnesses are going to be a lot
2 shorter than this, but --

3 MR. MORRIS: Yes, I promise.

4 THE COURT: -- that's how we'll proceed. And I
5 expect to finish Mr. Seery today.

6 So, all right. With that, you may proceed, Mr. Morris.

7 MR. MORRIS: Okay.

8 DIRECT EXAMINATION, RESUMED

9 BY MR. MORRIS:

10 Q Can you hear me okay, Mr. Seery?

11 A Yes, sir.

12 Q Okay. Before we move on to the next topic, you spent some
13 time describing the asset monetization plan. Would it be fair
14 to describe that as a long-term going-concern liquidation?

15 A Long-term is subjective. We anticipate that we'll be able
16 to monetize the assets in two years. We could go out longer
17 to three. There's no absolute restriction that we couldn't
18 take longer, depending on what we see in the market, but the
19 objective would be to find maximization opportunities within
20 that time period.

21 Q Okay. So let's turn now to the post-confirmation
22 corporate governance structure.

23 (Interruption.)

24 THE WITNESS: Mr. Golub (phonetic), you should mute.

25 THE COURT: Yes. I don't know -- I didn't catch who

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1 that was. But anyway, anyone other than --

2 A VOICE: It's someone named Garrett Golub.

3 THE COURT: -- Morris and Seery, please mute. All
4 right. Go ahead.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q At a high level, Mr. Seery, can you please describe for
8 the Court the post-confirmation structure that's envisioned
9 under the proposed plan?

10 A At a high level, we anticipate reorganizing HCMLP such
11 that the current parties of interest will be extinguished and,
12 in exchange, creditors will get trust interests. There'll be
13 a trust that will sit on top of HCMLP and it will have an
14 overall responsibility for the Claimant Trust, which will be
15 the HCMLP assets plus the assets that we move into the
16 Claimant Trust, depending on structural considerations. And
17 then a Litigation Trust, which will be a separate trust, and
18 that will roll up into the main trust. And the main trust
19 will be where the creditors hold their interests. And those
20 interests take the form of senior interests or junior
21 interests.

22 Q All right. You mentioned a Claimant Trust. Who is
23 proposed to serve as the Claimant Trustee?

24 A I am.

25 Q And you mentioned a Litigation Trust. Is there someone

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1 proposed to serve as the Litigation Trustee?

2 A A gentleman named Marc Kirschner. He's been doing these
3 kinds of things for a long time.

4 Q Is there going to be any kind of oversight group or
5 committee?

6 A There is an oversight committee that sits at the main
7 trust. Into it will report Mr. Kirschner and myself. It has
8 oversight responsibilities similar to a board of directors in
9 terms of the operations of the Claimant Trust and the
10 Litigation Trust.

11 Q Do you have an understanding as to who the initial members
12 of the Claimant Oversight Committee?

13 A The initial members will be each of the members of the
14 Creditors' Committee. So, UBS, Acis, Redeemer, a
15 representative from Redeemer, and Meta-e, as well as an
16 independent named David Pauker. So that's the initial
17 structure.

18 Q And can you describe for the Court, how did Mr. Pauker get
19 involved in this?

20 A He was selected by the Committee.

21 Q Okay. Is there -- Meta-e is a convenience class claim
22 holder. Do I have that right?

23 A Yeah. They're -- they -- as I went through earlier, they
24 had a liquidated claim for litigation services. So we
25 expected that they'll be paid off rather early in the process.

1 At that point, we suspect they wouldn't -- they would no
2 longer be an Oversight Committee member and they would be
3 replaced by an independent.

4 Q And do you have any understanding as to how that
5 independent will be chosen?

6 A I believe it's chosen by the other members.

7 Q Okay. Can you describe your proposed compensation
8 structure as the proposed Claimant Trustee?

9 A My compensation will be \$150,000 a month, which is the
10 same compensation I have now. In addition, we'll negotiate a
11 bonus structure with the Oversight Committee. And that will
12 likely be a bonus not just for myself but for the entire team,
13 depending on performance.

14 Q Okay. And that -- and who is that negotiation going to be
15 had with?

16 A The Oversight Committee.

17 Q Okay. Are you familiar with Mr. Pauker's compensation
18 structure?

19 A I -- I've seen it. I don't recall specifically. I think
20 his -- from the models, I think he's about 40 or 50 grand a
21 month, something along those lines.

22 Q Okay. How about Mr. Kirschner? Do you recall -- let me
23 just ask you this. Does it refresh your recollection at all
24 if I said that 250 in year one for Mr. Pauker?

25 A Yeah. So maybe closer to \$20,000 to \$25,000 a month. And

1 then Mr. Kirschner is a lower amount, but he would get a
2 contingency fee arrangement somewhere dependent on the
3 recoveries from his litigations.

4 Q Okay. You mentioned earlier that the Debtor intends to
5 continue operations at least for some period of time post-
6 effective date. Do you have a view as to whether the post-
7 confirmation entity will have sufficient personnel to manage
8 the business?

9 A I do, yes.

10 Q And why is that? What makes you believe that the Debtor
11 will have -- the post-confirmation Debtor will have sufficient
12 personnel to manage the business?

13 A Well, we've gone through and looked at each of the assets
14 and what is required to manage those assets. We have a lot of
15 experience doing it during the case. The bulk of the
16 employees, who do a fine job, are really doing shared service
17 arrangements. The direct asset management group is a smaller
18 group, and we'll be able to manage those with the team we're
19 putting together.

20 Q Okay. How does the ten employees compare to the original
21 plan that was set forth in the disclosure statement, if you
22 recall?

23 A Well, we had less, and I believe the number was either two
24 or three, along with me, and then using a lot of outside
25 professional help. But we determined that we wanted to have a

1 much more robust team, based on the litigation that we're
2 seeing around the case and we expect to continue post-exit, so
3 that the team can manage those assets unfettered.

4 In addition, we were taking on the CLO management, the 1.0
5 CLO contracts. These one -- as I've mentioned before, they're
6 not traditional CLOs in the sense that they require the same
7 hands-on management, but they do require an experienced team
8 to help manage the exposures, most of which are cross-holdings
9 in different -- in different entities or different investments
10 that Highland also has exposure to.

11 Q In addition to the assumption of the CLO management
12 agreements, has the Debtor made any decisions regarding the
13 possibility of hiring a sub-servicer?

14 A We have, yes.

15 Q And did that factor into the Debtor's decision to increase
16 the number of personnel it was going to retain?

17 A Well, we determined we weren't going to hire a sub-
18 servicer. And I'm not sure exactly when we made that
19 determination. We do have a TPA, which is SEI, and that's a
20 third-party administrator, to sift through the funds and
21 provide accounting supporting to those, to those funds. So
22 that -- they will help. We also have an outside consultant
23 that we're using, Experienced Advisory Consultants, who are
24 financial consultants who've worked in the business. So we do
25 have those.

1 But we didn't think that we would get a third-party sub-
2 servicer, as was the case in Acis, and determined that wasn't
3 in the best interest of the estate.

4 Q Can you just shed a little light on what factors the
5 Debtor took into account in deciding not to hire a sub-
6 servicer?

7 A Well, we primarily looked at cost, as well as control of
8 the assets, and determined that that was -- those were in the
9 best interests of the estate, to keep them managed internally.
10 We reviewed that with the Committee, and they agreed.

11 Q Okay.

12 MR. MORRIS: Let's turn now to the best interests of
13 creditors' test, Your Honor, 1129(a)(7), and let's talk about
14 whether the plan is in the best interests of creditors.

15 BY MR. MORRIS:

16 Q Has the Debtor done any analysis to determine the likely
17 value to be realized in a Chapter 7 liquidation?

18 A We have, yes.

19 Q And has the Debtor done any analysis to determine the
20 likely recoveries under the plan?

21 A Yes.

22 Q Okay. Do you recall when these projections were first
23 prepared?

24 A We started working on projections in the fall, as we were
25 developing the monetization plan. We filed projections, I

1 believe, in November. We've subsequently updated those
2 projections based on the claims, market condition, and value
3 of the assets.

4 Q And were those updates provided to plan objectors last
5 week?

6 A Yes, they were.

7 Q Okay. Can we refer to the projections that were in the
8 disclosure statement as the November projections?

9 A That'd be fine.

10 Q And can we refer to the projections that were provided to
11 the objectors last week as the January projections?

12 A Yes.

13 Q And as --

14 A I think they're actually -- I think they're actually dated
15 February 1, is the most recent update.

16 Q Okay. And then was a further update provided yesterday
17 and filed on the docket, to the best of your knowledge?

18 A Yes.

19 Q All right. We'll talk about some of the changes in those
20 projections.

21 MR. MORRIS: Can we call up on the screen Debtor's
22 Exhibit 7D as in dog? And this document is in evidence. Um,
23 --

24 THE COURT: No, this is -- oh, wait. How many Ds is
25 it? Seven?

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1 MR. MORRIS: It's 7D, so that would be on Docket
2 1866, all of which has been admitted.

3 THE COURT: Okay. You're right.

4 MR. MORRIS: Okay.

5 And if we could just, I'm sorry, go to Page 3.

6 BY MR. MORRIS:

7 Q Is there any way to look at this, Mr. Seery? Is this the
8 January projections that were provided last week?

9 A Yes.

10 Q Okay. Can you describe for the Court the process by which
11 this set of projections and the November projections were
12 prepared? How did the Debtor go about preparing these
13 projections?

14 A Yeah. These are prepared what I would call bottoms-up.
15 So what we did was we looked at each of the assets that the
16 Debtor owns or manages or has a direct or indirect interest
17 in, used the values that we have for those assets, because we
18 do keep valuations for each of the assets that the Debtor owns
19 or manages in the ordinary course of business. We then
20 adjusted those depending on what we saw as the outcomes for
21 the case, either a plan outcome or a liquidation outcome, and
22 then rolled those into the -- into the numbers that you see
23 here.

24 So the 257 and change. And please excuse my eyesight.
25 I'm going to make this bigger. The 257 is the estimated

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1 proceeds from monetization. Above that, you see cash. That's
2 our estimated cash at 131. And we monitor those, those values
3 daily.

4 Q And were these projections prepared under your
5 supervision?

6 A They were, yes.

7 Q Okay. And who was involved in the preparation of this
8 document and other iterations of the projections?

9 A The team at DSI. Obviously, myself; the team at DSI; as
10 well as the, at least from a review perspective, counsel.

11 Q All of these contain various assumptions. Do I have that
12 right?

13 A Yes.

14 MR. MORRIS: Can we go to the prior page, please, I
15 think is where the assumptions are? And let's just look at a
16 few of them. Okay. Can we make that a little bigger, La
17 Asia? Okay. Good.

18 BY MR. MORRIS:

19 Q Why does the Debtor's projections and liquidation analysis
20 contain any assumptions? Why, why include assumptions?

21 A Well, all projections contain assumptions. So an
22 assumption -- I was strangely asked the question at
23 deposition, what does that mean? It's a thing or fact that
24 one accepts as true for the purposes of analysis. And so in
25 terms of looking out into the future as to what the potential

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1 operation expenses will be and what the potential recoveries
2 will be, one has to make assumptions in order to be able to
3 compare apples to apples.

4 Q And do you believe that these assumptions are reasonable?

5 A Yes. It would make no sense to have assumptions that
6 aren't reasonable. I mean, and we've all seen that with
7 analysis through our respective careers. It really should be
8 grounded in some fact and a reasonable projection on what can
9 happen in the future, based upon experience.

10 Q Okay. And have you personally vetted each of the
11 assumptions on this page?

12 A Yes.

13 Q Okay. Let's just look at a few of them. Let's start with
14 B. It says, All investment assets are sold by December 31,
15 2022. Do you see that?

16 A Yes.

17 Q Why did the Debtor make that assumption?

18 A We looked at a two-year projection horizon. We thought
19 that that was a reasonable amount of time, looking at these
20 assets, to monetize the assets. Remember that we did go
21 through a process of the case over the last year, and we did
22 consider monetization asset events for certain of the assets
23 throughout the case, some of which we were successful on, some
24 of which we weren't, some we just determined to pull back.
25 But we do believe that, based upon our view of the market and

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1 where we think these assets will be positioned, that
2 monetizing them over a two-year period makes sense.

3 Q And is it possible that it takes longer than that?

4 A It's possible. The -- you know, we would be wrong about
5 the market. The -- we could go into a full-blown recession.
6 Capital could dry up. The financing markets could turn
7 negative. But they're extremely positive right now. Those
8 things could happen. But we're assuming that they won't.

9 Q And is it possible that you complete the process on a more
10 accelerated timeframe?

11 A That's always possible. It's not, in my experience, a
12 good way to plan. Luck really isn't a business strategy. But
13 if good opportunity shows up and folks want to pay full value
14 for an asset, we certainly wouldn't turn them away just so we
15 could stretch out the time period.

16 Q Is it fair to say that this projected time period is your
17 best estimate on the most likely timeframe needed?

18 A It's -- I think it's the best estimate that we have based
19 upon our experience with the assets, again, and our projection
20 of the marketplace that we see now. If things change, we'll
21 adjust it, but this is a fair estimate of when we can get the
22 monetization accomplished.

23 Q Okay. The next assumption relates to certain demand
24 notes. Do you see that?

25 A Yes.

1 Q Can you explain to the Court what that assumption is and
2 why the Debtor believed that it was reasonable?

3 A Well, the Debtor has certain notes that are demand notes.
4 These are all from related entities. Most of the notes, the
5 demand notes, we have demanded, and we've commenced litigation
6 to collect. And we assume that we're going to be able to
7 collect those.

8 Three notes that were long-term notes -- these were notes
9 with maturities in 2047 that had been stretched out a couple
10 years ago -- were defaulted recently. And we have accelerated
11 those notes and we've asserted demands and we have commenced
12 litigation, I believe, on each of those last week to collect.
13 So we do estimate that we will collect on all of the notes
14 that we've demanded and that we've commenced action on. So
15 the demand notes as well as the accelerated notes.

16 The next, the next bullet shows there's one Dugaboy note
17 that has not defaulted. That also has a 2047 maturity. I
18 believe it's about \$18 million. And we expect that one to
19 stay current, because now I think the relater parties learned
20 that when you don't pay a long-dated note, it accelerates,
21 provided the holder, which is us, wishes to accelerate it,
22 which we did. And so that note we do not expect to be
23 collected in the time period.

24 Q Okay.

25 MR. MORRIS: Let's go down to M.

1 BY MR. MORRIS:

2 Q M relates to certain claims. Do you see that?

3 A Yes.

4 Q Can you just describe at a high level what assumption was
5 made with which -- with respect to which particular claims?

6 A Well, we've summarized them there. And what we've assumed
7 is that, with respect to Class 8, IFA, which is a derivative
8 litigation claim that seeks to hold, loosely, HCMLP liable for
9 obligations of NexBank, is worth zero. I think that's pretty
10 close to settling. We assumed here \$94.8 million for UBS,
11 which was the estimated amount, and \$45 million for
12 HarbourVest.

13 Q And when you say the estimated amount, are you referring
14 to the 3018 order on voting?

15 A Yes. We just use the estimated amount in this projection
16 based upon the 3018 order.

17 Q Okay. And finally, let's look at P. P has a payout
18 schedule. Do I have that right?

19 A That's an estimated payout schedule, yes.

20 Q And what do you mean by that, that it's estimated?

21 A Based upon our projections and how we perceive being able
22 to monetize the assets and reach the valuations that we want
23 to reach, we believe we could make these distributions.
24 However, there's no requirement to make them.

25 So the first and foremost objective we have, as I said

1 earlier, is to maximize value, and not -- it's not based on a
2 payment schedule, it's based upon the market opportunity. And
3 we've estimated for our purposes here that we'll be able to
4 meet these distribution amounts, but there's no requirement to
5 do so.

6 Q Okay.

7 MR. MORRIS: Let's go to Page 3 of the document,
8 please.

9 BY MR. MORRIS:

10 Q Can you just describe generally what this page reflects?

11 A This is a comparison of the plan analysis and what we
12 expect to achieve under the plan and the liquidation analysis
13 if a trustee, a Chapter 7 trustee, were to take over. And it
14 compares those two distribution amounts based upon the
15 assumptions on the prior page.

16 Q All right. Let's just look at some of the -- some of the
17 data points on here. If we look at the plan analysis, what is
18 -- what is projected to be available for distribution, the
19 value that's available for distribution?

20 A \$222.6 million.

21 Q Okay. So, 222? And on a claims pool that's estimated to
22 be, for this purpose, how much?

23 A \$313 million.

24 Q And what is the distribution, the projected distribution
25 to general unsecured creditors on a percentage basis?

1 A On this analysis, to general unsecured creditors, it's
2 62.14 percent. But remember, that backs out the payment to
3 the Class 7 creditors of 85 cents above.

4 Q Okay. And does this plan analysis include any value for
5 litigation claims?

6 A No, it does not.

7 Q And is that true for all forms of the Debtor's
8 projections?

9 A That's correct, yes.

10 Q Okay. And let's look at the right-hand column for a
11 moment. It says, Liquidation Analysis. What does that column
12 represent?

13 A That represents our estimate of what a Chapter 7 trustee
14 could achieve if it were to take over the assets, sell them,
15 and make distributions.

16 Q Okay. And let's just look at the comparable data points
17 there. Under the liquidation analysis, as of -- the January
18 liquidation analysis as of last week, what was projected to be
19 available for distribution?

20 A A hundred and -- approximately \$175 million.

21 Q Okay. And what was the claims pool?

22 A The claims pool was \$326 million. Recall that that's a
23 slightly larger claims pool because it doesn't back out the
24 Class 7 claims.

25 Q Okay. The convenience class claims?

1 A Correct.

2 Q Okay. And what's the projected recovery for general
3 unsecured claims under the liquidation analysis?

4 A Based on this analysis and the assumptions, 48 (audio
5 gap).

6 Q Okay. Based on the Debtor's analysis, are creditors
7 expected to do better under this analysis in the -- under the
8 Debtor's plan versus the hypothetical Chapter 7 liquidation?

9 A Yes. Both -- both Class 7 and Class 8.

10 Q Okay. Now, this set of projections differs from the
11 projections that were included in the disclosure statement; is
12 that right?

13 A That's correct.

14 Q Okay. Can we just talk about what the differences are
15 between the November projections that were in the disclosure
16 statement and the January projections that are up on the
17 screen? Let's start with the monetization of assets, the
18 second line. Do you recall if there was an increase, a
19 decrease, or did the value from the monetization of assets
20 stay the same between the November projections and the January
21 projections?

22 A They increased from November 'til -- 'til now.

23 Q Okay. Can you explain to the judge why the value from the
24 monetization of assets increased from November to January?

25 A Well, really, it's the composition of the assets and their

1 value. So there's four main drivers.

2 The first is HarbourVest. We had a settlement with
3 HarbourVest, which include HarbourVest transferring to the
4 Debtor \$22-1/2 million of HCLOF interests. Those have a real
5 value, and we've now included them in the -- in the asset
6 pool. We've also included HarbourVest in the claims pool.

7 The second was we talked a little bit earlier on the
8 assumptions on the notes. We previously had anticipated that,
9 on the long-dated notes, a collection, we -- we'd receive
10 principal and interest currently, but we wouldn't receive the
11 full amount of the principal that was due well off in the
12 future, and we would sell it a discount.

13 So the amount of the asset pool has been increased by \$24
14 million, and that reflects the delta between or the change
15 between what was in the prior plan, the notes paying and then
16 being sold at a discount, and what's in the current plan,
17 which include the accelerated notes, which is a \$24 million
18 note that Advisors defaulted on that we have accelerated and
19 brought action on, as well as two six -- roughly \$6 million
20 notes, one from Highland Capital Real Estate and the other
21 from HCM Services. So that's, that's additional 24.

22 In addition, Trussway, we've reexamined where Trussway is
23 in the market, both its marketplace and its performance, and
24 reassessed where the value is. So that has increased by about
25 \$10.6 million.

1 That doesn't mean that we would sell it today. It means
2 that, when you look at the performance of the company, what we
3 think are the best opportunities in the market. As we see the
4 marketplace with managing the company over time, we think that
5 that asset has appreciated considerably since November.

6 And then, finally, there were additional revenues that
7 flow into the model from the November analysis which would be
8 distributable, and those include revenues from the 1.0 CLOs.

9 Q Okay. So that accounts for the difference and the
10 increase in value from the monetization of assets. Is there
11 also an increase in expenses from the November projections to
12 the January projections?

13 A Yeah. It's -- it's about -- it's around \$25 million
14 additional increase.

15 Q And can you explain to the Court what is the driver behind
16 that increase in expenses?

17 A Yeah. There's several drivers to that. The first one is
18 head count. So our head count, we've increased. As I
19 mentioned earlier, we determined that we wanted to have a much
20 more robust management presence. So we've increased the head
21 count, so we have a base comp, compensation, about \$5 million
22 more than we initially thought.

23 Secondly, we have bonus comp. So we've back-ended --
24 structured a backend bonus performance bonus for the team, and
25 that will run another \$5 million, roughly.

1 Previously, we had thought about, as you mentioned
2 earlier, the sub-servicing, but we've now talked about and we
3 have engaged a TPA, SEI, as well as experienced advisors.
4 That's another \$1 to \$2 million.

5 Operating expenses have increased by about \$8 million,
6 based upon our assessment. The biggest driver there is D&O,
7 which is up about \$3 million. In addition, we've gotten -- we
8 determined to keep a bunch of agreements related to data
9 collection and operations. Those were requested by the
10 Committee, but they also serve us in performing our functions.
11 That's another couple million dollars.

12 My comp, my bonus comp was not in the prior model. So I
13 have a bonus that has not been agreed to by the Court for the
14 bankruptcy performance. This is not a future bonus. And we
15 built that into the model. Obviously, it's subject to Court
16 approval and Committee objection, and I suppose anybody else's
17 objection, but we'll -- we'll be before the Court for that.
18 But we wanted to build that into the model so that we had it
19 covered in the event that it was approved.

20 Q Was there also a change in the assumption from November to
21 January with respect to the size of the general unsecured
22 claim pool?

23 A Yes. There have been -- there have been several changes
24 that have happened, and we've added those and refined the
25 claim pool numbers.

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1 Q And are those changes reflected in the assumption we
2 looked at earlier, Exhibit -- Assumption M, which went through
3 certain claims that have been liquidated?

4 A Some, some are. That assumption, I don't believe, was --
5 it's not in front of me, but wasn't up to date. So, that one,
6 for example, assumed UBS at the 3018 estimated amount. We've
7 since refined that number to reflect the agreed-upon
8 transaction with UBS, which is subject to Court approval.

9 Q Right. But before we get to that, for purposes of the
10 January model, the one that's up on the page -- and if we need
11 to look at the prior page --

12 MR. MORRIS: Let's go to the prior page, the
13 assumption. Assumption M.

14 BY MR. MORRIS:

15 Q Assume the UBS, the UBS claim at the \$94.8 million, the
16 3018 number. Do you remember that?

17 A Yeah. That's, that -- that's the assumption in this
18 model. I think back in November we assumed HarbourVest at
19 zero and UBS at zero. So we've since -- we've since refined
20 those numbers, obviously, through both the 3018 process as
21 well as the settlement with HarbourVest.

22 Q And did the -- did the inclusion -- withdrawn. At the
23 time that you prepared the November model -- withdrawn. At
24 the time the Debtor prepared the November model, did it know
25 what the UBS or the HarbourVest claims would be valued at?

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1 A No. We just had our assumption back then, which was zero.
2 And now, obviously, we know.

3 Q And so the January model took into account the settlement
4 with HarbourVest and the 3018 motion; do I have that right?

5 A That's correct. That's in the assumptions.

6 Q And what was the impact on the projected recoveries to
7 general unsecured creditors from the changes that you've just
8 described, including the increase in the claims amount?

9 A Well, when -- like any fraction, the distribution will go
10 down if the claimant pool goes up. So, with the denominator
11 going up by the UBS and the UBS amount -- the UBS and the
12 HarbourVest amounts, the distribution percentage went down.

13 Q Okay. I want to focus your attention on the second line
14 where we've got the monetization of assets under the plan at
15 \$258 million but under the liquidation analysis it's \$192
16 million. Do you see that?

17 A Yes.

18 Q Can you tell Judge Jernigan why the Debtor believes that
19 under the plan the Debtor or the post-confirmation Debtor is
20 likely to receive or recover more for the --

21 (Interruption.)

22 THE COURT: All right. Hang on a minute. Where is
23 that coming from, Mike?

24 THE CLERK: Someone is calling in.

25 THE COURT: Okay.

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1 MR. MORRIS: Thank you.

2 THE COURT: Mr. --

3 MR. MORRIS: Let me restate the question.

4 THE COURT: Yes. Restate.

5 BY MR. MORRIS:

6 Q Can you explain to Judge Jernigan why the Debtor believes
7 that the -- under the plan corporate structure, the Debtor is
8 likely to recover more from the monetization of assets than a
9 Chapter 7 liquidation trustee would?

10 A Sure. My experience is that Chapter 7 trustees will
11 generally try to move quickly to monetize assets. They will
12 retain their own professionals, they will examine the assets,
13 and they will look to sell those assets swiftly.

14 The monetization plan does not plan to do that. I've got
15 a year's of experience -- a year now of experience with these
16 assets, as well as we'll have a team with several years at
17 least each of experience with the assets. We intend to look
18 for market opportunities, and think we'll be able to do it in
19 a much better fashion than a liquidating Chapter 7 trustee.

20 The nature of these assets is complex. Many of them are
21 private equity investments in operating businesses. Certain
22 of them are complicated real estate structures that need to be
23 dealt with. Some of them are securities that, depending on
24 when you want to sell them, we believe there'll be better
25 times than moving quickly forward to sell them now.

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1 So, with each of them, we think that we'll be able to do
2 better than a Chapter 7 trustee based upon our experience.
3 The only thing that we're level-set with a Chapter 7 trustee
4 on is that cash is cash.

5 Q Do you have any concerns that a Chapter 7 trustee might
6 not be able to retain the same personnel that the Debtor is
7 projected to retain?

8 A Well, again, in my experience, it would be very difficult
9 for a Chapter 7 trustee to retain the same professionals, and
10 typically they don't.

11 Secondly, retaining the individuals, I think, would be
12 very difficult for a Chapter 7 trustee, would not have a
13 relationship with them, and that gap of time and the risks
14 that they would have to take to join a Chapter 7 trustee I
15 think would lead most of them to look for different
16 opportunities.

17 Q Okay. One of the other things, one of the other changes I
18 think you mentioned between the November and the January
19 projections was the decision to assume the CLO management
20 contracts. Do I have that right?

21 A That's correct.

22 Q And why has the Debtor decided to assume the CLO
23 management contracts? How does that impact the analysis on
24 the screen?

25 A Well, it does add to the expense, but it also adds to the

1 proceeds.

2 When we did the HarbourVest settlement, we ended up with
3 the first significant interest in HCLOF. HCLOF owns the vast
4 majority of the equity in Acis 7, and also owns significant
5 preferred share interests in the 1.0 CLOs. And we think it's
6 in the best interest of the estate to keep the management of
7 those assets where we have an interest in the outcome of
8 maximizing value with the estate.

9 In addition, we're going to have employees who are going
10 to work with us to manage those specific assets, so we feel
11 like that will be something where we can control the
12 disposition much better.

13 There's also cross-interests that these CLOs have in --
14 the 1.0 CLOs have in a number of other investments that
15 Highland has. As in all things Highland, it's interrelated,
16 and so many of the companies have direct loans from the CLOs.
17 We intend to refinance that, but we feel much more comfortable
18 and feel that there would be value maximization if we're able
19 to work directly with the Issuers as a manager while we seek
20 in those underlying investments to refinance the CLO debt.

21 Q Has the Debtor -- has the Debtor reached an agreement with
22 the Issuers on the assumption of the CLO management
23 agreements?

24 A Yes, we have.

25 Q Can you describe for the Court the terms of the

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1 assumption?

2 MR. RUKAVINA: Your Honor, this --

3 THE WITNESS: Yes.

4 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
5 would object to this as hearsay.

6 THE COURT: Well, he has not --

7 MR. MORRIS: It's --

8 THE COURT: He's not said an out-of-court statement
9 yet, so I overrule.

10 Go ahead.

11 THE WITNESS: Yeah, we -- we are going to assume the
12 CLO contracts. We have had direct discussions with the
13 Issuers. They have agreed.

14 The basic terms are that we're going to cure them by
15 satisfying about \$500,000 of cure costs related to costs that
16 the CLO Issuers have incurred in respect of the case, and
17 we'll be able to pay that over time.

18 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
19 would renew my objection and move to strike his answer that
20 they've agreed. That is hearsay, an out-of-court statement
21 offered to prove the truth of the matter asserted.

22 THE COURT: Okay. Mr. Morris, what is your response?

23 MR. MORRIS: He's describing an agreement. I
24 actually think it's in the Debtor's plan that's on file
25 already. But he's describing the terms of an agreement. He's

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1 not saying what anybody said. There's no out-of-court
2 statement. It's an agreement that's being described.

3 THE COURT: All right. Thank you. I overrule the
4 objection.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q Does the Debtor believe that the CLO agreements will be
8 profitable?

9 A Yes.

10 Q And why does the Debtor believe that the CLO agreements
11 will be profitable to the post-confirmation estate?

12 A Well, we don't -- we don't break out profitability on a
13 line-by-line basis. But the simple math is that the revenues
14 from the CLO contracts which will roll in to the Debtor from
15 the management fees are more than what we anticipate the
16 actual direct costs of monitoring and managing those assets
17 would be.

18 Q Okay. Are you aware that yesterday the Debtor filed a
19 further revised set of projections?

20 A I am, yes.

21 Q All right. Let's call those the February projections.

22 MR. MORRIS: Can we put those on the screen?

23 It's Exhibit 7P, Your Honor.

24 THE COURT: Okay.

25 MR. MORRIS: All right. I think that for some reason

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1 -- yeah, okay. There we go. Perfect. Right there.

2 Your Honor, these are the projections that were filed
3 yesterday. I'm going to move for the admission into evidence
4 of these projections.

5 THE COURT: All right.

6 MR. TAYLOR: Your Honor, this is Clay Taylor.

7 THE COURT: Go ahead.

8 MR. TAYLOR: We object. These were -- these were not
9 previously provided. They were provided on the eve of the
10 confirmation hearing, after the Debtors had already revised
11 them once and provided those on -- after close of business on
12 a Friday before Mr. Seery's deposition. And these were
13 provided even later, certainly not within the three days
14 required by the Rule. And therefore we move to -- that these
15 should not be allowed into evidence.

16 THE COURT: Mr. Morris, what is your response to
17 that?

18 MR. MORRIS: Your Honor, first of all, the January
19 projections were provided in advance of Mr. Seery's deposition
20 and he was questioned extensively on it. These projections
21 have been updated since then, I think for the singular purpose
22 of reflecting the UBS settlement.

23 As Your Honor just saw, the prior projections included an
24 assumption based on the 3018 motion. Since Mr. Seery's
25 deposition, UBS and the Debtor have agreed to publicly

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1 disclose the terms of the settlement, and that's reflected in
2 these revised numbers. I think there was one other change
3 that Mr. Seery can testify to, but those are the only changes
4 that were made.

5 THE COURT: All right. Mr. Seery, what besides the
6 UBS settlement do you think was put in these overnight ones?

7 THE WITNESS: I believe the only other change, Your
8 Honor, was correcting a mistake. In Assumption M, the second
9 line is assumes RCP claims will offset against HCMLP's
10 interest in the fund and will not be paid from the Debtor's
11 assets. That hasn't changed.

12 Basically, the Debtor got an advance from RCP that was to
13 -- for tax distributions, and did not repay it. The RCP
14 investors are entitled to recovery of that. So we had
15 previously backed that out. It's about four million bucks.
16 What happened was it was just double-counted.

17 THE COURT: Okay.

18 THE WITNESS: So, as an additional claim, it was
19 counted as \$8 million. I think that's the only other change.

20 THE COURT: All right. I overrule the objection.
21 You may go forward. I admit 7P.

22 MR. MORRIS: Thank you, Your Honor.

23 (Debtor's Exhibit 7P is received into evidence.)

24 MR. MORRIS: Can you just -- if we can go to the next
25 page, please.

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1 BY MR. MORRIS:

2 Q So, with -- seeing that the claims pool under the plan
3 previously was \$313 million, and what's the claims pool under
4 the projections up on the screen under the plan?

5 A Two -- well, remember, there's 273 for Class 8, and then
6 you'd add in the Class 7 as well, which is the \$10.2 million.
7 So the 273 went from 313 to 273 with that settlement.

8 Q And is there any -- is there any reason for the decrease
9 other than the change from the 3018 settlement -- order figure
10 to the actual settlement amount?

11 A For the UBS piece, no. And then, as I mentioned, I
12 believe the other piece would have been that four million --
13 that additional \$4 million that was taken out.

14 Q And did those two changes have a -- did those two changes
15 have an impact on the projected recoveries under the plan?

16 A Sure, particularly with respect to -- to the Class 8.
17 Those recoveries went up significantly because the denominator
18 went up.

19 Q Okay. Does the Debtor believe that its plan is feasible?

20 A Yes, absolutely.

21 Q And do you know whether the administrative priority and
22 convenience class claims will be paid in full under the
23 Debtor's plan?

24 A Yes. We monitor the cash very closely, so we do have
25 additional cash to raise, but we're set to reach or exceed

1 that target, so we do believe we'll be able to pay all the
2 administrative claims when they come in. Obviously, we have
3 to see what they are. We will be able to pay Class 7 on the
4 effective date. Any other distributions, we expect to be able
5 to make as well.

6 So, and then it's -- then it's a question of going forward
7 with a few other claims that we have to pay over time. We
8 have the cash flow to pay those. Frontier, for example, we'll
9 be able to pay that claim over time in accordance with the
10 restructured terms. If the assets that secure that claim are
11 sold, they would be paid when those assets are sold.

12 Q Frontier, will the plan enable the Debtor to pay off the
13 Frontier secured claim?

14 A Yes. That's what I was explaining. The cash flow is
15 sufficient to support the current P&I on that claim. We will
16 be able to satisfy it from other assets if we determine not to
17 sell the asset securing the Frontier claim, or if we sell the
18 asset securing the Frontier claim we could satisfy that claim.
19 The asset far exceeds the value of the claim.

20 Q Has the plan been proposed for the purpose of avoiding the
21 payment of any taxes?

22 A No. We expect all tax claims to be paid in accordance
23 with the Code, and to the extent that there are additional
24 taxes generated, we would pay them.

25 Q Okay. Let's just talk about Mr. Dondero for a moment

1 before we move on. Are you aware that Mr. Dondero's counsel
2 has requested the backup to, you know, these numbers,
3 including the asset values?

4 A It -- I'm not sure if it was his counsel or one of the
5 other related-entity counsels.

6 Q Okay. But you're aware that a request was made for the
7 details regarding the asset values and the other aspects of
8 this?

9 A Yes.

10 Q Those were -- were those formal requests or informal
11 requests?

12 A They were certainly at my deposition.

13 Q Right. But you haven't seen a document request or
14 anything like that, have you?

15 A No.

16 Q Did the Debtor make a decision as to whether or not to
17 provide the rollup, the backup information to Mr. Dondero or
18 the entities acting on his behalf?

19 A Yes.

20 Q And what did the Debtor decide?

21 A We would not do that.

22 Q And why did the Debtor decide that?

23 A Well, I think that's pretty standard. The underlying
24 documentation and the specific terms of the model are very
25 specific, and they are -- they are confidential business

1 information that runs through what we expect to spend and what
2 we expect to receive and when we expect to sell assets and
3 then receive proceeds, and the prices at which we expect to
4 sell them.

5 To the extent that any entity wants to have that
6 information as a potential bidder, that would be very
7 detrimental to our ability to maximize value. So, typically,
8 I wouldn't expect that to be given out, and I would not
9 approve it to be given out here.

10 Q Did the Debtor disclose to Mr. Dondero's counsel or
11 counsel for one of his entities the agreement in principle
12 with UBS before the updated plan analysis was filed last
13 night?

14 A I believe that disclosure was done a while ago, to Mr.
15 Lynn.

16 Q So, to the best of your -- so, to the best of your
17 knowledge, the Debtor actually shared the specifics of the
18 agreement with UBS with Mr. Dondero and his counsel before
19 last night?

20 A Yes. I have specific personal knowledge of it because we
21 had to ask UBS for their permission, and they agreed.

22 Q Okay.

23 MR. MORRIS: All right. Let's move on to 1129(b),
24 Your Honor, the cram-down portion.

25 BY MR. MORRIS:

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1 Q Are you aware, Mr. Seery, how various classes have voted
2 under the plan?

3 A I am generally, yes.

4 Q Okay. Did any class vote to reject the plan, to the best
5 of your knowledge?

6 A I don't -- I guess it depends on how you define the class.
7 I think the answer is that I don't believe that, when you
8 count the full votes of the -- the allowed claims and the
9 votes in any class, I don't believe any of the classes voted
10 to reject the plan.

11 Q What type of claims are in Class 8?

12 A General unsecured claims.

13 Q And what percentage of the dollar amount of Class 8 voted
14 to accept?

15 A It's -- I think it's near -- now with the Daugherty
16 agreements, it's near a hundred percent of the third-party
17 dollars. I don't know the individual employees' claims off
18 the top of my head.

19 Q All right. And what about the number in Class 8? Have a
20 majority voted to accept or reject in Class 8?

21 A If you include the employee claims -- which, again, we
22 think have no dollar amounts -- then I think it's a majority
23 would have rejected. The vast dollar amounts did accept.

24 Q Okay. Let's talk about those employees claims for a
25 moment. Do you have an understanding as to the basis of the

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1 claims?

2 A Yes.

3 Q What's your understanding of the basis of the claims?

4 A Most of the claims are based on deferred compensation, and
5 that's the 2005 Highland Capital Management bonus plan. And
6 that bonus plan provides certain deferred payment amounts to
7 the employees to be paid over multiple-year periods, provided
8 that they are in the seat when the payment is due. That's the
9 vesting date.

10 Q Okay.

11 MR. MORRIS: Your Honor, just as a note-keeping
12 matter, the deferred compensation plan and the annual bonus
13 plan are Exhibits 6F and 6G, respectively, and they're on
14 Docket 1822.

15 THE COURT: All right.

16 BY MR. MORRIS:

17 Q And Mr. Seery, are you generally familiar with those
18 plans?

19 A I am, yes.

20 Q In order to receive benefits under the plans, are the
21 employees required to be employed at the time of vesting?

22 A Yeah. Our counsel refers to them, various terms, but
23 generally -- our outside labor counsel. They're referred to
24 as seat-in-the-seat plans, meaning that your seat has to be in
25 a seat at the office at the day that the payment is due. If

1 you're terminated for cause or if you resign, you're not
2 entitled to any payment.

3 So either you're there and you receive it or you're not
4 and you don't. The only exception to that, I believe, is
5 death and disability. Or disability.

6 Q All right. Did the Debtor terminate the annual bonus
7 plan?

8 A Yes, we did.

9 Q And in what context did the Debtor terminate the annual
10 bonus plan?

11 A Well, we had discussion on it last week. As Mr. Dondero
12 had also testified, the plan was to terminate all the
13 employees prior to the transition. That's well known among
14 the employees. The board terminated the 2005 bonus plan and
15 instead replaced it with a KERP plan that was approved by this
16 Court.

17 Q And what was your understanding of the consequences of the
18 termination of the bonus plan for -- for purposes of the
19 claims that have been asserted by the employees who rejected
20 in Class 8?

21 A It's clear that, under the 2005 HCMLP bonus plan, no
22 amounts are due because the plan has been terminated.

23 Q All right. Do you have an understanding as to when
24 payments become due under the deferred compensation -- under
25 the compensation plan?

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1 A I do, yes.

2 Q And when are they due?

3 A The next payments are due in May.

4 Q And what is the Debtor intending to do with respect to the
5 objecting employees?

6 A The Debtor will have terminated all those employees before
7 that date.

8 Q All right. So, what's -- what are the consequences of
9 their termination vis-à-vis their claims under the deferred
10 compensation plan?

11 A They won't have any claims.

12 Q Okay. So is it the Debtor's view that the employees who
13 voted to reject in Class 8 have no valid claims under the
14 annual comp -- annual bonus plan or the deferred compensation
15 plan?

16 MR. RUKAVINA: Your Honor, this is Davor Rukavina.
17 With due respect, Your Honor, these employees have voted. The
18 voting is on file. There has been no claim objections to
19 their claims filed. There's been no motion to designate their
20 votes filed. So Mr. Seery's answer to this is irrelevant.
21 They have votes -- pursuant to this Court's disclosure
22 statement order, they have votes and they have counted, and
23 now Mr. Seery is attempting to basically impeach his own
24 balloting summary.

25 THE COURT: Mr. Morris, what is your response?

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1 MR. MORRIS: The point of cram-down, Your Honor, is
2 it fair and equitable. Does -- does -- is it really fair and
3 equitable to the 99 percent of the economic interests to allow
4 24 employees who have no valid claims to carry the day here?
5 And this is -- that's what cram-down is about, Your Honor.

6 THE COURT: All right. I overrule the objection.

7 BY MR. MORRIS:

8 Q Let's talk about Class 7 for a moment, Mr. Seery. That's
9 the convenience class; is that right?

10 A That's correct.

11 Q How and why was that created?

12 A Well, initially, that was created because we had two types
13 of creditors in the case, broadly speaking. We had liquidated
14 claims, which were primarily trade-type creditors, and we had
15 unliquidated claims, which were the litigation-type creditors.
16 And so that class was created to deal with the liquidated
17 claims, and the Class 8 would deal with the unliquidated
18 claims, which were expected to, as we talked about earlier
19 with respect to the monetization plan, take some time to
20 resolve.

21 Q Was the creation of the convenience class a product of
22 negotiations with the Committee?

23 A The initial discussion on how we set it up I believe was
24 generated by the Debtor's side, but how it evolved and who
25 would be in it and how it was treated in terms of

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1 distributions was a product of negotiation with the Committee.

2 Q Okay. So how was the dollar threshold figure arrived at?
3 How did you actually determine to create a convenience class
4 at a million dollars?

5 A It was through negotiation with the Committee. So this
6 was one of those items that moved a fair bit, in my
7 recollection, through the many negotiations we had, heated
8 negotiations on some of these items, with the Committee.

9 Q And are all convenience class -- all holders of
10 convenience class claims holders of claims that were
11 liquidated at the time the decision was made to create the
12 class?

13 A I believe so. I don't think there's been -- other than --
14 well, there -- we just had some settlements today, and I think
15 that relates to the employees, but those would be the only
16 ones that there would be disputes about, and that would roll
17 into the liquidat... the convenience class.

18 Q Okay. Finally, is there any circumstance under which
19 holders of Class 10 or 11, Class 10 or Class 11 claims will be
20 able to obtain a recovery under the plan?

21 A Theoretically, there's a circumstance, and that is if
22 every other creditor in the case were to be paid in full, with
23 interest at the federal judgment rate, including Class 9,
24 which are the subordinated claims. If those all got paid in
25 full, then theoretically the junior interest holders could

1 receive distributions.

2 However, based upon our projections, that would be wholly
3 dependent on a significant recovery in the Litigation -- by
4 the Litigation Trustee.

5 Q Okay. Let's move now to questions of the Debtor release
6 and the plan injunction. Is the Debtor providing a release
7 under the plan?

8 A Yes.

9 Q Is anyone other than the Debtor providing a release under
10 the plan?

11 A No.

12 Q Who is the Debtor proposing to release under the plan?

13 A The release parties are pretty similar to what you
14 typically would see, in my experience, in most plans. You
15 have the independent board, myself as CEO and CRO, the
16 professional -- the Committee members, the professionals in
17 the case, and the employees that we reached agreement with
18 respect to certain of them who have signed on to a
19 stipulation, and others, get a broader release for negligence.

20 Q Okay. Is the Debtor aware of any facts that might give
21 rise to a colorable claim against any of the proposed release
22 parties?

23 A Not with respect to any of the release parties. So the --
24 obviously, I don't think there's any claims against me. But
25 the same is true with respect to the oversight board, the

1 independent board.

2 The Committee has been, you know, working with us hand-in-
3 glove, and I think if they thought we -- there was something
4 there, we would have heard it.

5 With respect to the professionals, we haven't seen
6 anything as an independent board.

7 And with respect to the employees' that -- general
8 negligence release, these are current employees and we have
9 been monitoring them for a year and we don't have any evidence
10 or anything to suggest that there would be a claim against
11 them.

12 Q Are there conditions to the employees' release?

13 A There are. So, the employee release, as we talked about
14 earlier, was highly negotiated with the Committee. It
15 requires that employees assist in the monetization efforts,
16 which is really on the transition and the monetization. They
17 don't have to assist in bringing litigations against anybody,
18 so that's not part of what the provision requires. But it
19 does require that they assist generally in our efforts to
20 monetize assets.

21 We don't think that's going to be significant, but if
22 there are individual questions or help we need, we certainly
23 would reach out to them. If it's significant time, that will
24 be a different discussion.

25 And then with respect to the two senior employees who

1 signed the stipulation, they have to give up a part of their
2 distribution for their release.

3 Q All right. I think you just alluded to this, but has the
4 release been the subject of negotiation with the Creditors'
5 Committee?

6 A Yeah. We've touched on it a bunch of times, and we
7 certainly, unfortunately, let it spill over into the court a
8 couple times. It was a hotly-negotiated piece of the plan.

9 Q Okay. Has the Committee indicated to the Debtor in any
10 way that anybody subject to the release is the subject of a
11 colorable claim?

12 A Anyone subject to the release? No.

13 Q Yeah. All right. Let's talk about the plan injunction
14 for a moment. Are you familiar with the plan injunction?

15 A Broadly, yes.

16 Q And what is your broad understanding of the plan
17 injunction?

18 A Anybody who has a claim or thinks they have a claim will
19 broadly be enjoined from bringing that, other than as it's
20 satisfied under the plan or else ultimately bringing it before
21 this Court. And that's the gatekeeper part, which is a little
22 bit of combining the two pieces.

23 Q And what's your understanding of the purpose of the
24 injunction?

25 A It's really to prevent vexatious litigation. We, as

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1 independent directors, stepped into what I think most people
2 would fairly say is one of the more litigious businesses and
3 enterprises that they've seen. And we have a plan that will
4 allow us to monetize assets for the benefit of the creditor
5 body, provided we're able to do that and not have to put out
6 fires every day on different fronts. So what we're hoping to
7 do with the injunction is ensure that we can actually fulfill
8 the purposes of the plan.

9 Q All right. Let's talk about some of the litigation that
10 you're referring to.

11 MR. MORRIS: Can we put up on the screen the
12 demonstrative for the Crusader litigation?

13 BY MR. MORRIS:

14 Q And Mr. Seery, I would just ask you to kind of describe
15 your understanding in a general way about the history of the
16 Crusader litigation.

17 MR. MORRIS: And, Your Honor, just to be clear here,
18 this is a demonstrative exhibit. As you can see in the
19 footnotes, it's heavily footnoted to the documents and to --
20 and, really, to the court cases themselves. The documents on
21 the exhibit list include the dockets from each of the
22 underlying litigations. And I just want to just have Mr.
23 Seery describe at an extremely high level some of the
24 litigation that the Debtor has confronted over the years, you
25 know, as the driver, as he just testified to, for the decision

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1 to seek this gatekeeper injunction.

2 THE COURT: All right.

3 BY MR. MORRIS:

4 Q So, Mr. Seery, can you just describe kind of in general
5 terms the Crusader litigation?

6 A Yeah. I apologize to the Redeemer team for maybe not
7 doing this justice. But this is litigation that came out of a
8 financial crisis upheaval related to this fund. Disputes
9 arose with respect to the holders of the interests, which were
10 the -- ultimately became the Redeemers, and Highland as the
11 manager.

12 That went through initial litigation, and then into the
13 Bermuda courts, where it was subject to a scheme. The scheme
14 required or allowed for the liquidation of the fund and then
15 distributions to the -- to the holders, and then deferred many
16 of the payments to Highland.

17 At some point, Highland, frustrated that it wasn't able to
18 get the payments, decided to just take them, and I think, you
19 know, fairly -- can be fairly described, at least by the
20 arbitration panel, as coming up with reasons that may not have
21 been wholly anchored in reality as to what its reasons were
22 for taking that money.

23 That led to further disputes with the Redeemers, who then
24 terminated Highland and brought an arbitration action against
25 Highland. They were successful in that arbitration and

1 received a \$137 arbitration award. And right up to the
2 petition date, that arbitration pursued. When they finally
3 got their -- the arbitration award, they were going to
4 Delaware Chancery Court to file it and perfect it, and the
5 Debtor filed.

6 Q Okay.

7 MR. MORRIS: Let's go to the next slide, the Terry/
8 Acis slide. If we could just open that up a little bit. It's
9 -- as you can imagine, Your Honor, it's a little difficult to
10 kind of summarize the Acis/Terry saga in one slide, but we've
11 done the best we can.

12 BY MR. MORRIS:

13 Q Mr. Seery, can you describe generally for Judge Jernigan,
14 who is well-versed in the matter, the broad overview of this
15 litigation?

16 A There's clearly nothing I can tell the Court about the
17 bankruptcy that it doesn't already know. But very quickly,
18 for the record, Mr. Terry was an employee at Highland. He
19 also has a partnership interest in Acis, which was, in
20 essence, the Highland CLO business. He -- and he got into a
21 dispute with Mr. Dondero regarding certain transactions that
22 Mr. Dondero wanted to enter into and Mr. Terry didn't believe
23 were appropriate for the investors.

24 Strangely, the assets that underlie that dispute are still
25 in the Highland portfolio, both Targa (phonetic) and Trussway.

1 Mr. Terry was terminated, or quit, depending on whose side of
2 the argument you take. Mr. Terry then sought compensation in
3 the arbitration pursuant to the partnership agreement.
4 Ultimately, he was awarded an arbitration award of roughly \$8
5 million.

6 When he went to enforce that -- that was against Acis.
7 When he went to enforce that against Acis, which had all the
8 contracts, Highland went about, I think, terribly denuding
9 Acis and moving value. Mr. Terry ultimately was able to file
10 an involuntary against Acis, and after a tremendous amount of
11 litigation had a plan confirmed that gave him certain rights
12 in Acis and any ability to challenge certain transactions with
13 respect to Highland that formed the basis of his claims in the
14 Highland bankruptcy.

15 That wasn't the end of the saga, because Highland
16 commenced a litigation -- well, not Highland, but HCLOF and
17 others, directed by others -- commenced litigation against Mr.
18 Terry in Guernsey, an island in the English Channel. That
19 litigation wound its way for a couple -- probably close to two
20 years, at least a year and a half, and ultimately was -- it
21 was dismissed in Mr. Terry's favor.

22 While that was pending, litigation was commenced in New
23 York Supreme Court against Mr. Terry and virtually anybody who
24 had ever associated with him in the business, including --
25 including some of the rating agencies. That was withdrawn as

1 part of our efforts working with DAF to try to bring a little
2 bit of sanity to the case. But it was withdrawn without
3 prejudice.

4 But ultimately, you know, we've agreed to a claims
5 settlement, which was approved by this Court, with Acis and
6 Mr. Terry.

7 Q All right.

8 MR. MORRIS: How about UBS? Can we get the UBS
9 slide?

10 THE WITNESS: I should mention that there's other
11 litigations involving Mr. Terry and Highland individuals that
12 are outstanding, I believe, in Texas court. We have not yet
13 had to deal with those.

14 BY MR. MORRIS:

15 Q Okay. Can you describe for the Court your general
16 understanding of the UBS litigation?

17 A Again, UBS comes out of the financial crisis. It was a
18 warehouse facility that UBS had established for Highland. It
19 actually was a pre-crisis facility that was restructured in
20 early '08, while the markets were starting to slide but before
21 they really collapsed. That litigation started after Highland
22 failed to make a margin call. UBS foreclosed out -- or it
23 wasn't really a foreclosure, because it's a warehouse
24 facility, but basically closed out all the interest and sought
25 recovery from Highland for the shortfall.

1 Highland was one of the defendants, but there are numerous
2 defendants, including some foreign subsidiaries of Highland.

3 That case wend its way through the New York Supreme Court,
4 up and down between the Supreme and the Appellate Division,
5 which is the intermediate appellate court in New York.
6 Incredibly litigious effort over virtually every single item
7 you could possibly think of.

8 Ultimately, UBS got a judgment for \$500-plus million and
9 -- plus prejudgment interest against two of the Highland
10 subsidiaries. It then sought to commence action up -- enforce
11 its judgment through various theories against Highland. That
12 is part of the settlement that we have -- it's been part of
13 the lift stay motion here, the 3019, as well as the 3018, and
14 as well as the ultimate settlement we've discussed today.

15 Q Okay. Moving on to Mr. Daugherty, can you describe for
16 the Court your understanding of the Daugherty litigation?

17 A The Daugherty litigation goes back even further. It did
18 -- I think the original disputes were -- or, again, started to
19 happen between Mr. Daugherty and Mr. Dondero even prior to the
20 crisis, but Mr. Dondero -- Daugherty certainly stayed with
21 Highland post-crisis. And then when Mr. Daugherty was severed
22 or either resigned or terminated from his position, there was
23 various litigations that began between the parties very
24 intensely in state court, one of the more nasty litigations
25 that you can imagine, replete with salacious allegations and

1 press releases.

2 That litigation then led to an award originally for Mr.
3 Daugherty from HERA, which was an entity that had assets that
4 Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay
5 a judgment against Highland. Ultimately, litigations were
6 commenced in both the state court and the Delaware Chancery
7 Court. Those litigations, many of those continue, because
8 they're not just against the entities but specific
9 individuals. Mr. Daugherty got a voting -- a claim allowed
10 for voting purposes in our case of \$9.1 million, and we've
11 since reached an agreement with Mr. Daugherty on his claim,
12 save for a tax case which we announced earlier that relates to
13 compensation, claimed compensation with respect to a tax
14 distribution, which we have defenses for and he has claims
15 for.

16 MR. MORRIS: All right. We can take that down,
17 please.

18 BY MR. MORRIS:

19 Q And let's just talk for a few minutes about some of the
20 things that have happened in this case. Did Mr. Dondero
21 engage in conduct that caused the Debtor to seek and obtain a
22 temporary restraining order?

23 A Yes, he did.

24 Q And did the Debtor -- did Mr. Dondero engage in conduct
25 that caused the Debtor to seek and obtain a preliminary

1 injunction against him?

2 A Yes.

3 Q And has the Debtor filed a motion to hold Mr. Dondero in
4 contempt for violation of the TRO?

5 A Yes.

6 Q Are you aware that -- of the CLO-related motion that was
7 filed in mid-December?

8 A It's similar in that these are controlled entities that
9 brought similar types of claims against the Debtor and
10 interfered in similar ways, albeit not as directly threatening
11 with respect to the personnel of the Debtor.

12 Q Okay. And you're aware of how that -- that motion was
13 resolved?

14 A I know we resolved it, and I'm drawing a blank on that.
15 But --

16 Q All right. Are you aware, did Mr. Daugherty also object
17 to the Acis and HarbourVest settlements, or at least either
18 him or entities acting on his behalf?

19 A I think you meant Mr. Dondero. I don't believe Mr.
20 Daugherty did.

21 Q You're right. Thank you. Let me ask the question again.
22 Thank you for the clarification. We're almost done. To the
23 best of your knowledge, did Mr. Dondero or entities that he
24 controls file objections to the Acis and HarbourVest
25 settlements?

1 A Yes, they did.

2 Q And we're here today with this long recitation because the
3 remaining objectors are all Mr. Dondero or entities owned or
4 controlled by him; is that right?

5 A That's correct.

6 Q All right.

7 MR. RUKAVINA: Your Honor, I didn't have a chance to
8 object in time. Entities owned or controlled by Mr. Dondero.
9 There's no evidence of that with respect to at least three of
10 my clients, and this witness has not been asked predicate
11 questions to lay a foundation. Mr. Dondero does not own or
12 control the three retail (inaudible). So I move to strike
13 that answer.

14 MR. MORRIS: Your Honor, I withdraw with respect to
15 the three funds. It's fine.

16 THE COURT: All right. With that withdrawal, then I
17 think that resolves the objection.

18 MR. MORRIS: Uh, --

19 THE COURT: Or I overrule the remaining portion.

20 Okay. Go ahead.

21 MR. RUKAVINA: That does, Your Honor. Thank you.

22 BY MR. MORRIS:

23 Q Are -- are -- is everything that you just described, Mr.
24 Seery, the basis for the Debtor's request for the gatekeeper
25 and injunction features of the plan?

1 A Well, everything I described are a part of the basis for
2 that. I didn't describe every single basis with respect to
3 why those --

4 Q So what are -- what are the other reasons that the Debtor
5 is seeking the gatekeeper and injunction provisions in the
6 plan?

7 A We really do need to be able to operate the business and
8 monetize the assets without direct interference and litigation
9 threats. We didn't go through some of the specifics, and I
10 hesitate to burden the Court again, but the email to me, the
11 email to Mr. Surgent, the testimony threatening -- effectively
12 threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the
13 court in previous weeks, statements by his counsel indicating
14 that Mr. Dondero is going to sue me for hundreds of millions
15 of dollars down the road.

16 I mean, this is nonstop. I'm an independent fiduciary.
17 I'm trying to maximize value for the estate. I've got some
18 guy who's threatening to sue me? It's absurd.

19 MR. MORRIS: Your Honor, I have no further questions,
20 but what I would respectfully request is that we take just a
21 short five-minute break. I'd like to just confer with my
22 colleagues before I pass the witness.

23 THE COURT: All right. Five-minute break.

24 MR. MORRIS: Thank you, Your Honor.

25 THE CLERK: All rise.

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1 (A recess ensued from 1:58 p.m. to 2:06 p.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Please be seated. We're back
4 on the record in Highland. Mr. Morris, anything else?

5 MR. MORRIS: All right, Your Honor. Can you hear me?

6 THE COURT: I can, uh-huh.

7 MR. MORRIS: Okay. Mr. Seery, are you there?

8 THE WITNESS: I am, yes.

9 MR. MORRIS: I just have a few follow-up questions,
10 Your Honor, if I may.

11 THE COURT: Okay.

12 DIRECT EXAMINATION, RESUMED

13 BY MR. MORRIS:

14 Q Okay. Mr. Seery, we talked for a bit about the difference
15 between the convenience class and the general unsecured
16 claims. Do you recall that?

17 A Yes.

18 Q And that's the difference between Class 7 and 8; do I have
19 that right?

20 A Yes.

21 Q And what is the recovery for claimants in Class 7, to the
22 best of your recollection, the convenience class?

23 A It's 85 cents.

24 Q And under --

25 A On the dollar.

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1 Q And under the projections that were filed last night, and
2 we can call them up on the screen if you don't have total
3 recall, do you recall what Class 8 is projected to recover now
4 that we've taken into account the UBS settlement?

5 A Approximately 71.

6 Q Okay.

7 A Percent. 71 cents on the dollar.

8 THE COURT: Okay. The answer --

9 BY MR. MORRIS:

10 Q Okay. Do I this right --

11 THE COURT: The answer was a little garbled. Can you
12 repeat the answer, Mr. Seery?

13 THE WITNESS: Approximately 71 cents on the dollar,
14 Your Honor.

15 THE COURT: Okay. Thank you.

16 BY MR. MORRIS:

17 Q Okay. And do I have that right, that that 71 cents
18 includes no value for potential litigation claims?

19 A That's correct. We didn't even put that in our
20 projections at all.

21 Q So is it possible, depending on Mr. Kirschner's work, that
22 holders of Class 8 claims could recover an amount in excess of
23 85 percent?

24 A It's possible, yes.

25 Q Okay. Are you aware that Dugaboy has suggested that the

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1 Debtor should resolicit because their -- their -- the
2 projections in the November disclosure statement were
3 misleading?

4 A I'm aware that they've made allegations along those lines,
5 yes.

6 Q Okay. Do you think the November projections were
7 misleading in any way?

8 A No, not at all.

9 Q And why not?

10 A Well, the plan was -- the projections are for the plan,
11 and they contain assumptions. And it was clear in the plan
12 that those assumptions could change. So the value of the
13 assets, which aren't static, does change. The costs aren't
14 static. They do change. The amount of the claims, the
15 denominator, was not static and would change.

16 Q Okay. And were the -- were the changes in the claims, for
17 example, changes that were all subject to public viewing, as
18 the Court ruled on 3018, as the settlement with HarbourVest
19 was announced?

20 A Well, the plan -- the terms of the plan made clear that
21 the Class 8 claims would -- would be whatever the final
22 amounts of those claims were going to be. We did resolve the
23 claims of HarbourVest and then ultimately the settlement
24 announced today, but in front of -- in front of the world, in
25 front of the Court, with a 9019 motion.

1 Q Okay. We had finished up with some questioning about the
2 gatekeeper and the injunction provision. Do you recall that?

3 A Yes, I do.

4 Q And you had testified as to the reasons why the Debtor was
5 seeking that particular protection. Do you recall that?

6 A Yes.

7 Q In the absence of that protection, does the Debtor have
8 any concerns that interference by Mr. Dondero could adversely
9 impact the timing of the Debtor's plan?

10 A Well, that's my opinion and what I testified to before. I
11 think the -- the injunction -- the exculpation, the
12 injunction, and the gatekeeper are really critical and
13 essential elements of this plan, because we have to have the
14 ability, unfettered by litigation, particularly vexatious
15 litigation in multiple jurisdictions, we have to be able to
16 avoid that and be able to focus on monetizing the assets and
17 try to maximize value.

18 Q Is there a concern that that value would erode if
19 resources and time and attention are diverted to the
20 litigation you've just described?

21 A Absolutely. The focus of the team has to be on the
22 assets' monetization, creative ways to get the most value out
23 of those assets, and not on defending itself, trying to paper
24 up some sort of litigation defense against vexatious
25 litigation, and also spending time actually defending

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1 ourselves in various courts.

2 Q Okay. Last couple of questions. If there was no
3 gatekeeper provision in the plan, would you accept appointment
4 as the Claimant Trustee?

5 A You broke up. No which provision?

6 Q If there was no gatekeeper provision in the -- in the
7 confirmation order, would you accept the position as Claimant
8 Trustee?

9 A No, I wouldn't. Just -- just like when I came on, there
10 were -- there are some pretty essential elements that I
11 mentioned before. One is indemnification. Two is directors
12 and officers insurance. And three was a gatekeeper function.
13 I want to make sure that we're not at risk, that I'm not at
14 risk, for doing my job.

15 Q And I think you just said it, but if you were unable to
16 obtain D&O insurance, would you accept the position as
17 Claimant Trustee?

18 A No, I would not.

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

20 THE COURT: All right. So, you went two hours and 34
21 minutes in total with your direct. So we'll now pass the
22 witness for cross. And the Objectors get an aggregate of two
23 hours and 34 minutes.

24 Who's going to go first?

25 MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 7**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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1 THE COURT: Okay. Go ahead.

2 MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit
3 6N, the ballot summary, Page 7 of 15 on the top.

4 MR. POMERANTZ: Mr. Morris, you're not on mute.

5 MR. MORRIS: Thank you, sir.

6 MR. RUKAVINA: Mr. Vasek, did you hear me? There it
7 is.

8 CROSS-EXAMINATION

9 BY MR. RUKAVINA:

10 Q Mr. Seery, are you familiar with this ballot tabulation
11 that was filed with the Court and that has been admitted into
12 evidence?

13 A Yes, I believe I've seen this.

14 Q Okay. And this says that 31 Class 8 creditors rejected
15 and 12 Class 8 creditors accepted the plan, correct?

16 A That's correct.

17 Q And since then, I think we've heard that Mr. Daugherty and
18 maybe two other employees have changed their vote to an
19 accept; is that correct?

20 A That's correct, yes.

21 Q Okay. Other than three, those three employees that are
22 changing, do you know of any other Class 8 creditors that are
23 changing their votes?

24 A Mr. Daugherty is not an employee.

25 Q I apologize. Other than those three Class 8 creditors

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1 that are changing their votes, do you know of any other ones
2 that are changing their votes?

3 A No.

4 Q Okay. You didn't tabulate the ballots, did you?

5 A No, I did not.

6 Q Do you have any reason to question the accuracy of this
7 ballot summary that's been filed with the Court?

8 A No, I do not.

9 Q Okay. You mentioned that many of the people that rejected
10 the plan are former employees who you don't think will
11 ultimately have allowed claims, correct?

12 A Not ultimately. I said they don't have them now.

13 Q Okay. Are you aware that the Court ordered that
14 contingent unliquidated claims be allowed to vote in an
15 estimated amount of one dollar?

16 A I'm aware of that, yes.

17 Q Okay. All right. Now, no motion to reconsider that order
18 has been filed, correct?

19 A Not to my knowledge.

20 Q Okay. No objection to these rejecting employees' claims
21 have been filed yet, correct?

22 A Correct.

23 Q Okay. And no motion to strike or designate their vote has
24 been filed as of now, correct?

25 A Correct.

1 MR. RUKAVINA: You can take down that exhibit, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Mr. Seery, the Debtor itself is a limited partnership; I
5 think you confirmed that earlier, correct?

6 A Correct.

7 Q And its sole general partner is Strand Advisors, Inc.,
8 correct?

9 A Correct.

10 Q And to your understanding, the Debtor, as a limited
11 partnership, is managed by its general partner, correct?

12 A Correct.

13 Q Okay. And Strand, that's where the independent board of
14 you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm
15 misspelling, misstating his name -- that's where the board
16 sits, at Strand, correct?

17 A Yes.

18 Q Okay. And that board has been in place since about
19 January 9, 2020?

20 A Yes.

21 Q Okay. Strand is not a debtor in bankruptcy, correct?

22 A No.

23 Q Okay. Do you have any understanding as to whether, under
24 non-bankruptcy law, a general partner is liable for the debts
25 of the limited partnership that it manages?

1 A I do.

2 Q Okay. What's your understanding?

3 A Typically, a general partner is liable for the debts of
4 the partnership.

5 Q Okay. And under the plan, Strand itself is an exculpated
6 party and a protected party and a released party for matters
7 arising after January 9, 2020, correct?

8 A Yes.

9 Q Okay. You mentioned that you're the chief executive
10 officer and chief restructuring officer in this case for the
11 Debtor, correct?

12 A For the Debtor, yes.

13 Q Yeah. You are not a Chapter 11 trustee, right?

14 A No.

15 Q Okay. You are one of the principal authors of this plan,
16 correct?

17 A Consultant.

18 MR. MORRIS: Objection to the form of the question.

19 THE COURT: Sustained.

20 BY MR. RUKAVINA:

21 Q You are --

22 THE COURT: Sustained.

23 BY MR. RUKAVINA:

24 Q You are --

25 THE COURT: Rephrase.

1 BY MR. RUKAVINA:

2 Q -- one of the principal --

3 MR. RUKAVINA: I apologize.

4 BY MR. RUKAVINA:

5 Q You had input in creating this plan, didn't you?

6 A I did, yes.

7 Q Okay. And you're familiar with the plan's provisions,
8 aren't you?

9 A Yes.

10 Q Okay. And you, of course, approve of the plan, correct?

11 A Yes.

12 Q Okay. And you are, of course, familiar generally with
13 what the property of the estate currently is, correct?

14 A Yes.

15 Q Okay. And part of the purpose of the plan, I take it, is
16 to vest that property in the Claimant Trust in some respects
17 and the Reorganized Debtor in some respects, correct?

18 A I don't -- I don't know if that's a fair characterization.
19 Some property -- maybe some property will stay with the
20 Debtor, some will be transferred directly to the Trust.

21 Q Okay. All property of the estate as it currently exists
22 will stay with the Debtor or go to the Trust, correct?

23 A Yes.

24 Q Okay. And under the plan, the Creditor Trust will be
25 responsible for payment of prepetition claims, correct?

1 A Yes.

2 Q And under the plan, the Creditor Trust will be responsible
3 for the payment of postpetition pre-confirmation claims,
4 correct?

5 A Do you mean admin claims? I don't --

6 Q Sure.

7 A I don't understand your question. I'm sorry.

8 Q Yes. We can call them admin claims.

9 A Yeah. Those -- they'll be -- they will be paid on the
10 effective date or in and around that time. So I'm not sure if
11 that's actually going to be from the Trust, but I think it's
12 actually from the Debtor, as opposed to from the Trust.

13 Q Okay. But after the creation of the Claimant Trust, --

14 A Uh-huh.

15 Q -- whatever administrative claims are not paid by that
16 time will be assumed by and paid from the Claimant Trust,
17 correct?

18 A I don't recall that specifically.

19 Q Is it your testimony that the Reorganized Debtor will be
20 obligated post-effective date of the plan to pay any admin
21 claims that are then unpaid?

22 MR. MORRIS: Objection to the form of the question.

23 THE COURT: Sustained. Rephrase.

24 BY MR. RUKAVINA:

25 Q Who pays unpaid admin claims under the plan once the plan

1 goes effective?

2 A I believe the Debtor does. The Reorganized Debtor.

3 Q Okay. The Reorganized Debtor also gets a discharge,
4 correct?

5 A Yes.

6 Q Okay. And there is no bankruptcy estate left after the
7 plan goes effective, correct?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Overruled.

10 MR. RUKAVINA: Your Honor, I have the right to know
11 what the objection to my question is.

12 THE COURT: I overruled.

13 MR. MORRIS: Okay.

14 THE COURT: I overruled the objection.

15 MR. RUKAVINA: Thank you.

16 BY MR. RUKAVINA:

17 Q Mr. Seery, do you remember my question?

18 A That whether there was a bankruptcy estate after the
19 effective date?

20 Q Yes.

21 A There wouldn't be a bankruptcy estate anymore, no.

22 Q Okay. Under the plan, the creditors, to the extent that
23 they have their claims allowed, the prepetition creditors,
24 they're the beneficiaries of the Claimant Trust, correct?

25 A They are some of the beneficiaries, yes.

1 Q Okay. And you would be the Trustee, I think you said, of
2 the Claimant Trust?

3 A Of the Claimant Trust, yes.

4 Q Okay. And you will have fiduciary duties to the
5 beneficiaries of the Claimant Trust, correct?

6 A I believe I have some, yes.

7 Q Okay. Well, as the Trustee, you will have some fiduciary
8 duties; you do agree with that?

9 A That's what I said, yes.

10 Q Okay. What's your understanding of what those fiduciary
11 duties to the beneficiaries of the Claimant Trust will be?

12 A I think they'll be -- they are cabined to some degree by
13 the provisions of the agreement, but generally there will be a
14 duty of care and a duty of loyalty.

15 Q Do you feel like you'll have a duty to try to maximize
16 their recoveries?

17 A That depends.

18 Q On what?

19 A My judgment on what's the -- if I'm exercising my duty of
20 care and my duty of loyalty.

21 Q Okay. But surely you'd like to, whether you have a duty
22 or not, you'd like to maximize their recoveries as Trustee,
23 wouldn't you?

24 A Yes.

25 Q Okay. Now, in addition to the beneficiaries, which I

1 believe are the Class 8 and Class 9 creditors, the plan
2 proposes to give non-vested contingent interests in the Trust
3 to certain holders of limited partnership interests, correct?

4 A Yes.

5 Q Okay. And those non-vested contingent interests would
6 only be paid and would only vest if and when all unsecured
7 creditors and subordinated creditors are paid in full, with
8 interest, correct?

9 A Yes.

10 Q Okay. And those non-vested contingent interests are a
11 property interest, although they're an inchoate property
12 interest, correct?

13 A I don't know. I think I testified in my deposition that I
14 -- I reached for inchoate, but I'm not an expert in the
15 definitions of property interests. I don't know if they're
16 too ethereal to be considered a property interest.

17 Q Okay.

18 MR. RUKAVINA: Mr. Vasek, will you please pull up Mr.
19 Seery's deposition at Page 215? And if you'll go to Page 200
20 -- can you zoom -- can you zoom that in a little bit? Mr.
21 Vasek, can you zoom on that?

22 MR. VASEK: Just a moment. There's some sort of
23 issue here.

24 MR. RUKAVINA: Okay. And then go to Page 216.
25 Scroll down to 216, please.

1 MR. VASEK: Okay. I can't see it, so --

2 MR. RUKAVINA: Okay. Stay, stay where you are. Go
3 down one more row.

4 BY MR. RUKAVINA:

5 Q Okay. Mr. Seery, can you see this?

6 A Yes.

7 Q Okay. So, I ask you on Line 21, "They may be a property
8 interest, but inchoate only, correct?" And you answer, "That
9 is my belief. I don't claim to be an expert on the different
10 types of property interests," --

11 MR. RUKAVINA: Mr. Vasek, can you go to the next
12 page?

13 BY MR. RUKAVINA:

14 Q (continues) "-- whether they be inchoate, reversionary,
15 ethereal. I don't claim to be an expert on the different
16 types of property interests."

17 Do you see that answer, sir?

18 A Yes.

19 Q And do you stand by your answer given on Lines 23 through
20 Line 4 of the next page?

21 A Yes.

22 Q Okay. And these non-vested contingency -- contingent
23 interests in the Claimant Trust, they may have some value in
24 the future, correct?

25 A Yes.

1 MR. RUKAVINA: Okay. You can take that down, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Have you tried to see whether anyone outside this case, or
5 anyone at all, would pay anything for those unvested
6 contingent interests to the Claimant Trust?

7 A No.

8 Q Okay. Now, the Debtor is a registered investment advisor
9 under the Investment Advisers Act of 1940; is that correct?

10 A That's correct.

11 Q And under that Act, the Debtor owes a fiduciary duty to
12 the funds that it manages and to the investors of those funds,
13 correct?

14 A Clearly to the funds, and generally to the investors more
15 broadly, yes.

16 Q Okay. And would you agree that that duty compels the
17 Debtor to look for the interests of the funds and the
18 investors of those funds ahead of its own interests?

19 A Generally, but it's a much more fine line than what you're
20 describing. It means you can't -- the manager can't put its
21 own interests in front of the investors and the funds. It
22 doesn't mean that the manager subordinates its interest in the
23 -- to the investors and the funds.

24 MR. RUKAVINA: Well, Mr. Vasek, please pull up the
25 October 20th transcript at Page 233.

1 MR. MORRIS: What transcript is this?

2 MR. RUKAVINA: October 20, 2019. Mr. Vasek has the
3 docket entry.

4 MR. MORRIS: Oh, so it's the -- Your Honor, I just do
5 want to point out that Mr. Rukavina objected, in fact, to the
6 use of trial transcripts, but we'll get to that when we put on
7 our evidence, when we finish up.

8 MR. RUKAVINA: Well, Your Honor, I believe that
9 you're allowed to use a trial transcript to impeach testimony,
10 which is what I'm going to do now.

11 So, for that purpose, Mr. Vasek, if you could -- are you
12 on Page 233?

13 THE COURT: And just so the record is clear, this is
14 from October 2020, not October 2019, which is, I think, what I
15 heard. Continue.

16 MR. MORRIS: Your --

17 MR. RUKAVINA: Your Honor, I apologize, you did hear
18 that and I did make a mistake. Yes, this is at Docket 1271.

19 Mr. Vasek, if you'll scroll down, please. Okay. No, stop
20 there.

21 BY MR. RUKAVINA:

22 Q And you see on Line 16, sir, you're asked your
23 understanding, and then you answer, "Okay." "And in
24 exercising those duties, the manager, under the Advisers Act,
25 has a duty to subordinate its interests to the interests of

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1 those investors in the CLOs, correct?" And you answer --

2 MR. RUKAVINA: Go down, Mr. Vasek.

3 BY MR. RUKAVINA:

4 Q -- "I think -- I think, generally, when you think about
5 the fiduciary duty, and I think that we -- I want to make sure
6 I'm very specific about this, is that the manager has a duty,
7 fiduciary duties -- there's a whole bunch of legal analysis of
8 what they are, but they are significant -- that the manager
9 owes to the investors. And to the extent" --

10 MR. RUKAVINA: Scroll down, please.

11 BY MR. RUKAVINA:

12 Q "And to the extent that the manager's interests would
13 somehow be -- somehow interfere with the investors' in the
14 CLO, he is supposed to -- he or she is supposed to subordinate
15 those to the benefit of the investors."

16 Did I read that accurately, Mr. Seery?

17 A You did.

18 Q Was that your testimony on October 20th last?

19 A Yes.

20 Q Okay. Are you willing to revise your testimony from a few
21 minutes ago that the manager does not have to subordinate its
22 interests to the interests of the investors?

23 A No. I think that's very similar.

24 Q Okay.

25 A You left out the part about garbled up top where I said it

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1 was nuanced, almost exactly what I just said. On Line 9, I
2 believe, on the prior page.

3 Q Well, I heard you say a couple of minutes ago, and maybe I
4 misunderstood because of the WebEx nature, that the manager
5 does not have to subordinate its interests to the interests of
6 the investors. Did I misheard you say that a few minutes ago?

7 A I think you misheard it. I said it's a nuanced analysis,
8 and it's -- it's pretty significant. But the manager does
9 subordinate his general interest and assures that the CLO or
10 any of the investors' interests are paramount, but he doesn't
11 subordinate every single interest.

12 For example, and I think it's in this testimony, the
13 manager, if the fund isn't doing well, doesn't just have to
14 take his fee and not get paid. He's allowed -- entitled to
15 take his fee. He doesn't subordinate every single interest of
16 his. He doesn't give up his home and his family. So it's --
17 it's a nuanced analysis. The interests of the manager are
18 subordinated to the interests of the investors and the fund.
19 I don't -- I don't disagree with anything I said there. I
20 think I'm consistent.

21 Q Okay.

22 MR. RUKAVINA: You can take that down, Mr. Vasek.

23 BY MR. RUKAVINA:

24 Q So, how do you describe, sir, the fiduciary duty that the
25 Debtor owes to the funds that it manages and to the investors

1 in those funds?

2 MR. MORRIS: Objection to the -- to the extent it
3 calls for a legal conclusion, Your Honor. I just want to make
4 sure we're -- we're asking a witness for his lay views.

5 THE COURT: Okay. I overrule the objection. He can
6 answer.

7 THE WITNESS: Yes. As a manager of a fund, the
8 manager is a fiduciary to the fund, and sometimes to the
9 investors, depending on the structure of the fund. Some funds
10 are purposely set up where the investors are actually debt-
11 holders, and their interests are much more cabined by the
12 terms of the contract, as opposed to straight equity holders.
13 But the manager has a duty to seek to maximize value of the
14 assets in the best interests of the underlying -- of the fund
15 and the underlying investors, to the extent that it can,
16 within the confines and structure of the fund.

17 BY MR. RUKAVINA:

18 Q Okay. And these duties as you just described them, they
19 would apply to the Reorganized Debtor, correct?

20 A They would apply to the Reorganized Debtor to the extent
21 that it's a manager for a fund, not, for example, with respect
22 to necessarily interests -- the inchoate interests that we
23 talked about earlier.

24 Q Sure. And I apologize, I meant just for the fund. And if
25 the manager, the Reorganized Debtor, breaches those duties,

1 then it's possible that there's going to be liability,
2 correct?

3 A It's possible.

4 Q Okay. Now, under the plan, the limited partnership
5 interests in the Reorganized Debtor will be owned by the
6 Claimant Trust, correct?

7 A Yes.

8 Q Okay. And there's a new entity called New GP, LLC that
9 will be created or already has been created, correct?

10 A Yes.

11 Q Okay. And that entity will hold the general partnership
12 interest in the Reorganized Debtor, correct?

13 A I believe that's correct.

14 Q Okay. And that entity -- that being New GP, LLC -- will
15 also be owned by the Claimant Trust, correct?

16 A Yes.

17 Q Okay. Who will manage the Reorganized Debtor?

18 A The G -- the GP will manage the Reorganized Debtor.

19 Q Okay. And will there be an officer or officers of the
20 Reorganized Debtor, or will it all be managed through the GP?

21 A It'll be managed through the GP.

22 Q Okay. And who will manage the GP?

23 A Likely, I will.

24 Q Okay. That's the current plan, that you will?

25 A I'll be the Claimant Trustee, and I believe that I'll be

1 responsible for any assets that remain in the Reorganized
2 Debtor, yes.

3 Q Okay. Right now, the Debtor is managing its own assets as
4 the Debtor-in-Possession, right?

5 A Yes.

6 Q And it is managing various funds and CLOs, right?

7 A Yes.

8 Q Okay. And right now, the Debtor is attempting to reduce
9 some of its assets to money, like the promissory notes that
10 you mentioned earlier that the Debtor filed suit on, correct?

11 A Yes.

12 Q And the Debtor is trying to reduce some of its assets to
13 money, like the promissory notes, to benefit its creditors,
14 correct?

15 A Yes.

16 Q Okay. And correct me if I'm wrong, but the Committee has
17 filed various claims and causes of action against Mr. Dondero,
18 correct?

19 A They -- they've filed some. I haven't -- I haven't looked
20 at their (indecipherable) closely, but --

21 Q Okay.

22 A -- some are preserved in the case.

23 Q You understand --

24 A In the plan. I'm sorry.

25 Q You understand that the Committee is doing that for the

1 benefit of the estate, correct?

2 A Yes.

3 Q And you understand that they're also doing that for the
4 benefit of creditors, correct?

5 A Yes.

6 Q Okay. And under the plan, just so that I'm clear, those
7 claims that the Committee has asserted will be preserved and
8 will vest in either the Claimant Trust or the Litigation Sub-
9 Trust, correct?

10 A Yes.

11 Q Okay. And under the plan, the Reorganized Debtor would
12 continue to manage its assets, correct?

13 A Yes.

14 Q And it would continue to manage the Funds and the CLOs,
15 correct?

16 A Yes.

17 Q And the Claimant Trust would attempt to liquidate and
18 distribute to its beneficiaries the assets that are
19 transferred to it, correct?

20 A Yes.

21 Q Okay. And you mentioned that the Claimant Trust will have
22 an Oversight Board comprised of five members, right?

23 A Yes.

24 Q And four of them will be the people that are currently on
25 the Committee, right?

1 A Yes.

2 Q And the fifth is David Pauker, and I think you mentioned
3 that he's independent. David Pauker is the fifth member,
4 right?

5 A Yes.

6 Q Who -- who is he?

7 A David Pauker is a very well-known professional in the
8 restructuring world. He's a long-time financial advisor in --
9 in reorganizations. He's served on numerous boards in
10 restructuring -- restructurings.

11 Q Okay. So, other than a different corporate structure and
12 the Claimant Trust, the monetization of assets for the benefit
13 of creditors would continue post-confirmation as now, correct?

14 A I -- I believe so. I'm not exactly sure what you asked
15 there.

16 Q No one is putting in any new money under the plan, are
17 they?

18 A No. No.

19 Q Okay. There's no exit financing contingent on the plan
20 being confirmed, right?

21 A You mean no exit -- the plan is not contingent on exit
22 financing. I think you just mixed up your -- your financing
23 and your plan.

24 Q I apologize. There's no exit financing in place today,
25 correct?

1 A No.

2 Q Okay. So, post-confirmation, you are basically going to
3 continue managing the CLOs and funds and trying to monetize
4 assets for creditors the same as you are today, correct?

5 A Similar, yes.

6 Q Okay. And just like the Committee has some oversight role
7 in the case, the members of the Oversight Board will have some
8 oversight role post-confirmation, correct?

9 A Yes.

10 Q Okay. You don't need anything in the plan itself to
11 enable you to continue managing the Debtor and its assets,
12 correct?

13 A I don't need anything in the plan?

14 Q Correct.

15 A I don't -- I don't understand the question. Can you
16 rephrase it?

17 Q Well, you are managing the Debtor and its assets today,
18 correct?

19 A Yes.

20 Q Okay. Nothing in the plan is going to change that,
21 correct?

22 A Well, it's going to change it a lot.

23 Q Okay. Well, with respect to you managing the Funds and
24 the CLOs, you don't need anything in the plan that you don't
25 have today to keep managing them, do you?

1 A No. The Debtor manages them, and I will -- I'm the CEO
2 and I'll be in a similar position with a different team.

3 Q Okay. And I believe you told me that you expect the
4 Debtor to administer the CLOs for two or three years, maybe?

5 A However long it takes, but we expect -- our projections
6 are that we'd be able to monetize most of the assets within
7 two years.

8 Q Does that include the CLOs?

9 A It does, yes.

10 Q Okay. Now, you're going to be the person for the
11 Reorganized Debtor in charge of managing the CLOs, correct?

12 A I'll be the person responsible for managing the
13 Reorganized Debtor. The Reorganized Debtor will be the
14 manager of the CLOs.

15 Q Okay. But the buck will stop with you at the Reorganized
16 Debtor, right?

17 A Yes.

18 Q Okay. You're going to have a team of employees and
19 outside professionals helping you, but ultimately, on behalf
20 of the Reorganized Debtor, you're going to be the one in
21 charge of managing the CLOs, correct?

22 A Yes.

23 Q Okay. That means that you'll also be making decisions as
24 to when to sell assets of the CLOs, correct?

25 A Yes.

1 Q Okay. And to be clear, the CLOs, they own their own
2 assets, whatever they are, and the Debtor just manages those
3 assets, right?

4 A Correct.

5 Q The Debtor doesn't directly own those assets, right?

6 A No.

7 Q And currently there's more than one billion dollars in CLO
8 assets that the Debtor manages?

9 A Approximately.

10 Q Yeah. And the Debtor receives fees for its services,
11 correct?

12 A Yes.

13 Q Can you generally describe how the amount of those fees is
14 calculated and paid, if you have an understanding?

15 A How the fees are calculated and paid?

16 Q Yes, sir.

17 A It's a percentage of the assets.

18 Q Assets administered or assets sold in any given time
19 period?

20 A Administered.

21 Q Okay. So the sale of CLO assets does not affect the fees
22 that the Reorganized Debtor would receive under these
23 agreements?

24 MR. MORRIS: Objection to the form of the question.

25 THE COURT: Over --

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1 THE WITNESS: That's not correct.

2 THE COURT: Overruled.

3 BY MR. RUKAVINA:

4 Q Okay. What is not correct about that?

5 A When you sell the assets, the amount administered shrinks,
6 so you have less fees.

7 MR. RUKAVINA: Your Honor, the answer cut out at the
8 very end. You have less--?

9 THE WITNESS: Fees.

10 BY MR. RUKAVINA:

11 Q Fees? I understand. Okay. So are you saying that there
12 is a disincentive to the Reorganized Debtor to sell assets in
13 the CLOs?

14 A No.

15 Q Okay. Is there an incentive to the Reorganized Debtor to
16 sell assets in the CLOs?

17 A To do their job correctly, yes.

18 Q Okay. And the Debtor wishes to assume those contracts
19 because the Debtor will get those fees going forward and
20 there'll be a profit, even after the expenses of servicing
21 those contracts are taken out, correct?

22 A They are profitable. That's one of the reasons that we're
23 assuming, yes.

24 Q Okay. Now, over my objection, you testified that the CLOs
25 have agreed to the assumption of these contracts, right?

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1 A Yes.

2 Q Okay. Is there anything in the record other than your
3 testimony here today demonstrating that?

4 A I believe there is, yes.

5 Q What do you believe there is in the record other than your
6 testimony?

7 A I believe we filed a notice of assumption.

8 Q Okay. My question is a little bit different. You
9 testified that the CLOs, over my objection, have agreed to the
10 assumption. You did testify so, right?

11 A Yes.

12 Q Okay. What is there in the record, sir, from the CLOs
13 confirming that?

14 A You mean today's record?

15 Q Yes, sir.

16 A I'm the only one who's testified so far.

17 Q Okay. Are you aware of anything in the exhibits that
18 would confirm your testimony?

19 A Not that I know of.

20 Q Has there been an agreement with the CLOs that's been
21 reduced to writing?

22 A Yes.

23 Q So there is a written agreement with the CLOs providing
24 for assumption?

25 A Yes.

1 Q A signed, written agreement?

2 A No, it's -- it's email.

3 Q Okay. When was this email agreement reached?

4 A Within the last couple weeks. There's a number of back
5 and forths where that was agreed to, and I believe we filed a
6 notice of assumption.

7 MR. RUKAVINA: Mr. Vasek, if you will please pull up
8 Mr. Seery's January 29th deposition.

9 BY MR. RUKAVINA:

10 Q Mr. Seery, you remember me deposing you last Friday,
11 correct?

12 A Yes.

13 Q And you remember me asking you if there was a written
14 agreement in place with the CLOs?

15 A I don't recall specifically.

16 MR. RUKAVINA: Okay. Mr. Vasek, if you would please
17 scroll to that. Okay. Stop there.

18 BY MR. RUKAVINA:

19 Q Sir, you'll recall I also deposed you January 20th, right?

20 A Yes.

21 Q Okay. And do you remember that we had some discussion
22 regarding whether the CLOs would consent or not?

23 A Yes.

24 Q Okay. And do you remember telling me something like that
25 like you think that they will and that's still in the works on

1 January 20th?

2 A I don't recall specifically, but if you say that's what it
3 says.

4 Q Okay. Well, here I'm asking you on January 29th, Line 17,
5 "I asked you before and you didn't have anything in writing by
6 then, so let me ask now. As of today, do you have anything in
7 writing from the CLOs consenting to the assumption of those
8 management agreements?" I'm sorry. Contracts. Answer, "I
9 don't believe that I do. It could be on my email I opened. I
10 don't recall."

11 MR. RUKAVINA: Scroll down, Mr. Vasek.

12 BY MR. RUKAVINA:

13 Q Okay. Then I ask, "Do you have an understanding of
14 whether those CLOs have consented in writing to the assumption
15 of the management agreements?" And you answer, "I believe
16 they have. The actual final docs haven't been completed, but
17 I believe they have agreed in writing, yes."

18 Then I ask --

19 MR. RUKAVINA: Scroll down a little bit more.

20 BY MR. RUKAVINA:

21 Q I ask, "Do you expect the final docs to be completed
22 before Tuesday's confirmation hearing?" Answer, "I don't know
23 whether they will be done by Tuesday."

24 Did I read all of that correctly, sir?

25 A Other than your misstatement. The word was "unopened."

1 Q Thank you. So, let me ask you again today. As of today,
2 is there a written agreement that has been signed by the
3 parties providing for the assumption of the CLO agreements?

4 A When phrased the way you did, is it signed by the parties,
5 no.

6 Q Okay.

7 MR. RUKAVINA: You can take that down, Mr. Vasek.

8 BY MR. RUKAVINA:

9 Q I think -- I'm not sure if you quantified this earlier,
10 but it might help. I believe that the Reorganized Debtor
11 projects that it will generate revenue of \$8.269 million post-
12 reorganization from managing the CLO contracts, correct?

13 A It's in that neighborhood. I did not testify to that
14 earlier.

15 Q That's what I meant. And when I asked you at deposition,
16 you were able to give me an estimate of how much it would cost
17 to generate that revenue, correct?

18 A I was not?

19 Q You were? I'm sorry. Let me --

20 A Did you say I wasn't or I was?

21 Q Let me -- I apologize. Let me ask again. I talk too fast
22 and I have an accent. You have been able to give an estimate
23 of how much the Reorganized Debtor will expend to generate
24 that revenue, correct?

25 A Yes.

1 Q Okay. Do you remember what your estimate is?

2 A I -- I think it was around \$2 million a year. It was a
3 portion of our employees plus the contracts.

4 Q Okay. So, over the life of the projection at \$8.2
5 million, do you remember that you projected costs of about
6 \$3.5 to \$4 million to generate that revenue?

7 A If -- if you are representing that to me, I'd accept it.
8 Yes, that sounds about right.

9 Q Well, suffice it to say you're projecting at least \$4
10 million in net profit over the next two years for the
11 Reorganized Debtor from managing the CLO agreements, correct?

12 A Net profit is not a fair, fair way to analyze it, no.

13 Q Okay. Are you projecting any profit for the Reorganized
14 Debtor from managing the CLO agreements post-confirmation?

15 A Yes.

16 Q Okay. Do you have an estimate of what that profit is?

17 A General overview are the contracts are profitable to about
18 the tune of \$4 million over that period.

19 Q Okay. Thank you. If the Reorganized Debtor makes a
20 profit post-confirmation, is it fair to say that that would
21 then be dividended up or distributed up to the partners,
22 ultimately to the Claimant Trust?

23 A I don't think that's fair to say, no.

24 Q Okay. So, if the Reorganized Debtor makes a profit post-
25 confirmation, where does that profit go?

1 A The Reorganized Debtor -- what kind of profit? I don't
2 understand your question.

3 Q Okay. I apologize if I'm being too simplistic about it.
4 If a business, after it takes account of its expenses to
5 generate revenue, has any money left over, would that be
6 profit to you?

7 A Yes.

8 Q Okay. Do you think that the Reorganized Debtor, post-
9 confirmation, will make a profit?

10 A I don't know.

11 Q Okay. Do you think that the Reorganized Debtor, post-
12 confirmation, will lose money?

13 A I think there will be costs, and the costs will exceed the
14 -- the amount that it generates on an income basis, yes.

15 Q Okay. Thank you.

16 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
17 the plan, the injunctions, and releases. 9F.

18 (Pause.)

19 BY MR. RUKAVINA:

20 Q I apologize, Mr. Seery.

21 MR. RUKAVINA: So, Mr. Vasek, if you'll go to the
22 bottom of the Page 51. Stop there.

23 BY MR. RUKAVINA:

24 Q So, I'm going to read just the first couple sentences
25 here, Mr. Seery, if you'll read it along with me. Subject --

1 this is the bottom paragraph: Subject in all respects to
2 Article 12(b), no enjoined party may commence or pursue a
3 claim or cause of action of any kind against any protected
4 party that arose or arises from or is related to the Chapter
5 11 case, the negotiation of the plan, the administration of
6 the plan, or property to be distributed under the plan, the
7 wind-down of the business of the Debtor or Reorganized Debtor.

8 I'd like to stop there. Do you see that clause there, Mr.
9 Seery, talking about the wind-down of the business of the
10 Debtor or Reorganized Debtor? Do you see that, sir?

11 A Yes.

12 Q Okay. Do I understand correctly that this provision we've
13 just read means that, upon the assumption of these CLO
14 management agreements, if the counterparties to those
15 agreements want to take any action against the Reorganized
16 Debtor, they first have to go through this channeling
17 injunction?

18 A I believe that's what it says, yes.

19 Q Okay. Because the wind-down of the business of the
20 Reorganized Debtor will include the management of these CLO
21 portfolio management agreements, correct?

22 A Yes.

23 Q Okay. As well as the management of various funds that the
24 Debtor owns, correct?

25 A Yes.

1 Q Okay. And would you agree with me that the new general
2 partner, New GP, LLC, is also a protected party under the
3 plan?

4 A I assume it is. I don't recall specifically.

5 Q I believe you discussed to some degree postpetition
6 losses. I'd like to visit a little bit about those. Since
7 January 9th, 2020, Mr. Dondero was not an officer of the
8 Debtor, correct?

9 A Correct.

10 Q And since January 9th, 2020, he was no longer a director
11 of Strand, correct?

12 A That's correct.

13 Q Since January 9th, 2020, until he was asked to resign, he
14 was an employee, correct?

15 A Yes.

16 Q And about -- I'm trying to remember. About when did he
17 resign? October something of 2020? Do you remember?

18 A I don't recall.

19 Q Okay. Do you recall if it was in October 2020?

20 A It was in the fall.

21 Q Okay. And he resigned because the independent board asked
22 him to resign, correct?

23 A Yes.

24 Q Okay. And you mentioned that the estate has had a
25 postpetition drop in the value of its assets and the assets

1 that it manages. Right?

2 A I believe I went through the estate's assets. The only
3 asset that wasn't a direct estate asset was the hundred
4 percent control of Select Equity Fund. I didn't talk about
5 the Fund assets.

6 Q Okay. Do you recall that the disclosure statement that
7 the Court approved states that, postpetition, there was a drop
8 from approximately \$566 million to \$328 million in the value
9 of Debtor assets and assets under Debtor management?

10 A Yes. That's the \$200 million I walked through earlier.

11 Q Okay. And I believe you mentioned some of it was due to
12 the pandemic, right?

13 A It certainly impacted the markets. The pandemic didn't
14 cause a specific loss. It impacted the markets and the
15 ability to work within those markets.

16 Q But you also believe that Mr. Dondero was responsible for
17 something like a hundred million dollars of these losses,
18 right?

19 A Probably more.

20 Q Okay. Mr. Dondero is not being released or exculpated for
21 that, is he?

22 A No.

23 Q And while Mr. Dondero was an employee during the period of
24 these losses, he answered to you as CEO and CRO, correct?

25 A Not during that period. I wasn't (audio gap) until later.

1 Q I'm sorry. As of January 9th, 2020, were you the CEO of
2 the Debtor?

3 A No.

4 Q When did you become the CEO of the Debtor?

5 A I believe the order was July 9th, retroactive to a date in
6 March.

7 Q July 9th, 2020?

8 A Correct.

9 Q Okay. And when did you become the CRO of the Debtor?

10 A At the same time.

11 Q Okay. So, between January and July 2020, you were one of
12 the independent directors, correct?

13 A Yes.

14 Q Okay. So, during that period of time, would Mr. Dondero
15 have answered to that independent board?

16 A Yes.

17 Q Okay. Now, if someone alleges that that independent board
18 has any liability on account of Mr. Dondero's losses, that's
19 released under this plan, isn't it?

20 A Yes.

21 Q Okay. And if someone alleges that Strand has any
22 liability on account of Mr. Dondero's losses, that's released
23 under this plan, correct?

24 A Yes.

25 Q Okay. And if someone believes that the Debtor -- that the

1 way that the Debtor has managed the CLOs or its funds
2 postpetition gives rise to a cause of action in negligence,
3 that's also released and exculpated in the plan, correct?

4 A I believe it would be. I'm not positive, but I believe it
5 would be.

6 Q Well, let's be clear. The plan does not release or
7 exculpate you or Strand or the board for willful misconduct,
8 gross negligence, fraud, or criminal conduct, correct?

9 A No, it does not.

10 Q Okay. And I'm not, just so we're clear, I'm not alleging
11 that, okay? So I want the judge to understand I'm not
12 alleging that. But the plan does release and exculpate for
13 negligence, right?

14 A Yes.

15 Q Okay. Where do you have an understanding a cause of
16 action for breach of fiduciary duty lies on the spectrum of
17 negligence all the way to criminal conduct?

18 A It's -- it's not -- generally not criminal, although I
19 suppose that breach of fiduciary duty could be criminal.
20 Typically, it's negligence, and that you would breach a duty
21 for either duty of care, duty of loyalty. But it could slide
22 to willful. And probably most of the instances where they
23 come up are where someone has done something willfully or
24 grossly negligent.

25 Q Okay. But -- and I would agree with you. But there are

1 certain breaches of fiduciary duty that are possible based on
2 simple negligence, correct?

3 A They are, and in these instances, they don't -- they don't
4 rise to actionable claims because they're indemnified by the
5 funds.

6 Q Okay. You have to explain that to me. So, the negligence
7 claim is not actionable because someone is indemnifying it?

8 A Typically, there's no way to recover because it's
9 indemnified by the fund that the investor might be in. If it
10 goes beyond that, then it wouldn't be.

11 Q Okay. So there are potential negligence breach of
12 fiduciary duty claims that might be subject to these
13 exculpations and releases that would not be indemnified?

14 A Gross negligence and willful misconduct, certainly.

15 Q Okay. Now, post-confirmation, post-confirmation, if the
16 Debtor, or the Reorganized Debtor, rather, engages in
17 negligence or any actionable conduct, that's when the
18 channeling injunction comes into play, right?

19 A I don't quite understand your question.

20 Q Okay.

21 A Can you repeat that?

22 Q Sure. To your understanding, does the channeling
23 injunction we're looking at right now -- and you can read it
24 if you need to -- does it apply to purely post-confirmation
25 alleged causes of action?

1 A It does apply to those, yes.

2 Q Okay. And it says that the Bankruptcy Court will have
3 sole and exclusive jurisdiction to determine whether a claim
4 or cause of action is colorable, and, only to the extent
5 legally permissible and as provided for in Article 11, shall
6 have jurisdiction to adjudicate the underlying colorable claim
7 or cause of action.

8 Do you see that, sir?

9 A I do.

10 Q Okay. And this -- the Bankruptcy Court's exclusive
11 jurisdiction here, that would continue after confirmation? Is
12 that the intent behind the plan?

13 A It has -- it says what it says. Will have the sole and
14 exclusive jurisdiction to determine whether a claim is
15 colorable, and then, to the extent permissible, it'll have
16 jurisdiction to adjudicate.

17 Q Okay. Nothing in this plan limits the period of the
18 Bankruptcy Court's inquiry to the pre-confirmation time frame,
19 correct?

20 A I don't believe it does, no.

21 Q Okay. Have you taken into account the potential that this
22 bankruptcy case will eventually be closed with a final decree?

23 A Have I taken that into account?

24 Q Well, do you know what a final decree in Chapter 11 is?

25 A I do.

1 Q Okay. So, help me understand. If there's a final decree
2 and the bankruptcy case is closed, then who do I go to,
3 because the Bankruptcy Court has exclusive jurisdiction, to
4 get this clearing injunction cleared?

5 MR. MORRIS: Objection to the form of the question,
6 Your Honor.

7 THE COURT: Sustained. Rephrase.

8 MR. RUKAVINA: Okay.

9 BY MR. RUKAVINA:

10 Q Is it the plan's intent, Mr. Seery, that this channeling
11 injunction that we just looked at would continue to apply even
12 after a point in time in which the bankruptcy case is closed?

13 A I don't believe so.

14 MR. RUKAVINA: Again, Your Honor, someone -- I heard
15 someone's phone ring when he answered, and I didn't hear his
16 answer, if he could please re-answer.

17 THE WITNESS: I don't -- I don't think if the case is
18 closed that's the intention.

19 BY MR. RUKAVINA:

20 Q Okay. What about if there's a final decree entered?

21 MR. MORRIS: Objection, Your Honor. You know, the
22 document kind of speaks for itself.

23 THE COURT: Overruled. He can answer if he knows.

24 THE WITNESS: Yeah. I don't -- I don't -- I'm not
25 making a distinction between the case being closed and the

1 final decree. I believe in both instances they'll be pretty
2 close to the same time and we'll make a judgment then as to
3 how to close the case in accordance --

4 Q Okay.

5 A -- with the rules.

6 MR. RUKAVINA: Mr. Vasek, if you'll please scroll up
7 to the beginning of this injunction. A little bit higher.
8 Right there. Right there.

9 BY MR. RUKAVINA:

10 Q The very first clause, Mr. Seery, if you'll read with me,
11 says, Upon entry of the confirmation order -- pardon me --
12 all enjoined parties are and shall be permanently enjoined on
13 and after the effective date from taking any actions to
14 interfere with the implementation or consummation of the
15 plan.

16 Do you see that, sir?

17 A I do, yes.

18 Q What does interfering with the implementation or
19 consummation of the plan mean?

20 A It means in some way taking actions to upset, distract,
21 stop, or otherwise prohibit or hurt the estate from
22 implementing or consummating the plan.

23 Q Okay. And is that intended -- is that clause we just
24 read and you described intended to be very broad?

25 A I -- I think it's -- if the words have meaning, yes, that

1 it should -- it's pretty broad.

2 Q Okay. Is the Debtor not able to state with more
3 specificity what it would believe interference with the
4 implementation or consummation of the plan would mean?

5 MR. MORRIS: Objection to the form of the question.

6 THE COURT: Sustained.

7 THE WITNESS: I think it's -- I think it's --

8 THE COURT: Sustained.

9 MR. RUKAVINA: Okay.

10 THE WITNESS: I'm sorry.

11 BY MR. RUKAVINA:

12 Q Well, you just gave us four or five examples of what
13 interfering with the implementation or consummation of the
14 plan might be. Why isn't that, those four or five examples,
15 why aren't they listed here?

16 MR. MORRIS: Object to the form of the question.

17 MR. RUKAVINA: Well, Your Honor, I'll withdraw it
18 and I'll argue this at closing argument.

19 THE COURT: Okay.

20 BY MR. RUKAVINA:

21 Q When did the Committee agree to you serving as the
22 Claimant Trustee?

23 A In the late -- in the late fall. I've been contemplated
24 to be the Claimant Trustee. I'm willing to take -- if we can
25 come to an agreement. They have their options open if we

1 can't come to an agreement on compensation.

2 Q Okay. And since the Committee agreed to you being the
3 Claimant Trustee, you have reached a resolution with UBS,
4 correct?

5 A I don't think so. I think that that was before UBS, the
6 UBS resolution was reached.

7 Q I'm sorry. When did you reach the UBS resolution in
8 principle with UBS?

9 A I don't recall the exact date, but I do recall specific
10 conversations where some of the Committee members were
11 supportive. I didn't know that UBS wasn't, but I assumed
12 that some meant not all. And that was UBS, because I don't
13 think we had a deal yet.

14 Q Well, let me ask the question in a little bit of a
15 different way. Whenever the Debtor reached the agreement in
16 principle with UBS that your counsel described this morning,
17 whenever that point in time was, the Committee had already
18 agreed before that point in time to you serving as Claimant
19 Trustee, correct?

20 A I believe so, yes.

21 Q And is the answer the same with respect to the
22 HarbourVest settlement?

23 A I believe so. With HarbourVest, I believe so as well,
24 yes.

25 Q What about the Acis settlement?

1 A I don't believe so. I think Acis came first. I don't
2 think we settled on an agreement on Claimant Trustee until
3 after the Acis -- certainly after the Acis agreement, maybe
4 not after the Acis 9019. I just don't recall.

5 Q Okay. And the million-dollar cutoff for convenience
6 class creditors, that number was a negotiated amount with the
7 Committee, correct?

8 A Yes.

9 Q Okay. Thank you, Mr. Seery.

10 MR. RUKAVINA: Your Honor, I'll pass the witness.

11 THE COURT: All right. Just for purposes of time,
12 it's 3:00 o'clock, so you went 48 minutes.

13 Who's next?

14 MR. DRAPER: Mr. Taylor is.

15 THE COURT: All right. Mr. Taylor, go ahead.

16 MR. TAYLOR: Yes, Your Honor. At this time, what we
17 would like the Court to do, we are asking for a brief
18 continuance and to go into tomorrow, and there is a reason
19 for that and I would like to explain it.

20 Mr. Dondero has communicated an offer which we believe to
21 be a higher and better offer than what the plan analysis,
22 even in its most recent iteration that was just changed last
23 night, will yield significantly higher recoveries. Those are
24 guaranteed recoveries. There is a cash component to that
25 offer. There are some debt components, but they would be

1 secured by substantially all of the assets of Highland.

2 We believe it's a higher and better offer, that the
3 creditors and the Creditors' Committee, Mr. Seery, who
4 obviously has been testifying all day on the stand, may have
5 heard some -- some inkling of it via a text or an email he
6 might have been able to glance at, or maybe not, because he's
7 been too busy, and that's understandable.

8 But we do believe it is a material offer. It is a real
9 offer. And for that reason, we would like to request the
10 Court's indulgence. This has gone rather fast. We believe
11 that in the event that it does not gain any traction, then we
12 could complete this confirmation hearing tomorrow, or it's
13 more than likely that we could. And therefore we would
14 request a continuance until tomorrow morning beginning at
15 9:30 so all the parties can confer, consider that offer, and
16 see if it gains any traction.

17 THE COURT: All right.

18 MR. POMERANTZ: Your -- Your --

19 THE COURT: Go ahead. Mr. Morris? Or who is going
20 to respond --

21 MR. POMERANTZ: Your --

22 THE COURT: -- to that?

23 MR. POMERANTZ: Your Honor, this is Jeff --

24 THE COURT: Mr. Pomerantz?

25 MR. POMERANTZ: This is Jeff Pomerantz. I will

1 respond.

2 I think right at the beginning of the hearing, or
3 slightly after, I did receive an email from Michael Lynn
4 extending this offer. The email was also addressed to Mr.
5 Clemente. As we have told Your Honor before, if the Committee
6 is interested in continuing negotiations with Mr. Dondero, far
7 be it from us to stand in the way.

8 So what I would really ask is for Mr. Clemente to respond
9 to think if -- to see if he thinks that this offer is worthy.
10 If it's worthy and the Committee wants to consider it, we
11 would by all means support a continuance. If it is not, I
12 think this is just a last-minute delay without a reason. And
13 if there is no likelihood of that being acceptable or the
14 Committee wanting to engage, we would want to continue on.

15 THE COURT: All right. Mr. Clemente, what say you?

16 MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente
17 on behalf of the Committee.

18 Obviously, I haven't had a chance to confer with my
19 Committee members, but there's no reason to not continue the
20 confirmation hearing today. I will be able to confer with
21 them over email, et cetera, this evening. There's simply no
22 reason to not continue going forward at this particular point
23 in time, Your Honor.

24 So, although I haven't conferred with the Committee
25 members, that would be what I would recommend to them. And so

1 my view, the Committee's view, I believe, would be let's
2 continue forward and we'll discuss Mr. Dondero's proposal that
3 I know came across after opening statements this morning, you
4 know, in due course. But I do not believe that a continuance
5 here is necessary or appropriate.

6 THE COURT: All right. Mr. Taylor, that request is
7 denied, so you may cross-examine.

8 MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor.
9 I have a couple people that are in my ear. But yes, I'm ready
10 to proceed.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Seery, I believe you can probably largely testify from
15 your memory of the various iterations of the plan analysis
16 versus the liquidation analysis. But to the extent that
17 you're unable to, we can certainly pull those up.

18 Mr. Seery, you put forth or Highland put forth on November
19 24th of 2020 a plan analysis versus a liquidation analysis,
20 correct?

21 A I think that's the approximate date, yes.

22 Q Okay. And do you recall what the plan analysis predicted
23 the recovery to general unsecured creditors in Class 8 would
24 be at that time?

25 A I believe it was in the 80s.

1 Q And approximately 87.44 percent?

2 A That sounds close, yes.

3 Q Okay. And then just right before -- the evening before
4 your deposition that took place on January 29th, I believe a
5 revised plan analysis versus a liquidation analysis was
6 provided. Do you remember that?

7 A Yes.

8 Q Okay. And what was the predicted recovery to general
9 unsecured creditors under that analysis?

10 A I believe that was --

11 MR. MORRIS: Object to the form of the question. I
12 just want to make sure that we're talking about the -- and
13 maybe I misunderstood the question -- plan versus liquidation.

14 THE COURT: Okay. Could you restate --

15 MR. TAYLOR: I said plan analysis.

16 THE COURT: Plan.

17 THE WITNESS: I believe that that initially was in
18 the -- in the high 60s.

19 BY MR. TAYLOR:

20 Q It was --

21 A Might have been --

22 Q -- 62.14 percent; is that correct?

23 A Okay. Yeah. That sounds -- I'll take your
24 representation. That's fine.

25 Q Okay. And going back to the November 28th liquidation

1 analysis, what did Highland believe that creditors in Class 8
2 would get under a liquidation analysis?

3 A I don't recall the -- if you just tell me, I'll -- I'll --
4 if you're reading it, I'll agree with -- because I -- from my
5 memory.

6 Q 62.6 percent? Is that correct?

7 A That sounds about right.

8 Q You would agree with me, would you not, that 62.6 cents on
9 the dollar is higher than 62.14 cents, correct?

10 A Yes.

11 Q And so at least comparing the January 28th versus -- of
12 2021 versus the November 24th of 2020, the liquidation
13 analysis actually ended up being higher than the plan
14 analysis, correct?

15 A Yes.

16 Q But there was -- there was some changes also in the plan
17 analysis. I'm sorry. There were some subsequent changes that
18 were done over the weekend that were provided on February 1st.
19 Is that correct?

20 A Yes.

21 Q Okay. And what were -- give us an overview of what those
22 changes were.

23 A What are -- what are you comparing? What would you like
24 me to compare?

25 Q Okay. The January to February plan analysis, what were

1 the changes? Why did it go up from 62.6 to 71.3?

2 A The main changes, as we discussed earlier, and maybe the
3 only major change, was the UBS claim amount, which went down
4 significantly from the earlier iteration. And then there was
5 the small change related to the RCP recovery, which was a
6 double-count.

7 Q Okay. And you talked about earlier about what assumptions
8 went into these analyses, correct?

9 A Yes.

10 Q And you said these assumptions were always done after
11 careful consideration. Is that a correct summation of what
12 you said?

13 A I think that's fair.

14 Q Okay.

15 MR. TAYLOR: Mr. Assink, could you pull up the
16 November assumptions?

17 BY MR. TAYLOR:

18 Q I believe that's coming up, Mr. Seery. The Court.

19 (Pause.)

20 MR. TAYLOR: And go down one page, please, Mr.
21 Assink. Roll up. The Assumption L.

22 BY MR. TAYLOR:

23 Q So, these are the November assumptions, correct, Mr.
24 Seery?

25 A I believe so, yes.

1 Q Okay. And what was the assumption that you made after
2 careful consideration regarding the claims for UBS and
3 HarbourVest?

4 A The plan assumes zero, that was L, for those claims.

5 Q Okay. And ultimately what did -- and I believe you just
6 announced this today and made this public today -- what is
7 UBS's claim? What are you proposing that it be allowed at?

8 A \$50 million in Class 8, and then they have a junior claim
9 as well.

10 Q Okay. And what about HarbourVest? What kind of allowed
11 claim did they end up with?

12 A \$45 million in Class 8 and a \$35 million junior claim.

13 Q So your well-reasoned assumption, carefully considered,
14 was off by \$95 million; is that correct?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Overruled.

17 THE WITNESS: The difference between zero and those
18 numbers is \$95 million, yes.

19 BY MR. TAYLOR:

20 Q You solicited creditors of the Highland estate based upon
21 the November plan analysis and liquidation analysis that was
22 provided and that we're looking at right now, correct?

23 A It was one of the bases, yes. It's the plan is what --
24 what we solicited votes for, not the projections.

25 Q But this was included within the disclosure statement; is

1 that correct?

2 A It's one of the bases. It was included, yes.

3 Q And this is the bases by which you believe that the best
4 interests of the creditors have been met better than a Chapter
5 7 liquidation, correct?

6 A I believe this evidences that the best interest test would
7 be satisfied, yes.

8 Q And so the record is very clear, for this Court and
9 anybody looking at the record, no solicitation was done of the
10 creditor body after the disclosure statement was sent out? No
11 updates were sent, correct?

12 A Updated projections were filed, but no solicitation was --
13 was -- there was only one solicitation. We did not resolicit.
14 That's correct.

15 Q Okay. Mr. Seery, how much are you -- after this plan, or
16 if this plan is confirmed, how much are you going to be paid
17 per month to be the Trustee?

18 A For the Trustee role, \$150,000 per month is the base.

19 Q It's a base amount? On top of that, you're going to
20 receive some sort of bonus amount, correct?

21 A There's two bonuses. There's a bonus for the bankruptcy
22 case, which I'd need Court approval for, and then I'm going to
23 seek a bonus for the Trustee work, which would be a
24 combination of myself and the team for a performance bonus.
25 That's to be negotiated.

1 To be fair, the Committee or the Oversight Group may not
2 agree to any change, in which case we would not have an
3 agreement.

4 Q And what would happen if you don't come to an agreement,
5 Mr. Seery?

6 A They would have to get a different Plan Trustee.

7 Q Okay. So it's certainly going to have to be greater than
8 zero, correct?

9 A Typically.

10 Q Is it going to be in the nature of three or four percent
11 of the sales proceeds, or have you considered that?

12 A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been
13 thinking -- my apologies. I misunderstood. I thought you
14 meant any number. I haven't -- I haven't had negotiation with
15 them. I'm thinking about looking at the full recovery of the
16 team -- for the team, looking at expected performance numbers,
17 and then trying to negotiate a structure of bonus compensation
18 that would be payable to the whole team, and then allocated by
19 the CEO (garbled) which would be made.

20 Q When predicting the expenses of the Trust going forward in
21 your projections, did you build in an amount for a bonus fee?

22 A No. It wouldn't be part of the expenses. It would come
23 out at the end.

24 Q Okay. So those additional expenses are not shown in the
25 plan analysis, correct?

1 A No, they're not. It's just not going to be an expense.
2 It'll be a -- as an operating expense. It'll be an
3 expenditure at the end out of distributions.

4 Q Okay. And did you subtract those from the distributions?

5 A No.

6 Q Okay. A Chapter 7 trustee is not going to charge \$150,000
7 or more to monetize these assets, is he?

8 A No.

9 Q Have you priced how much D&O insurance is going to be on a
10 go-forward basis post-confirmation?

11 A I'm sorry. I couldn't -- couldn't hear you.

12 Q Sorry. Let me get closer to my mic. Have you priced what
13 D&O insurance is going to run the Trust on a go-forward basis
14 post-confirmation?

15 A Yes.

16 Q Okay. And what are you projecting that to run?

17 A About \$3-1/2 million.

18 Q And is that per annum for over the two-year life of this
19 plan?

20 A Well, it's the two-year projection period, not life. But
21 I expect that that's for the two-year projection period.

22 Q Okay. So approximately one point -- I'm sorry, you said
23 \$3.5 million, correct?

24 A Yes.

25 Q Okay. So, \$1.75 million per year?

1 A Yes.

2 Q On top of the minimum \$1.8 million per year that you're
3 going to be paid, correct?

4 A Well, that's -- that's the base compensation. But, again,
5 to be fair to the Oversight Committee, they haven't approved
6 it yet. So the Committee, the Committee reserves their rights
7 to negotiate a total package.

8 Q And there's going to be a Litigation Trustee, correct?

9 A Yes.

10 Q And that Litigation Trustee is going to be paid some
11 amount of compensation, correct?

12 A Yes.

13 Q That has not been negotiated yet, correct?

14 A No, I believe -- I believe the base piece has. But his --
15 I don't know what the contingency fee or if that's been
16 negotiated yet. I don't know.

17 Q And what is the base fee for the Litigation Trustee?

18 A My recollection is it was about \$250,000 a year, some
19 number in that area.

20 Q Thank you. So, at this point, over the two-year period,
21 we're looking at approximately \$3.6 million to you, \$3.5
22 million to the D&O insurance, and approximately \$500,000 base
23 fee to the Litigation Trustee, plus a contingency. Is that
24 correct?

25 A That's probably real close, yes.

1 Q Okay. And how about U.S. Trustee fees? You've estimated
2 of how much those are going to be during the two-year period,
3 correct?

4 A They're built into the plan up 'til -- I think it's only
5 up until the actual effective date, but I don't recall the
6 specifics.

7 Q Okay. And U.S. Trustee fees, the case is going to stay
8 open and those are going to continue to have to be paid, even
9 after confirmation, correct?

10 A Yes.

11 Q Okay. And do you have an estimate of how much those are
12 going to run per annum or over that two-year period?

13 A I don't recall, no.

14 Q Okay. Well, they're provided within your projections,
15 correct?

16 A Yes.

17 Q Okay. A Chapter 7 trustee would not have to incur any of
18 these costs, would they?

19 A I don't think they'll have to incur Chapter -- U.S.
20 Trustee fees. I don't know whether they would bring on a
21 litigation trustee or not. I would assume, since there's --
22 appear to be valuable claims, they probably would, but perhaps
23 they would do it themselves. So I don't know the specifics of
24 what they would do.

25 Q In preparing your liquidation analysis, did you ask

1 Pachulski if they would be willing to work for a Chapter 7
2 trustee if one was appointed?

3 A I didn't specifically ask, no.

4 Q Did you ask DIS, your, for lack of a better word,
5 financial advisors in this case, if they would be willing to
6 work with a Chapter 7 trustee?

7 A DSI. No, I did not specifically ask them.

8 Q Okay. All right. Any of the accountants that you're
9 working with, did you ask them if they would be willing to
10 work with a Chapter 7 trustee?

11 A I didn't specifically ask them, no.

12 Q Okay. The proposed plan has no requirements that you
13 notice any potential sale of either Highland assets or
14 Highland subsidiary assets; is that correct?

15 A Do you mean after the effective date?

16 Q Yes.

17 A No, it does not.

18 Q In the SSP sale, which is a subsidiary of Trussway, which
19 is a subsidiary of Highland, or actually it's a sub of a sub
20 of Highland, you conducted the sale of SSP, correct?

21 A The team did, yes. I was part.

22 Q All right. That was not noticed to the creditor body; is
23 that correct?

24 A That's correct.

25 Q And it is the Debtor's and your position that no notice

1 was required because this was a sub of a sub and therefore
2 this was in the ordinary course?

3 A Not exactly, no.

4 Q Okay. Then what is your position?

5 A It was in the ordinary course. It was -- I believe it's a
6 sub of a sub of a sub, and a significant portion of the
7 interests are owned by third parties.

8 Q It is possible, is it not, that had you noticed this to
9 the larger creditor body, that you might have engendered a
10 competitive bidding situation that might have reached a higher
11 return for investors, correct?

12 A The same possibility is it could have gone lower.

13 Q But it is possible, correct?

14 A Certainly possible.

15 Q In fact, there is normally requirements under the
16 Bankruptcy Code and the Rules that asset sales are noticed out
17 to the creditor body, correct?

18 A Asset sales that -- property of the estate, yes. Other
19 than in the ordinary course, of course.

20 Q I believe you have described Mr. Dondero as being very
21 litigious within this case; is that correct?

22 A I believe so, yes.

23 Q Okay. Did Mr. Dondero initiate any litigation in this
24 case prior to September 2020?

25 A Prior to September? I don't believe so. I don't know

1 when he filed the claim from NexPoint. It certainly indicated
2 that -- I believe it was from NexPoint. My memory is slightly
3 off here. He filed a claim in -- administrative claim, which
4 effectively is like you're bringing a complaint, against HCMLP
5 for the management of Multi-Strat and the sale of the life
6 settlement policies out of Multi-Strat, which was conducted in
7 the spring.

8 Q And wasn't Mr. Dondero seeking document production related
9 to that sale?

10 A No.

11 Q Okay. I believe that the preliminary injunction that you
12 talked about and were questioned earlier, the plan asks to
13 enjoin (garbled) party from allowing the plan to go effective.
14 Is that correct?

15 A I'm sorry. I didn't understand your question. There was a
16 -- there was a bunch of interference.

17 Q Okay. Sure. I'm sorry about that. I don't know if
18 that's -- I don't think that's me, but --

19 A It may not be. It sounded like someone else.

20 Q The injunction prohibits anybody from interfering with the
21 plan going effective, correct?

22 A The plan injunction?

23 Q Yes.

24 A Yes.

25 Q Okay. Just so I'm clear, is the plan injunction

1 attempting to strip appellate rights of Mr. Dondero?

2 A No.

3 Q Okay. So, if, for instance, if he were to file any appeal
4 of an order confirming this plan, he wouldn't be in violation
5 of that plan injunction?

6 A I don't think so, because the order wouldn't be final.

7 Q Okay. But it -- it says upon entry of a confirmation
8 order, you're enjoined from doing so. So that's not the
9 intent?

10 A It certainly would not be my intent. I don't think that
11 anybody had that in mind.

12 Q Okay. And if Mr. Dondero were to seek a stay pending
13 appeal either during that 14-day period or afterwards, is that
14 plan injunction attempting to stop that -- that sort of
15 action?

16 A I apologize. You're breaking up. But I think I
17 understood your question. No, it was -- it was your screen as
18 well. No. If either this Court stays its own order or a
19 higher court says that the order is stayed, then there would
20 be no way there could be any allegation that it's interfering
21 with an order if it's not effective.

22 Q Mr. Dondero opposed the Acis sale, correct?

23 A The Acis settlement?

24 Q Correct.

25 A Yes.

1 Q After he opposed the Acis settlement, the next filing Mr.
2 Dondero made was requesting that the Debtor notice the sale of
3 any assets or any major subsidiary assets. Is that correct?

4 A I don't recall the sequence of his filings. I think that
5 Judge Lynn at least sent a letter to that effect. I don't
6 recall if there is a filing to that effect.

7 Q Did Mr. Dondero, through his counsel, attempt to resolve
8 that motion without filing anything further?

9 A I don't recall the specifics of the motion. I know they
10 asked for some sort of relief that -- that we thought was
11 inappropriate.

12 Q When the Court postponed any hearing on Mr. Dondero's
13 request for relief until the eve of the confirmation hearing,
14 and Mr. Pomerantz announced that no sales were expected before
15 confirmation, did Mr. Dondero withdraw his motion?

16 A Again, I don't recall the specifics of the motion. I only
17 recall the letter from Judge Lynn.

18 Q Did Mr. Dondero do anything more than object to the
19 HarbourVest deal?

20 A Not that I know of.

21 Q Did Mr. Dondero do anything more than respond to the
22 Defendants' injunction suit?

23 MR. MORRIS: Objection to the form of the question.
24 I mean, -- objection to the form.

25 THE COURT: Overruled.

1 MR. TAYLOR: I apologize. I should have said the
2 Debtor's injunction suit.

3 THE WITNESS: Yeah, the -- I'm not sure of the
4 specific order, but certainly the communications with me,
5 which I think are prior to the order. The communications with
6 Mr. Surgent, which I believe are after the order. Certain
7 communications with Mr. Waterhouse, which were oral. Those
8 were all similarly difficult and obstreperous actions.

9 BY MR. TAYLOR:

10 Q Has Mr. Dondero commenced any adversary proceeding or
11 litigation in this case other than filing a competing plan?

12 MR. MORRIS: Objection to the form of the question.

13 THE COURT: Over --

14 THE WITNESS: Yeah, I don't --

15 THE COURT: -- ruled.

16 THE WITNESS: I don't believe he's commenced an
17 adversary. I'm sorry, Judge. I don't believe he's commenced
18 an adversary proceeding, no.

19 BY MR. TAYLOR:

20 Q Mr. Dondero didn't file any opposition to the life
21 settlement sale, did he?

22 A We didn't do the life settlement (garbled) Court.

23 Q Right. Again, that wasn't noticed through the -- this
24 Court, was it?

25 A It was an -- the reason was it was an asset of Multi-Strat

1 Fund. It wasn't an asset of the Debtor's.

2 Q Okay. Mr. Dondero did have concerns regarding the life
3 settlement sale, correct?

4 A Yes.

5 Q In fact, he believed that they were being sold for
6 substantially less than what could have otherwise been
7 received, correct?

8 A He may have.

9 Q And if you conduct any subsequent sales for less than
10 market value that might ultimately prevent the waterfall from
11 ever reaching Mr. Dondero, he would have no recourse under
12 this proposed plan to object to this sale or otherwise have
13 any comment on it. Is that correct?

14 A I clearly object to the thinking that that was less than
15 market value. It was -- it was more than market value. So I
16 don't -- I disagree with the premise of your question.

17 Q So, I don't believe that was the question that was asked.
18 The question that was asked is, as you move forward with your
19 -- what I will characterize as a wind-down plan, not putting
20 that word in your mouth -- but as you execute forward on your
21 plan, as these sales of these assets go through, no notice is
22 going to be provided, correct?

23 A Not necessarily. It depends on the asset and what we
24 think of the, you know, the -- the position of the parties at
25 the time.

1 If we have a -- if we have a transaction that's pending
2 that wouldn't be hurt by a notice and that we'd be able to get
3 the Court's imprimatur to maybe more better insulate, if you
4 will, against Mr. Dondero's attacks, then we may well come to
5 the Court to seek that.

6 The problem with noticing sales is that -- that it often
7 depresses value. That's just not the way folks outside of the
8 bankruptcy world (audio gap) sales.

9 Q So there's no requirement that either public or private
10 notice be provided, correct?

11 A No. Meaning it is correct.

12 Q Okay. And if Mr. Dondero had objections either to the
13 pricing of the sale or the manner and means by which the sale
14 was being conducted, he would be prohibited by the plan
15 injunction from bringing any objection to such sale, correct?

16 A I believe so, yes.

17 Q Mr. Dondero also had concerns regarding the OmniMax sale,
18 correct?

19 A Mr. Dondero did not go along with the OmniMax sale with
20 the assets that he managed. I don't know if he had concerns
21 with -- with our sale or OmniMax's interests.

22 Q Did Mr. Dondero ever express to you any concern that the
23 value wasn't being maximized regarding the sale of those
24 assets?

25 A He thought he could get more. I don't know that he

1 thought that he could get more for his assets that he was
2 managing or whether he thought he could get more for all of
3 the assets.

4 Q Other than voicing those concerns, did Mr. Dondero file
5 any pleading with this Court attempting to block that sale?

6 A Pleading with the Court? No.

7 MR. TAYLOR: Your Honor, I would like to confer with
8 my colleagues just very briefly and see if they have anything
9 further. And even if they don't, Mr. Lynn of my firm would
10 like a very brief moment to address the Court prior to me
11 passing the witness.

12 So, if I may have a literally hopefully one-minute break
13 where I can turn my camera off and my microphone off to confer
14 with my colleagues, and then move forward?

15 THE COURT: Okay. Well, you can have a one-minute
16 break, but we're going to continue on with cross-examination
17 at this point. Okay? I'm not sure what you meant by Mr. Lynn
18 wants to raise an issue at this point. Could you elaborate?

19 MR. TAYLOR: I will get some elaboration during our
20 30-second to one-minute break, Your Honor. I was just passed
21 a note.

22 THE COURT: All right. So, but I'll just you know,
23 --

24 A VOICE: Your Honor?

25 THE COURT: -- I'm inclined to continue with the

1 cross-examination. You know, this isn't a time for, you know,
2 arguments or anything like that. All right?

3 So, we'll take a one-minute break. You can turn off your
4 audio and video for one minute, and come back.

5 (Off the record, 3:33 p.m. to 3:34 p.m.)

6 THE WITNESS: Your Honor?

7 THE COURT: Yes?

8 THE WITNESS: It's Jim Seery. Can I turn it into
9 just a two-minute break, since I've sat in my seat, and it
10 would be better for him to just continue straight through. I
11 could use one or two minutes.

12 THE COURT: Okay.

13 THE WITNESS: I apologize.

14 THE COURT: All right. Well, it's been more than
15 minute. Let's just say a five-minute break for everyone, and
16 we'll come back at 3:39 Central time. Okay.

17 THE WITNESS: Okay. Thank you, Your Honor. I
18 appreciate that.

19 (A recess ensued from 3:35 p.m. until 3:40 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. All right. We are
22 back on the record. Mr. Taylor, are you there?

23 MR. TAYLOR: I am, Your Honor. My video is not
24 wanting to start, but my -- I believe my audio is on.

25 THE COURT: Okay. After you went offline for your

1 one-minute break, Mr. Seery asked for a five-minute bathroom
2 break, or a couple-minute. Anyway, we've been gone on a
3 bathroom break. We're back now.

4 MR. TAYLOR: Thank you. I was actually -- I was
5 still listening with one ear, --

6 THE COURT: Okay.

7 MR. TAYLOR: -- Your Honor, so I understand.

8 THE COURT: All right.

9 MR. TAYLOR: So, thank you.

10 THE COURT: Are you finished with cross, or no?

11 MR. TAYLOR: Just a little bit of a follow-up.

12 CROSS-EXAMINATION, RESUMED

13 BY MR. TAYLOR:

14 Q Mr. Seery, you had previously testified that Mr. Dondero's
15 counsel had threatened you and/or the independent board, I was
16 not exactly sure who you were referring to, with suits, and I
17 believe you said a hundred million dollars' worth of suits and
18 getting dragged into litigation.

19 Is that still your testimony today, that you were -- you
20 were threatened with suit by this firm of a suit of over a
21 hundred million dollars?

22 A I believe what I was told by my counsel was that, not Mr.
23 Dondero's, but one of the other counsel, who I can name, said
24 specifically that Dondero will sue Seery for hundreds of
25 millions of dollars. We're going to take it up to the Fifth

1 Circuit, get it reversed, and he'll go after him.

2 Q Okay. So it was not Mr. Dondero's counsel, and you were
3 not -- is that correct?

4 A No. It was one of the other counsel on the phone today.

5 Q Okay. And you base that not upon your own personal
6 knowledge but based on some -- something else that you were
7 told, correct?

8 A Yes. By my counsel.

9 Q Thank you.

10 MR. TAYLOR: Yes, Your Honor. We can pass the
11 witness.

12 THE COURT: Okay. So, you've gone, or you and Mr.
13 Rukavina collectively have gone one hour and 17 minutes. Mr.
14 Draper, you're next.

15 MR. DRAPER: Yes, Your Honor. Thank you. I
16 basically have no more than ten questions, so I gather the
17 Court will welcome that.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. DRAPER:

21 Q Mr. Seery, has the new general partner been formed yet?

22 A I don't know if they've been -- we've actually done the
23 formation, but it -- it would be in process.

24 Q So it either has been formed or has not been formed?

25 A I don't -- I don't know the answer.

1 Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will
2 have nothing to do with the Reorganized Debtor, correct?

3 A Not necessarily, but they don't have a specific role at
4 this time.

5 Q They won't be officers or directors of the new general
6 partner or the Reorganized Debtor, correct?

7 A I don't -- I don't believe so, but it's not set in stone.

8 Q All right. Has any finance -- has any party who is the
9 beneficiary of an exculpation, a release, or the channeling
10 injunction contributed anything to this plan of reorganization
11 in terms of money?

12 A No.

13 Q Have you ever interviewed a trustee as to how they would
14 liquidate the assets or monetize the assets in this case?

15 A No.

16 Q And last question is, is there any bankruptcy prohibition
17 that you're aware of that a Chapter 7 trustee could not do
18 what you're doing?

19 A Which -- which -- what do you mean, under the plan?

20 Q No. Could not monetize the assets of the estate in the
21 manner that you're attempting to monetize them.

22 A I don't think there's a specific rule, but I just haven't
23 -- I haven't seen that before, no. So I don't think there's a
24 specific rule that I know of.

25 Q Okay.

1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. I should have asked, we had a
3 couple of other objectors. Ms. Drawhorn, did you have any
4 questions?

5 MS. DRAWHORN: I have no questions, Your Honor.

6 THE COURT: All right. Were there any other
7 objectors out there that I missed that might have questions?

8 All right. Any redirect?

9 MR. MORRIS: Your Honor, if I may, can I -- can I
10 just take a short minute to confer with my colleagues?

11 THE COURT: Sure. You can --

12 MR. MORRIS: Thank you.

13 THE COURT: -- put you --

14 MR. MORRIS: Two -- two minutes, Your Honor.

15 THE COURT: Okay.

16 (Pause, 3:45 p.m. until 3:48 p.m.)

17 THE COURT: All right. We've been a couple of
18 minutes. Mr. Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: What are --

21 MR. MORRIS: Just, just a few points, Your Honor.

22 THE COURT: Okay.

23 MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

24 THE WITNESS: I am, yes.

25 REDIRECT EXAMINATION

1 BY MR. MORRIS:

2 Q You were asked a number of questions about your
3 compensation. Do you recall all that?

4 A Yes, I do.

5 Q And you testified to the \$150,000 a month. Do you recall
6 that?

7 A Yes.

8 Q Under the -- under the documentation right now, your
9 compensation is still subject to negotiation with the
10 Committee; is that right?

11 A Yes, it is.

12 Q Okay. You were asked a couple of questions about the
13 conduct of Mr. Dondero. Earlier, you testified that the
14 monetization plan was filed under seal at around the time of
15 the mediation. Do I have that right?

16 A Yes. Right at the start of the mediation.

17 Q Okay. And is that the first time that the Debtor made the
18 constituents aware, including Mr. Dondero, that it intended to
19 use that as a catalyst towards getting to a plan?

20 A That's the first time that we filed it, but that plan had
21 been discussed prior to that.

22 Q And do you recall that there came a point in time where
23 you -- when the Debtor gave notice that it intended to
24 terminate the shared services agreements with the Dondero-
25 related entities?

1 A Yes.

2 Q And when did that happen?

3 A That was about 60 -- now it's like 62 days ago.

4 Q Uh-huh. And you know, from your perspective, from the
5 filing of the monetization plan in August through the notice
6 of shared services, is that what you believe has contributed
7 to the resistance by Mr. Dondero to the Debtor's pursuit of
8 this plan?

9 A Well, I think there's a number of factors that
10 contributed, but the evidence that I've seen is that when we
11 started talking about a transition, if there wasn't going to
12 be a deal, if Mr. Dondero couldn't reach a deal with the
13 creditors, we were going to push forward with the monetization
14 plan. And the monetization plan required the transition of
15 the employees. And indeed, it called specifically, and we had
16 testimony regarding it all through the case, about the
17 employees being terminated or transferred.

18 In order to transfer them over to an entity that's
19 related, Mr. Dondero pulls all of those strings. And he
20 refused to engage on that. We started in the fall. We
21 specifically told employees of the Debtor not to engage. They
22 couldn't spend his money, which made sense --

23 MR. TAYLOR: Objection, Your Honor.

24 THE WITNESS: So, very -- that --

25 THE COURT: Just -- there's an objection.

1 MR. MORRIS: There's an objection.

2 THE WITNESS: I'm sorry.

3 THE COURT: There was an objection.

4 MR. TAYLOR: Yes, Your Honor. Object --

5 THE COURT: Go ahead.

6 MR. TAYLOR: Yes, Your Honor. This is Clay, Clay
7 Taylor. Objection. He's directly said Mr. Dondero told other
8 employees x, and that is purely hearsay, not based upon his
9 personal opinion, or his personal knowledge, and therefore
10 that part of the answer should be struck.

11 MR. MORRIS: Your Honor, it's a statement against
12 interest.

13 THE COURT: Overrule the objection. Go ahead.

14 THE WITNESS: Yeah. The difficulty of transitioning
15 this business, I've equated it to doing a corporate carve-out
16 transaction on an M&A side. It's hard, and you need
17 counterparties on the other side willing to engage. And what
18 we went through over the weekend, on Friday, was seemingly
19 that the Funds, you know, directed by Mr. Dondero, just
20 haven't engaged.

21 We actually gave them an extra two weeks to engage,
22 because it's -- they've really been unable to do anything. I
23 mean, hopefully, we've got the employees working in a way that
24 can -- that can foster and get around some of this
25 obstreperousness, and I've used that word before, but that's

1 what it is. It's really an attempt to just prevent the plan
2 from going forward.

3 And at some point, the plan will go forward. And if we
4 are unable to transition people, we will simply have to
5 terminate them. And that is not a good outcome for those
6 employees, but it's not a good outcome for the Funds, either.
7 And the Funds, Mr. Dondero, the Advisors, the boards, nobody
8 wants to do anything except come in this court.

9 BY MR. MORRIS:

10 Q Do you recall being asked about Mr. Dondero and certain
11 things that he didn't do and certain actions that he hadn't
12 taken?

13 A Yes.

14 Q By Mr. Taylor? To the best of your recollection, did Mr.
15 Dondero personally object to the HarbourVest settlement?

16 A I -- I don't recall if he did or if it was one of the
17 entities.

18 Q It was Dugaboy. Does that refresh your recollection?

19 A Dugaboy certainly objected, yes.

20 Q And do you understand that Dugaboy has appealed the
21 granting of the 9019 order in the HarbourVest settlement?

22 A Yes.

23 Q And Mr. Taylor asked you to confirm that Mr. Dondero
24 hadn't taken any action with respect to the life settlement
25 deal. Do you remember that?

1 A I do.

2 Q But are you aware that Dugaboy actually filed an
3 administrative claim relating to the alleged mismanagement of
4 the life settlement sale?

5 A Yes, I did, I did allude to that. I wasn't sure it was
6 Dugaboy, but -- but that was very --

7 Q Uh-huh.

8 A -- very early on, an objection filed in the form of an
9 administrative claim or complaint against, if you will,
10 against Highland for the management of Multi-Strat.

11 Q Uh-huh. And Mr. Dondero didn't personally file any motion
12 seeking to inhibit the Debtor from managing the CLO assets; is
13 that right?

14 A No, not the CLO assets, no.

15 Q Yeah. But the Funds and the Advisors did. That was the
16 hearing on December 16th. Do you recall that?

17 A Yeah. That was the -- the Funds. K&L Gates, the Funds,
18 and the various Advisors.

19 Q All right. Do you recall Mr. Rukavina asking you whether
20 there was any evidence in the record to support your testimony
21 that there was an agreement in place to assume the CLO
22 management agreements?

23 A I recall the question, yes.

24 Q Okay.

25 MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

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1 to put up on the screen the Debtor's omnibus reply to the plan
2 objections.

3 THE COURT: Okay.

4 MR. MORRIS: It was filed -- it was filed on January
5 22nd. And if we can go, I think, to -- I think it's Paragraph
6 -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

7 BY MR. MORRIS:

8 Q Take a look at that, Mr. Seery. Does that -- does that
9 statement in Paragraph 135 accurately reflect the
10 understanding that's been reached between the Debtor and the
11 CLO Issuers with respect to the Debtor's assumption of the CLO
12 management agreements?

13 A Yes. I think that's consistent with what I testified to
14 earlier, the substance of the agreement.

15 MR. MORRIS: And if we can just scroll to the top,
16 just to see the date. Or the bottom. I guess the top.

17 THE WITNESS: Do you mean the date of this pleading?

18 BY MR. MORRIS:

19 Q Yeah. So, it was filed on January 22nd, right, ten days
20 ago? Okay.

21 A That's correct.

22 MR. MORRIS: I'd like to put up on the screen an
23 email, Your Honor, that I'd like to mark as Debtor's Exhibit
24 10A. And this is --

25 BY MR. MORRIS:

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1 Q Do you recall, Mr. Seery, you testified that the agreement
2 was reflected in an email?

3 A Yes.

4 Q Is this the email that you're referring to?

5 MR. MORRIS: If we could scroll down. Right there.

6 THE WITNESS: Yes.

7 MR. MORRIS: Okay. One -- the email below. Okay.

8 Right there.

9 BY MR. MORRIS:

10 Q Is that the -- is that the email you had in mind?

11 A It was the series of emails. We -- we had a -- I think I
12 testified in the prior testimony, or my -- one of my
13 depositions, that we had had a number of conversations with
14 the Issuers and their counsel, and this was the summary of the
15 agreement that was contained in these emails.

16 Q Okay. And this is, this is the same date as the omnibus
17 reply that we just looked at, right, January 22nd?

18 A That's correct.

19 Q Okay. You were asked a question, I think, late in your
20 cross-examination about a Chapter 7 trustee's ability to sell
21 the assets in the same way as you are proposing to do. Do you
22 recall that testimony?

23 A Yes.

24 Q And I think, if I understood correctly, the question was
25 narrowly tailored to whether there was any legal impediment to

1 a trustee doing -- performing the same functions as you. Do I
2 have that right?

3 A That's the question I was asked, whether the Bankruptcy
4 Code had a specific prohibition.

5 Q Okay. And I think, I think you testified that you weren't
6 aware of anything. Is that right?

7 A That's correct.

8 Q All right. But let's talk about practice. Do you think a
9 Chapter 7 trustee will realize the same value as you and the
10 team that you're assembling will, in terms of maximizing value
11 and getting the maximum recovery for the assets?

12 A No. As I testified earlier, you know, I've been working
13 with these assets now for a year. It's a complicated
14 structure. The assets are all slightly different. And
15 sometimes much more than slightly. And the team that we're
16 going to have helping managing is familiar with the assets as
17 well. We believe we'll be able to execute very well in the
18 markets that we (garbled).

19 Q Do you think a Chapter 7 trustee will have a steep
20 learning curve in trying to even begin to understand the
21 nature of the assets and how to market and sell them?

22 A I think anybody coming into this, the way this company is
23 set up, as an asset manager, and the diversity of the assets,
24 would have a steep learning curve, yes.

25 Q Do you have any view as to whether the perception in the

1 marketplace of a Chapter 7 trustee taking over to sell the
2 assets will have an impact on value as compared to a post-
3 confirmation estate of the type that's being proposed under
4 the plan?

5 A Yes, I do, and it certainly would be negative, in my
6 experience. Typically, assets are not conducted -- asset
7 sales are not conducted through a bankruptcy court, and
8 certainly not with a Chapter 7 trustee that has to sell them,
9 and generally is viewed as having to sell them quickly. So we
10 -- we approach each asset differently, but certainly in a way
11 that would be much more conducive to maximizing value than a
12 Chapter 7 trustee could, just by the nature of their role.

13 Q Is it -- is it your understanding that, under the proposed
14 plan and under the proposed corporate governance structure,
15 that the Claims Oversight Committee will -- will manage you?
16 That you'll report to that Committee and that they'll have the
17 opportunity to make their assessment as to the quality of your
18 work?

19 A Yeah, absolutely. And that's consistent with what we've
20 done before in this case. Even where it wasn't an asset of
21 the estate or was being sold in the ordinary course, we spent
22 time with the Committee and the Committee professionals before
23 selling assets.

24 Q And you've worked with the Committee for over -- for a
25 year now, right?

1 A It's over a year.

2 Q And the Committee is comfortable with you taking this
3 role; is that right?

4 A I think they're supportive of it. Comfortable might be
5 not the right word choice.

6 Q Okay. I appreciate the clarification. And do you have
7 any reason to believe that the -- that the Oversight Committee
8 is going to allow you the unfettered discretion to do whatever
9 you want with the assets of the Trust?

10 A Not a chance. Not with this group. Nor would I want to.
11 There's no right or wrong answer for most of these things, and
12 the collaborative views from professionals and people who have
13 an economic stake in the outcome will be helpful.

14 Q Okay. You were asked some questions about the November
15 projections and the -- and the assumption that was made that
16 valued the HarbourVest and the UBS claims at zero. Do you
17 recall that?

18 A Yes.

19 Q As of that time, was the Debtor still in active litigation
20 with both of those claim holders?

21 A Very much so.

22 Q And after the disclosure statement was issued, do you
23 recall that the Court entered its order on UBS's Rule 3018
24 motion?

25 A Yes.

1 Q And do you recall what the -- what the claims estimate was
2 for voting purposes under that order?

3 A It was about \$95 million. That was -- it was together
4 with the summary judgment orders of that date. They were
5 separate orders, but that was the lone hearing.

6 Q And was that public information, that order was publicly
7 filed on the docket; isn't that right?

8 A Yes, it was.

9 Q Is there anything in the world that you can think of that
10 would have prevented any claim holder from doing the math to
11 try to figure out the impact on the estimated recoveries from
12 the -- by using that 3018 claims estimate?

13 A No. It would have -- it would have been quite easy to do.

14 Q And, in fact, that's what you wound up doing with respect
15 to the January projections, right?

16 A That's correct.

17 Q And do you recall when the HarbourVest settlement, when
18 the 9019 motion was filed?

19 A I don't recall the actual filing. It was subsequent to
20 the UBS, though.

21 MR. MORRIS: Ms. Canty, if you have it, can we just
22 put it on the screen, to see if we can refresh Mr. Seery's
23 recollection? If we could just look at the very top.

24 BY MR. MORRIS:

25 Q Does that refresh your recollection that the 9019 motion

1 was filed on December 23rd?

2 A Yes, it does. The agreement was reached before that, but
3 it took a little bit of time to document the particulars and
4 then to -- to get it filed.

5 Q And this wasn't filed under seal, to the best of your
6 recollection, was it?

7 A No, no. This was -- this was open, and we had a very open
8 hearing about it, because it was a related-party objection.

9 Q And to the best of your recollection, did this 9019 motion
10 publicly disclose all of the material terms of the proposed
11 settlement?

12 A Yes, it did.

13 Q Can you think of anything in the world that would have
14 prevented any interested party from doing the math to figure
15 out how this particular settlement would impact the claim
16 recoveries set forth in the Debtor's disclosure statement?

17 A No. And just again, to be clear, the plan and the
18 projections had assumptions, but the plan was very clear that
19 the denominator was going to be determined by the total amount
20 of allowed claims.

21 Q And, again, at the time that that was filed, you hadn't
22 reached a settlement with HarbourVest, had you?

23 A No.

24 Q And the order on the 3018 motion hadn't yet been filed; is
25 that right?

1 A That's correct.

2 Q Okay. Has -- are you aware of any creditor expressing any
3 interest in trying to change their vote as a result of the
4 updates of the forecasts?

5 A Only Mr. Daugherty. And actually, they have a stipulation
6 with the two -- the two former employees.

7 Q All right. But to be fair, that wasn't -- had nothing to
8 do with the revisions to the projections? That was just in
9 connection with their settlement; is that right?

10 A That's correct. As was, I suspect, Mr. Daugherty's, but
11 he'd been aware of the settlements, just like everyone else.

12 Q Okay. You were asked a couple of questions, I think, by
13 Mr. Rukavina about whether there is anything that you need to
14 do your job on a go-forward basis. And I think you said no.
15 Do I -- do I have that right? Nothing further that you need?

16 A I -- I'm not really sure what your question means, to be
17 honest.

18 Q Okay. Fair enough. To be clear, is there any chance that
19 you would accept the position as the Claimant Trustee if the
20 gatekeeper and injunction provisions of the proposed plan were
21 extracted from those documents?

22 A No. As I said earlier, they're integral in my view to the
23 entire plan, but they're absolutely essential to my bottom.

24 Q Okay. And through -- through the date of the effective
25 date, are you relying on the exculpation clause of the -- have

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1 you been relying on the exculpation clause in the January 9th
2 order that you testified to at the beginning of this hearing?

3 A Yeah. Both the January 9th order as well as the July
4 order with respect to my CEO/CRO positions.

5 Q Okay.

6 MR. MORRIS: I've got nothing further, Your Honor.

7 THE COURT: All right. Any recross on that redirect?

8 A VOICE: I believe Mr. Rukavina is speaking but is
9 muted, Your Honor.

10 THE COURT: Mr. Rukavina, do you have any recross?

11 MR. RUKAVINA: Your Honor, I do, yes. Thank you. I
12 apologize.

13 THE COURT: Okay.

14 MR. RUKAVINA: Can you hear me now?

15 THE COURT: Yes.

16 THE WITNESS: Yes.

17 MR. RUKAVINA: Thank you.

18 Mr. Vasek, if you'll please pull up the Debtor's Omnibus
19 Reply, Docket 1807. And if you'll go to Exhibit C. Do a word
20 search for Exhibit C. It's attached to it. Okay. Now scroll
21 down. Stop there.

22 RE CROSS-EXAMINATION

23 BY MR. RUKAVINA:

24 Q Mr. Seery, do you see what's attached as Exhibit C to the
25 Omnibus Reply, which is proposed language in the confirmation

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1 order?

2 A I see the exhibit. I didn't know if this was -- I don't
3 know exactly what it's for. If it's proposed language, I'll
4 accept your representation.

5 MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr.
6 Vasek. I want to make sure that I understand what you're
7 saying. Scroll back up. Do the word search for where Exhibit
8 C appears first. Start again. Okay. So scroll up.

9 BY MR. RUKAVINA:

10 Q So, you'll recall Mr. Morris was asking you about the
11 paragraph in here where you outlined the terms of the
12 agreement with the CLOs. Do you recall that testimony?

13 A Yes.

14 Q Okay. And then you see it says, The Debtor and the CLOs
15 agreed to seek approval of this compromise by adding language
16 to the confirmation order. A copy of that language is
17 attached hereto as Exhibit C and will be included in the
18 confirmation order.

19 Do you see that, sir?

20 A I do.

21 Q Okay.

22 MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.

23 BY MR. RUKAVINA:

24 Q So it's correct that this Exhibit C is the referenced
25 agreement that the Debtor and the CLOs will seek approval of,

1 correct?

2 A The -- the -- it may be word-splitting, but I believe it
3 says that they've reached agreement and this is the language
4 that will evidence that agreement or embody that agreement.

5 Q Okay.

6 MR. RUKAVINA: Scroll down, Ms. Vasek, to the next
7 page, please.

8 BY MR. RUKAVINA:

9 Q Real quick, do the CLOs owe the Debtor any money for the
10 management fees?

11 A I don't -- well, the answer is there are accrued fees that
12 haven't been paid, but when they have cash they run through
13 the waterfall and pay them.

14 Q And I believe you mentioned to me those accrued fees
15 before. They're several million dollars, correct?

16 A It -- I don't know right off the top of my head. They can
17 aggregate and then they get paid down in the quarter depending
18 on the waterfall. And it's -- it's not a fair statement by
19 either of us to say the CLOs, as if they're all the same.
20 Each one is different.

21 Q I understand. But as of today, you agree that the CLOs
22 collectively owe some amount of money to the Debtor in accrued
23 and unpaid management fees?

24 A I believe that's the case.

25 Q Okay. And do you believe it's north of a million dollars?

1 A I don't recall.

2 Q Okay.

3 MR. RUKAVINA: Well, scroll down a couple of more
4 lines, Mr. Vasek. Stay there.

5 BY MR. RUKAVINA:

6 Q Sir, if you'll read with me, isn't the Debtor releasing
7 each Issuer, which is the CLOs, for and from any and all
8 claims, debts, et cetera, by this provision?

9 A Claims. Not -- not fees, but claims. I don't believe
10 there's any release of fees that the CLOs might owe and would
11 run through the waterfall here.

12 Q Okay. For and from any and all claims, debts,
13 liabilities, demands, obligations, promises, acts, agreements,
14 liens, losses, costs, and expenses, including without
15 limitation attorneys' fees and related costs, damages,
16 injuries, suits, actions, and causes of action, of whatever
17 kind or nature, whether known or unknown, suspected or
18 unsuspected, matured or unmatured, liquidated or unliquidated,
19 contingent or fixed.

20 Are you saying that that does not release whatever fees
21 have accrued and the CLOs owe?

22 A I don't believe it would. If it did, your client should
23 be ecstatic. But I don't believe it does that.

24 Q And you don't believe that it releases the CLOs of any and
25 all other obligations that they may have to the Debtor and the

1 estate?

2 A I -- again, I don't believe there are any, but I think
3 it's a broad release of claims away from the actual fees that
4 are generated by the Debtor. I don't believe there's an
5 intention to release fees that have accrued.

6 Q Have you seen this language before I showed it to you
7 right now?

8 A I believe I have, yes.

9 Q Okay. Take a minute. Can you point the Court to anywhere
10 where present or future fees under the CLO agreements are
11 excepted from the release?

12 A I could go through, I'll take your representation, but I
13 don't believe that that's what it -- it's supposed to release
14 fees. Again, if the fees are owed, they get paid, if there
15 are assets there to pay them.

16 Q Okay. This release and this settlement was never noticed
17 out as part of a 9019, was it?

18 A I don't believe so, no.

19 Q Okay. So, other than bringing it up here today, this is
20 the first that the Court, at least, has heard of this,
21 correct?

22 A Yeah, again, I don't --

23 MR. MORRIS: Objection to the form of the question.

24 THE WITNESS: Yeah. I just stated before that I
25 don't think this is a -- that there claims.

1 THE COURT: Wait. Slow down. I think --

2 MR. SEERY: Oh, I'm sorry, Your Honor.

3 THE COURT: -- there was an objection. Go ahead, Mr.
4 Morris.

5 MR. MORRIS: The notion that this is the first time
6 the Court has heard of this is just factually incorrect.
7 First of all, it's in the document from January 22nd. Second
8 of all, Mr. Seery testified to it last week at the preliminary
9 injunction hearing. I mean, --

10 THE COURT: I -- I --

11 MR. MORRIS: -- I don't know what the point of the
12 inquiry is, but there's -- this is not new news.

13 THE COURT: Okay. I sustain the objection.

14 BY MR. RUKAVINA:

15 Q And Mr. Seery, can you point me to any document where
16 counsel for the CLOs has signed this particular confirmation
17 order or any other document agreeing to this language in the
18 confirmation order?

19 A I don't think there's any document that's signed. I think
20 we already went over that. I think the email is evidence
21 their agreement to the general terms. I don't see any
22 agreement with respect to this particular language.

23 Q Well, you have no personal information? You're going on
24 what your lawyers told you that the CLOs agreed to, correct?

25 A That's correct.

1 Q Okay. You didn't personally --

2 A Excuse me. That's correct with respect to this language,
3 not with respect to the agreement. I was on the phone when
4 they agreed.

5 Q Okay. And they agreed orally, you're saying, to basically
6 the assumption of the CLO management agreements?

7 A Correct.

8 Q Okay.

9 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
10 witness.

11 THE COURT: All right. Other recross?

12 MR. TAYLOR: Yes, Your Honor, I do.

13 THE COURT: Go ahead.

14 RECROSS-EXAMINATION

15 BY MR. TAYLOR:

16 Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry,
17 let me restart. I believe you testified earlier, in response
18 to questions by Mr. Morris, that you didn't believe a Chapter
19 7 trustee would be very effective in monetizing these assets,
20 correct?

21 A I think I said I didn't believe that the Chapter 7 trustee
22 would be as effective at monetizing the assets as the
23 Reorganized Debtor would be, and me in the role as Claimant
24 Trustee.

25 Q And one of the reasons that you gave is you believe that

1 the Chapter 7 trustee had to liquidate assets so quickly that
2 it could not be effective; is that correct?

3 A Typically, that's the case, yes.

4 Q You worked for the Lehman trustee, correct?

5 A That's incorrect.

6 Q Okay. Did you work on the Lehman case?

7 A Did I work in the case? No.

8 Q Okay. Did you -- how were you involved within -- within
9 the Lehman case?

10 A It's a long history, but I was a relatively senior person,
11 not senior level, not senior management level person at
12 Lehman. I ran the loan businesses and I helped a number of
13 other places and I -- in the organization. I helped construct
14 the sale of Lehman to Barclays out of the broker-dealer and
15 then helped consummate that sale.

16 Q Okay. I believe, in that case, it was a SIPC -- the
17 trustee was a SIPC trustee, correct?

18 A With respect to the broker-dealer.

19 Q Okay. And you believe that a SIPC trustee is very -- has
20 very similar rules with respect to asset sales; is that
21 correct?

22 A There are some similarities, absolutely.

23 Q Okay. And so in that case, the trustee was in place for
24 seven years, yet you believe -- you want this Court to believe
25 that a Chapter 7 trustee has to liquidate assets in a very

1 short time frame, is that correct?

2 MR. MORRIS: Objection to the form of the question.

3 THE WITNESS: Yeah, in the Lehman case, --

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry, Judge.

6 THE COURT: Go ahead.

7 THE WITNESS: In the Lehman case, the SIPC trustee
8 spent years litigating, not liquidating. The broker-dealer
9 was sold in our structured deal to Barclays, and then the SIPC
10 trustee liquidated the remainder of the estate, which was the
11 broker-dealer, but most of it had been sold to Barclays. It
12 was really a litigation case.

13 BY MR. TAYLOR:

14 Q But it did -- that trustee did sell off subsequent assets
15 after the initial sale, correct?

16 A That trustee, I don't think, managed -- I don't know about
17 that. The trustee didn't really manage any assets. Other
18 than litigations.

19 Q You've also testified that you didn't believe or that you
20 would not take on this role without the gatekeeper and
21 injunction -- gatekeeper role and injunction being in place;
22 is that correct?

23 A Yes.

24 Q And you're also familiar with the Barton Doctrine,
25 correct?

1 A I'm not.

2 Q Okay. Do you believe that a Chapter 7 trustee could be
3 sued by third parties without obtaining either relief from
4 this Court -- let me just stop there. Do you believe that a
5 Chapter 7 trustee could be sued without seeking leave of this
6 Court?

7 A I think it would be difficult. I know that Chapter 7
8 trustees have qualified immunity, so I think, whether it would
9 be leave of this Court or it's just that there's a very high
10 bar to suing them, I'm not exactly sure. It's not something
11 I've spent time on.

12 Q Okay. So a hypothetical Chapter 7 trustee would have no
13 need of the gatekeeper role or injunction if this case were
14 converted to one under Chapter 7, correct?

15 A That's probably true.

16 Q Thank you.

17 MR. TAYLOR: No further questions.

18 THE COURT: All right. Any other recross?

19 MR. DRAPER: Your Honor, I have nothing --

20 THE COURT: All right.

21 MR. DRAPER: -- further.

22 THE COURT: All right. I think we're done, but
23 anyone I've missed?

24 All right. Mr. Seery, it's been a long day. You are
25 excused from the virtual witness stand.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. Mr. Morris, let's see if
3 there's anything else we can accomplish today. It's 4:18
4 Central time. Who would be your next witness?

5 MR. MORRIS: My next witness would be John Dubel,
6 Your Honor.

7 THE COURT: All right. Can you give us a time
8 estimate for direct?

9 MR. MORRIS: I wouldn't expect Mr. Dubel to be more
10 than 20 minutes or so, but I would offer the Court, if you
11 think it would be helpful, counsel for the CLO Issuers is on
12 the call, and I believe that they would be prepared to just
13 confirm for Your Honor that there is an agreement in
14 principle, just as Mr. Seery has testified to, and maybe you
15 want to hear from her. I know she's not really a witness, but
16 she might be able to make some representations to give the
17 Court some comfort that everything Mr. Seery has said is true.

18 THE COURT: I think that would be useful. Is it Ms.
19 Anderson or who is it?

20 MS. ANDERSON: That is -- it is, Your Honor. And you
21 know, I appreciate the testimony given. I certainly do not
22 want to testify, but thought it might be useful for the Court
23 to hear from us.

24 Amy Anderson on behalf of the Issuers from Jones Walker.
25 Schulte Roth also represents the Issuers. And I can represent

1 to the Court that the agreement as it's represented on Docket
2 1807, as more particularly described in Exhibit C, which Your
3 Honor has seen, is the agreement reached between the Issuers
4 and the Debtor.

5 There was some testimony about fees owed, accrued fees
6 owed to the Debtor. I certainly cannot speak to the substance
7 of each particular management agreement with each CLO. They
8 are all distinct and unique and very lengthy documents. I
9 will -- I can represent to the Court that any accrued fees
10 that are owed were not intended to be included in the release.
11 It is -- it is not meant to release fees owed to Highland
12 under the particular management agreements.

13 Of course, if the Court has any questions or if I can
14 provide anything further, I'm happy to. And I will be on the
15 hearing today and tomorrow, but I thought it might be useful,
16 given the topic of the testimony this afternoon.

17 THE COURT: All right. That was useful. Thank you,
18 Ms. Anderson.

19 All right. Well, Mr. Morris, shall we go ahead and hear
20 from Mr. Dubel today, perhaps finish up a second witness?

21 MR. MORRIS: Yeah. I think we have the time. I
22 think Mr. Dubel is here. Are you here, Mr. Dubel?

23 MR. DUBEL: I am. Can you hear me, Your Honor?

24 THE COURT: I can hear you, but I cannot see you.
25 Oh, now I can see you. Please raise your right hand.

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1 JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

2 THE COURT: All right. Thank you. Mr. Morris, go
3 ahead.

4 MR. MORRIS: Thank you very much, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Dubel, can you hear me?

8 A I can, Mr. Morris.

9 Q Okay. Do you have a position today with the Debtor, sir?

10 A I am a director of Strand Advisors, Inc., which is the
11 general partner of the Debtor.

12 Q Okay. And can you --

13 MR. MORRIS: Your Honor, just as a reminder, I'm
14 going to ask Mr. Dubel to describe his professional experience
15 in some detail, to put into context his testimony, but his
16 C.V. can be found at Exhibit 6Y as in yellow on Docket No.
17 1822.

18 THE COURT: All right.

19 BY MR. MORRIS:

20 Q Mr. Dubel, can you describe your professional background?

21 A Yes. I have approximately, almost, and I hate to say it
22 because it's making me feel old, but I have almost 40 years of
23 experience working in the restructuring industry.

24 I have served in many roles in that, both as an advisor,
25 an investor in distressed debt, and also a member of

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1 management teams, and as a director, both an independent
2 director and a non-independent director.

3 My executive roles have included the -- both an executive
4 director, chief executive officer, president, chief
5 restructuring officer, chief financial officer. And I have
6 been involved in some of the largest Chapter 11 cases over the
7 last several decades, including cases like *WorldCom* and
8 *SunEdison*.

9 Q Let's focus your attention for a moment just on the
10 position of independent director. Have you served in that
11 capacity before this case?

12 A I have.

13 Q Can you describe for the Court some of the cases in which
14 you've served as an independent director?

15 A Sure. I've served as an independent director in several
16 cases that were I'll call post-reorg cases. *Werner Company*,
17 which was the largest climbing equipment manufacturer in the
18 world, manufacturer of ladders, *Werner Ladders*. You'll see
19 them on every pickup truck running around the countryside.

20 *FXI Corporation*, which is a -- one of the largest foam
21 manufacturers. Everybody's probably slept or sat on one of
22 their products.

23 *Barneys New York*, back in 2012, when they did an out-of-
24 court restructuring. I had previously been involved with
25 *Barneys* 15 years before that, and so I was called upon because

1 of my knowledge to be an independent director in that
2 situation. Have had no relationship with Barneys since it
3 emerged from Chapter 11 back in 1998.

4 I have been the independent director in *WMC Mortgage*,
5 which was a mortgage company owned by General Electric.

6 And I am currently serving as an independent director in a
7 company -- in two companies. One, *Alpha Media*, which is a
8 large radio station chain that recently filed Chapter 11, I
9 believe it was late Sunday night, and I am also an independent
10 director in the *Purdue Pharma* bankruptcy, and have served
11 prior to the bankruptcy and am the chair of the special
12 independent committee of directors -- special committee of
13 independent directors in that particular situation.

14 Q That sounds like a lot. In terms of other fiduciary
15 capacities, I think your *C.V.* refers to Leslie Fay. Were you
16 involved in that case, and if so, how?

17 A I was. That was -- for those people who may remember it,
18 that goes back into the 1993 era. *Leslie Fay* was a large
19 apparel manufacturer, and at the time was one of the largest
20 companies that had gone through an extensive fraud. I say at
21 the time because it was about a \$180 million fraud, which
22 pales by some of the ones that have followed it.

23 I was brought in as the executive vice president in charge
24 of restructuring, chief financial officer, and was also added
25 to the board of directors. Even though I wasn't independent,

1 I was added to the board of directors to have the fresh face
2 on the board in that particular situation because of the fraud
3 that had taken place.

4 Q And --

5 A Sun --

6 Q Go ahead.

7 A SunEdison, I was brought in as the CEO. Actually,
8 initially, as the chief restructuring officer, with a mandate
9 to replace the CEO, which took place shortly after I was
10 brought on board and -- because of various issues surrounding
11 investigations by the SEC, DOJ, and allegations by the
12 creditors of fraud. And so I was brought in to run the
13 company through its Chapter 11 process.

14 As I'd mentioned earlier, WorldCom, I was brought in at
15 the beginning of the case as the fresh chief financial
16 officer. And I think everybody is familiar with what happened
17 in the WorldCom situation.

18 Q All right. Based on that experience, do you have a view
19 as to whether the appointment of independent directors is
20 unusual?

21 A It is not. More recently, it has -- it had been in the
22 past. Usually, you know, they would try and take the existing
23 directors and form a special committee of the existing
24 directors. But I think the state of the art has become more
25 where independent directors are brought in, mainly because the

1 cases have become a lot more complex in nature, and larger,
2 and the transactions themselves are much more sophisticated.
3 And so having somebody independent has been important for
4 analyzing the various transactions. And also, quite often,
5 it's just bringing a fresh, independent voice to the company
6 on the board.

7 Q Do you have an understanding as to the purpose and the
8 role of independent directors generally in restructuring and
9 bankruptcy cases?

10 A Sure. As I kind of alluded to a little bit earlier, the
11 -- probably the most critical thing is for restoring
12 confidence in the company and in the management in terms of
13 corporate governance, especially when there have been troubled
14 situations, where -- whether it's been fraud or allegations
15 made against the company and its prior management or when
16 management has left under difficult situations.

17 Also, you know, independent thought process being brought
18 to the board is very important for helping guide companies.
19 It's quite often the existing management team or the existing
20 board may get stuck in a rut, as you can say, you know, in
21 terms of their thinking on how to manage it, and having
22 somebody with restructuring experience who provides that
23 independent voice is very important to the operations.

24 In addition, having someone who can look at conflicts that
25 might arise between shareholders or shareholders and the board

1 members is important. As I mentioned earlier, the *WMC*
2 *Mortgage* situation was one where I was brought on to -- as an
3 independent member of the board to effectively negotiate an
4 agreement or a settlement between WMC and its parent, General
5 Electric. That entity was being -- WMC was being sued for
6 billions of dollars, and there were issues as to whether or
7 not General Electric should fund those obligations. And so
8 that was a role that is quite often occurring in today's day
9 and age.

10 In addition, evaluating transactions for companies is
11 important, whereby either the shareholders who sit on the
12 board or board members may be involved in those transactions,
13 needing an independent voice to review it. And, you know, I
14 have served in situations. Again, *Barneys New York* and *Alpha*
15 *Media* is another example where, as an independent director, I
16 am one of the parties responsible for evaluating those
17 transactions and making recommendations to the entire board.

18 And then, again, you know, situations where it's just
19 highly-contentious and having, as I said, having that
20 independent view brought to the table is something that is
21 very helpful in these cases.

22 Q I appreciate the fulsomeness of the answer. During the
23 time that you served in these various fiduciary capacities, is
24 it fair to say you spent a lot of time considering and
25 addressing issues relating to D&O and other executive

1 liability issues?

2 A It's usually one of the things that you get involved with
3 thinking about prior to taking on the role because you want to
4 make sure that there are the appropriate protections for the
5 director.

6 Q Can you describe for the Court some of the protections
7 that you've sought or that you've seen employed in some of the
8 cases you've worked on, including this one, by the way?

9 A Sure. I mean, one of the first things you look to is does
10 the company -- will the company indemnify the director for
11 serving in that capacity? And if the company will not
12 indemnify, then there's always a question as to why not, and
13 it's probably something you don't want to get involved with.

14 Generally, that is something that I don't think I've ever
15 seen a case where there has not been indemnification.
16 Obviously, it would, you know, cause great pause or concern if
17 they weren't willing to indemnify. But that is important.

18 Providing D&O insurance is very important. And in most
19 situations, you know, over the last 10-15 years, if there's
20 not adequate D&O insurance -- quite often, the D&O insurance
21 has been tapped out because of claims that will -- have been
22 brought or are anticipated to be brought -- new D&O insurance
23 is something that's front and center for the minds of
24 independent directors such as myself.

25 As you -- that gets you into the case and gets you moving.

1 As you start to look towards the confirmation and exit from
2 the case, things that would be appropriate, that, you know,
3 would always be something you would want to look at would be
4 exculpation language, releases. And in this particular case,
5 the injunction, or what Mr. Seery earlier referred to as the
6 gatekeeper clause, is something that is very important for
7 directors, both, you know, as they're thinking through it and
8 as they emerge.

9 Q All right. Let's shift now to this case, with that
10 background. How did you learn about this case?

11 A I had a party who was involved in the case reach out to me
12 in early part of December of 2019 to see if I would be
13 interested in getting involved. I think that was about the
14 time -- it was after -- as I recall, it was after the case had
15 been moved to Dallas and when there was a -- consideration of
16 either a Chapter 11 or a Chapter 7 trustee. I can't remember
17 exactly which it was. But there was talk about a motion to
18 bring on a trustee and get rid of all the management and the
19 like and such.

20 Q Can you describe in as much detail as you can recall the
21 facts and circumstances that led to your appointment as an
22 independent director?

23 A Sure. I, as I said, I had -- early December, I had an --
24 one of the parties involved -- had, probably within the next
25 week, probably two or three others -- that reached out to see

1 if I would be interested in participating. I met with the
2 Creditors' Committee or -- I'm not sure if it was all the
3 members, but representatives of the Creditors' Committee,
4 along with counsel, and I believe financial advisors were
5 involved. They walked me through the issues. They wanted to
6 hear about my C.V. Quite a few of them knew me, knew me well,
7 but others wanted to hear about my background and how I would
8 look at things as an independent director.

9 That went through into the latter part of December. I
10 knew that they were talking to other parties. I think it was
11 probably right around the first of the year or so that I was
12 informed, maybe a little bit earlier than that, that I was
13 informed that Mr. Seery was one of the other parties that they
14 were talking to, and Mr. Seery and I were put in touch with
15 each other. I had worked with Mr. Seery back probably nine
16 years earlier when I was the CEO of FGIC. He was involved in
17 a matter that we were restructuring, and so knew him a little
18 bit and was comfortable working with him as a, you know,
19 another independent director.

20 Then we took the time that we had to to -- or, I took the
21 time to -- from the beginning, you know, the early part of
22 December, look at the docket, understand what was taking
23 place. I -- in addition, I met with the company and its
24 advisors, in-house counsel, the folks at DSI who were at the
25 time the CRO and the company's counsel to better understand

1 some of the issues.

2 Mr. Seery and I, as I said, were both selected, and we
3 went through the process of, I guess, breaking the tie, I
4 think, if I could say it that way, amongst the creditors and
5 the Debtor as to who would be the third member of the board.
6 And we were given the opportunity to go out, interview, and
7 select the third member, which resulted in Russell Nelms'
8 appointment to the board. And also during that time, we were
9 given the opportunity to have some input -- not a hundred
10 percent input, but some input -- on the January 9th order that
11 -- the January 9, 2020 order that was put in place appointing
12 us and giving us some of the protections that we felt were
13 appropriate and necessary in this case.

14 Q All right. We'll get to that in a moment, but during this
15 diligence period, did you form an understanding as to why an
16 independent board was being formed, why it was being sought?

17 A Yes. There was, my words, there was a lot of distrust
18 between the creditors and the management -- not the CRO, but
19 the prior management of the company -- and there had been a
20 motion brought both to obviously bring the case back to Dallas
21 from I think it was originally in Delaware and then there was
22 a motion to seek, you know, to remove management and put in a
23 trustee.

24 There had been a dozen years of litigation with one party,
25 about eight or nine years with another major party, and

1 several other of the major creditors were litigants. The
2 other, as I understood, the other creditors, main creditors in
3 the case were all lawyers who had not yet gotten paid for the
4 litigation work that they had done. And so it was obvious
5 that this was a very -- a highly-litigious situation.

6 Q In addition to speaking with the various constituents, did
7 you do any diligence on your own to try to understand the case
8 before you accepted the appointment?

9 A Yes. I went to the docket to look at all the -- not every
10 single thing that had been filed, but to try and look at all
11 the key, relevant items that had been filed, get a better
12 understanding of what was out there. Looked at some of the
13 initial filings of the company in terms of the, you know, the
14 creditors, to understand who the creditor base was per the
15 schedules that had been filed. Looked at the -- some of the
16 various pleadings that had been put in place.

17 Q Did you form a view as to the causes of the bankruptcy
18 filing?

19 A Litigation. That was my clear view. This company had
20 been in litigation with multiple parties, various different
21 parties, since around 2008. Generally, you would see
22 litigation like the types that were, you know, that were here,
23 you know, you'd litigate for a while, then you'd try and
24 settle it.

25 It did not appear to me that there was any intention on

1 the -- the Debtor to settle these litigations, but would
2 rather just continue the process and proceed forward on the
3 litigation until the very last minute. And so it was obvious
4 that this was going to -- that the Debtor was a, as I said, a
5 highly-litigious shop, and that was one of the causes,
6 obviously, the cause of the filing, along with the fact that
7 judgments were about to be entered against the Debtor.

8 Q All right. And in January 2020, do you recall that's when
9 the agreement was reached between the Debtor, the Committee,
10 and Mr. Dondero?

11 A Yeah, it was the first week or so, which resulted in a
12 hearing on I believe it was January 9th in front of Judge
13 Jernigan.

14 Q And as a part of that -- I think you testified at that
15 hearing. Do I have that right?

16 A I don't recall if I did. I might have. I might have
17 testified at a subsequent hearing. But --

18 Q But was --

19 A -- I was in the courtroom for that hearing, yes.

20 Q Was it part of that process by which you accepted the
21 appointment as independent director?

22 A I accepted it based upon the order that had been
23 negotiated amongst the parties, the creditors, the Debtor, Mr.
24 Dondero, and others. And that was the key thing that was --
25 and approved by the Court on that date. And that was key for

1 my acceptance of the role as an independent director.

2 Q And did you and the other prospective independent
3 directors participate in the negotiation of the substance of
4 the agreement?

5 A We did. We didn't have a hundred percent say over it, but
6 we were able to get our voices heard. As Mr. Seery testified
7 earlier, he was instrumental in coming up with an idea about
8 how to put in place the injunction, you know, the -- I think
9 he referred to it as the gatekeeper injunction, which was
10 obviously in this case very critical to all three of us: Mr.
11 Seery, Mr. Nelms, and myself.

12 Q Can you describe for the Court kind of the issues of
13 concern to you and the other prospective board members? What
14 was it that you were focused on in terms of the negotiations?

15 A Well, obviously, indemnification was important, but that
16 was something that was going to be granted. Having the right
17 to obtain separate D&O insurance just for the three directors
18 was important. We were concerned that Strand Advisors, Inc.
19 really had no assets, and so we wanted to make sure that the
20 Debtor was going to get -- was going to basically guarantee
21 the indemnification.

22 The -- because of the litigious nature and what we had
23 heard from all of the various parties involved, including
24 people inside the Debtor who we had talked with, that it would
25 be something that was important for us to make sure that the

1 injunction, the gatekeeper injunction was put in place.

2 Q And can you elaborate a little bit on I think you said you
3 had done some diligence and you had formed a view as to the
4 causes of the bankruptcy filing, but did this case present any
5 specific concerns or issues that you and the board members had
6 to address perhaps above and beyond what you experienced in
7 some of the other cases you described?

8 A Well, as I said earlier, the fact that the litigation --
9 the various litigations with the creditors have been going on
10 for what I viewed as an inordinate amount of years, and that
11 it was clear from my diligence that I had done that this had
12 been directed by Mr. Dondero, to keep this moving forward in
13 the litigation, and to, in essence, just, you know, never give
14 up on the litigation.

15 It was important that the types of protections that we
16 were afforded in the January 9th order were put in place,
17 because we -- none of us -- none of the three of us, and
18 myself in particular, did not want to be in a position where
19 we would be sued and harassed through lawsuits for the next,
20 you know, ten years or so. That's not something anybody would
21 want to sign up for.

22 Q All right. Let's look at the January 9th order and the
23 specific provisions I think that you're alluding to.

24 MR. MORRIS: Can we call up Exhibit 5Q, please?

25 THE WITNESS: Pardon me while I put my glasses on to

1 read this.

2 MR. MORRIS: All right. And if we can go to
3 Paragraph 4.

4 BY MR. MORRIS:

5 Q Is that the paragraph, sir, that was intended to address
6 the concern that you just articulated about Strand not having
7 any assets of its own?

8 A Yes, it is.

9 Q And can you just describe for the Court how that
10 particular provision addressed that concern?

11 A Sure. Since we were directors of Strand, which is the
12 general partner of the Debtor, we felt it was important that
13 the general -- that Highland, the Debtor, would provide the
14 guaranty on indemnification, because Highland had the assets
15 to back up the indemnification.

16 It was also pretty clear, from my experience in having
17 placed D&O insurance, you know, over the last 25-30 years,
18 that if there was no, you know, opportunity for
19 indemnification, putting in place insurance would be very
20 difficult or exorbitantly expensive. So having this
21 indemnification by Highland was a very important piece of the
22 order that we were seeking.

23 Q And the next piece is the insurance piece in Paragraph 5.
24 Do you see that?

25 A I do.

1 Q Did you have any involvement in the Debtor's efforts to
2 obtain D&O insurance for the independent board?

3 A I did.

4 Q Can you just describe for the Court what role you played
5 and what issues came up as the Debtor sought to obtain that
6 insurance?

7 A Sure. The Debtors had been looking to get an insurance
8 policy in place. They were not able to do that. I happen to
9 have worked with an insurance broker on D&O situations in some
10 very difficult situations over the years and brought them into
11 the mix. They were able to go out to the market and find a
12 policy that would cover us, the -- kind of the key components
13 of that policy, though, were, number one, the guaranty that
14 HCMLP would give -- I'm sorry, the guaranty that HCMLP would
15 give to Strand's obligations, and also the -- I'll call it the
16 gatekeeper provision was very important because these parties
17 did not want to have -- they wanted to have what was referred
18 to, commonly referred to as the Dondero Exclusion.

19 So while we were -- we purchased a policy that covered us,
20 it did have an exclusion, unless there were no assets left,
21 and then the what I'll call -- we refer to as kind of a Side A
22 policy would kick in.

23 Q Okay. What do you mean by the Dondero Exclusion?

24 A The insurers did not want to cover the -- any litigation
25 that Mr. Dondero would bring against directors. It was pretty

1 commonly known in the marketplace that Mr. Dondero was very
2 litigious, and insurers were not willing to write the
3 insurance without the protections that this order afforded
4 because they did not want to be hit with frivolous -- hit with
5 claims on the policy for frivolous litigation that might be
6 brought.

7 MR. TAYLOR: Your Honor, this is Mr. Taylor. I've
8 got to object to the last answer. He testified as to what the
9 insurers' belief was and what they would or would not do based
10 upon their own knowledge. It's not within his personal
11 knowledge. And therefore we'd move to strike.

12 THE COURT: I overrule that objection.

13 MR. MORRIS: Your Honor?

14 THE COURT: I overrule the objection.

15 MR. MORRIS: Thank you. Thank you, Your Honor.

16 BY MR. MORRIS:

17 Q Mr. Dubel, can you explain to the Court, in your work in
18 trying to secure the D&O insurance, what rule the gatekeeper
19 provision played in the Debtor's ability to get that?

20 A Based upon my discussions with the insurance broker, who I
21 have worked with for 25-plus years, had that gatekeeper
22 provision not been put in place, we would not have been able
23 to get insurance.

24 Q All right. Let's look at the gatekeeper provision.

25 MR. MORRIS: Can we go down to Paragraph 10, please?

1 Perfect. Right there.

2 BY MR. MORRIS:

3 Q Is this gatekeeper provision, is this also the source of
4 the exculpation that you referred to?

5 A Yes.

6 Q And what's your understanding of how the exculpation and
7 gatekeeper functions together?

8 A Well, my apologies, I'm not an attorney, so just from a
9 business point of view, the way I look at this is that, you
10 know, obviously, we're -- you know, the directors are not
11 protected from willful misconduct or gross negligence, but any
12 negligence -- you know, claims brought under negligence and
13 the likes of such, and things that might be considered
14 frivolous, would have to first go to Your Honor in the
15 Bankruptcy Court for a review to determine if they were claims
16 that should be entitled to be brought.

17 Q If you take a look at the provision, right, do you
18 understand that nobody can bring a claim without -- in little
19 i, it says, first determining -- without the Court first
20 determining, after notice, that such claim or cause of action
21 represents a colorable claim of willful misconduct or gross
22 negligence against an indirect -- independent director. Do
23 you see that?

24 A I do.

25 Q Is it your understanding that parties can only bring

1 claims for gross negligence or willful misconduct if the Court
2 makes a determination that there is a colorable claim?

3 A That's my understanding.

4 Q And the second --

5 A I think they have the right -- I think they have the right
6 to go to the Court to ask if they can bring the claim, but the
7 Court has to make the determination that it's a colorable
8 claim for willful misconduct or gross negligence.

9 Q And if the Court -- is it your understanding that if the
10 Court doesn't find that there is a colorable claim of willful
11 misconduct or gross negligence, then the claim can't be
12 brought against the independent directors?

13 A That is my understanding, yes.

14 Q And was -- taken together, Paragraphs 4, 5, and 10, were
15 they of importance to you and the other independent directors
16 before accepting the position?

17 A They were absolutely critical to me and definitely
18 critical to the other directors, because we all negotiated
19 that together, and it would -- I don't -- I don't think any of
20 the three of us would have taken on this role if those
21 paragraphs had not been included in the order.

22 Q Okay. Just speaking for yourself personally, is there any
23 chance you would have accepted the appointment without all
24 three of those provisions?

25 A I would not have.

1 Q And why is that? In this particular case, why did you
2 personally believe that you needed all three of those
3 provisions?

4 A Well, you know, people like myself, you know, someone
5 who's coming in as an independent director, come in in a
6 fiduciary capacity. And, you know, we take on risks. Now,
7 granted, in a Chapter 11 case, as the saying goes, you know,
8 it's a lot safer because everything has to be approved by the
9 Court, but there are still opportunities for parties to, in
10 essence, have mischief going on and bring nuisance lawsuits
11 that would take a lot of time and effort away from either the
12 role of our job of restructuring the entity or post-
13 restructuring, would just be nuisance things that would cost
14 us money. And we, you know, I did not want to be involved in
15 that situation, knowing the litigious nature of Mr. Dondero
16 from the research that I had done, you know, the diligence
17 that I had done. I did not want to subject myself to that.
18 And it has proven an appropriate and very solid order because
19 of the conduct of Mr. Dondero, as Mr. Seery has testified to
20 earlier.

21 Q Do you have a view as to what the likely effect would be
22 on future corporate restructurings if you and your fellow
23 directors weren't able to obtain the type of protection
24 afforded in the January 9th order?

25 A I think it would be very difficult to find qualified

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1 people who would be willing to serve in these types of
2 positions if they knew they had a target on their backs. You
3 know, it was something that was clear to us, to Mr. Seery, Mr.
4 Nelms, myself at the time, that if we had a target -- we felt
5 like we would have a target on our back if we didn't have
6 these protections.

7 It just wasn't worth the risk, the stress, the
8 uncertainty, the potential cost to us. And so I don't think
9 anybody else would be, you know, willing to take on the roles
10 as an independent director with the facts and circumstances
11 and the players involved in this particular case.

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

13 THE COURT: All right. Pass the witness. Let's see.
14 You went -- I'm going to give a time. You went 32 minutes.
15 So, for cross of this witness, I'm going to limit it to an
16 aggregate of 32 minutes. Who wants to go first?

17 MR. DRAPER: Your Honor, this is Douglas Draper.
18 I'll be happy to go first.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. DRAPER:

22 Q Mr. Dubel, prior to your engagement, did you happen to
23 read the case of *Pacific Lumber*?

24 A I did not.

25 Q And were you advised about *Pacific Lumber* by somebody

001645

1 other than a -- your lawyer?

2 A I'm not familiar with the case at all, Mr. Draper.

3 Q Are you aware, and you've been around a long time, that
4 different circuits have different rules for liabilities of
5 officers, directors, and people like that?

6 A I am aware that there are different, I don't know what the
7 right term is, but precedents, I guess, in different circuits
8 for any number of things, whether it's a sale motion or
9 protections of officers and directors or anything. So each
10 circuit has its own unique situations.

11 Q And one last question. On a go-forward, after -- if this
12 plan is confirmed and on the effective date, you will not have
13 any role whatsoever as an officer or director of the new
14 general partner, correct?

15 A I have not been asked to. As Mr. Seery testified, he may
16 ask for assistance or just -- in most situations that I'm
17 involved with, I may have a continuing role just as a -- I'll
18 call it an advisor or somebody to provide a history. But at
19 this point in time, I have not been asked to have any
20 involvement.

21 Q And based on your experience, you know that there's a
22 different liability for a director and an officer versus
23 somebody who is an advisor?

24 MR. MORRIS: Objection to the form of the question.

25 No foundation.

1 THE COURT: Overruled.

2 MR. DRAPER: Mr. Dubel has shown --

3 THE COURT: Mr. Dubel, you can answer if you know.

4 MR. DRAPER: Mr. Dubel, you can answer.

5 THE WITNESS: I'm sorry, Your Honor, I didn't hear
6 you say overruled. Thank you.

7 Mr. Draper, I apologize, could you repeat the question?

8 BY MR. DRAPER:

9 Q The question is you know from your experience that there's
10 a different liability for somebody who is an officer or
11 director versus somebody who's an advisor?

12 A Yes, that's my experience, which is why in several
13 situations post-reorganization, while I have not been involved
14 *per se*, and I use the term involved meaning, you know, on a
15 day-to-day basis, if someone asks me to assist, I'll usually
16 ask them to bring me in as a non -- an unpaid employee or a,
17 you know, a nominally-amount-paid employee, so that I would be
18 protected by whatever protections the company might provide.

19 MR. DRAPER: I have nothing further for this witness,
20 Your Honor.

21 THE COURT: All right. Other cross?

22 MR. TAYLOR: Yes, Your Honor.

23 MR. RUKAVINA: Yes, Your Honor.

24 MR. TAYLOR: Oh, go ahead, Davor.

25 MR. RUKAVINA: No, Clay, go ahead.

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CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Dubel, this is Clay Taylor here on behalf on Mr. Dondero. I believe you had previously testified in response to questions from Mr. Morris that Mr. Dondero had engaged in a pattern of litigious behavior; is that correct?

A I believe that's the testimony I gave, yes.

Q Okay. And please give me the specific examples of which cases you believe he has engaged in overly-litigious behavior.

A Well, all of the cases that resulted in creditors, large creditors in our bankruptcy. That would be the UBS situation, the Crusader situation which became the Redeemer Committee, litigation with Mr. Daugherty, with Acis and Mr. Terry. And as I mentioned earlier, I'd, you know, been informed by members of the management team that it was Mr. Dondero's style to just litigate until the very end to try and grind people down.

Q Okay. Was Mr. Dondero or a Highland entity the plaintiff in the UBS case?

A No, but what was referred -- what I was referring to was the nature in which he defended it and went overboard and refused to ever, you know, try and settle things in a manner that would have gotten things done. And just looking at, having been involved in the restructuring industry for the last 40 years, as I said, almost 40 years, and been involved

1 in many, many litigious situations, it's obvious when someone
2 is litigious, whether they're the plaintiff or the defendant.

3 Q So are you personally familiar with the settlement
4 negotiations in the UBS case that happened pre-bankruptcy,
5 then?

6 A I have been informed that there were settlement
7 negotiations, and subsequently determined, through discussions
8 with the parties, that they weren't really close to -- to a
9 settlement.

10 Q But are you aware of --

11 A Mr. Dondero might have thought they were, but they were
12 not.

13 Q Okay. Would you be surprised to learn if UBS had offered
14 to settle pre-bankruptcy for \$7 million?

15 A As I understand, settlements -- settlement offers pre-
16 bankruptcy had a tremendous number of -- I don't know what the
17 right term is -- things tied to it and that clearly were never
18 going to get done.

19 Q Okay. When you say things were tied to it, what things
20 were tied to it?

21 A I don't know all of the settlement discussions that took
22 place, but what I was informed was that there were a lot of
23 conditions that were included in that. And it's -- if it had
24 been an offer of \$7 million and Mr. Dondero didn't settle for
25 that, there must have been a reason why. So, you know, since

1 the entities -- all of the entities within the Highland
2 Capital empire, if you'd call it that, were being sued for
3 almost a billion dollars.

4 Q Okay. And you say there was lots of conditions that were
5 tied to that. What were the conditions?

6 A As I said earlier, I wasn't informed of them on all the
7 prepetition settlements. That's just what I was told, there
8 was conditions.

9 Q Okay. And who were you told these things by?

10 A Both external counsel and internal counsel. Mr.
11 Ellington, Scott Ellington, and Isaac -- the litigation
12 counsel.

13 Q Okay. So --

14 A That's -- sorry.

15 Q Okay. In each of these cases, you were informed by your
16 views by statements that were made to you by other people?

17 A Yes.

18 Q Okay.

19 A Made -- and particularly made by members of management of
20 the Debtor, which is pretty informed.

21 Q Okay. Which members of management were those?

22 A As I just testified, it was Mr. Ellington, who was the
23 general -- the Debtor's general counsel, and Mr. Leventon,
24 Isaac Leventon, who was the -- I believe his title was
25 associate general counsel in charge of litigation.

1 Q Okay. Thank you.

2 MR. TAYLOR: No further questions.

3 THE COURT: All right. Mr. Rukavina?

4 CROSS-EXAMINATION

5 BY MR. RUKAVINA:

6 Q Mr. Dubel, we've never met, although I think we were on
7 the phone once together. I know you're a director, so you're
8 at the top, but having been in this case for more than a year,
9 you probably have some understanding of the assets that the
10 Debtor has, don't you?

11 A I do, but I'm not as facile with it as Mr. Seery,
12 obviously.

13 Q Sure. Is it true, to your understanding, that the Debtor
14 owns various equity interests in third-party companies?

15 A Either directly or indirectly. That's my understanding,
16 yes.

17 Q Okay. Have you heard of an entity called Highland Select
18 Equity Fund, LP?

19 A I have.

20 Q And is that a publicly-traded company?

21 A I'm not familiar with its nature there, no.

22 Q Do you know how much of the equity of that entity the
23 Debtor owns?

24 A I don't know off the top of my head, no.

25 Q And again, these may be unfair questions because you're at

1 the top, so I'm not trying to make you look foolish. I'm just
2 trying to see. Let me ask one more. Have you heard of
3 Wright, W-R-I-G-H-T, Limited?

4 MR. MORRIS: Objection, Your Honor. Beyond the
5 scope.

6 MR. RUKAVINA: Your Honor, I can recall him on my
7 direct, then.

8 THE COURT: Yeah. I'll --

9 MR. RUKAVINA: But I'd just rather get it over with.

10 THE COURT: I'll allow it.

11 MR. MORRIS: All right. If we're going to get rid of
12 --

13 THE COURT: Overruled.

14 MR. MORRIS: No, that's fine.

15 BY MR. RUKAVINA:

16 Q Have you heard of Wright, W-R-I-G-H-T, Limited?

17 A I think I have, but I just don't recall it, Mr. Rukavina.
18 I'm sorry, Rukavina. Sorry.

19 Q It's okay. It's a --

20 A I'm looking at your chart here, at your name here, and it
21 looks like Drukavina, so I really apologize.

22 Q Believe it or not, it's actually a very famous name in
23 Croatia, although it means nothing here.

24 So, all of the entities that the Debtor owns equity in, I
25 guess you probably, just because, again, you're not in the

1 weeds, you can't tell us how much of that equity the Debtor
2 owns, can you?

3 A I can't individually, no. You know, Mr. Seery is our CEO
4 and he's responsible for the day-to-day, you know, issues. So
5 usually we look at it more on a consolidated basis and not in
6 the, you know, down in the weeds, as you refer to it, unless
7 something specific came up.

8 Q Well, would you remember whether, when Mr. Seery or the
9 prior CRO would provide you, as the board member, financial
10 reports, whether that included P&Ls and balance sheets and
11 financial reports for the entities that the Debtor owned
12 interests in?

13 A We might -- we would have seen certain consolidating
14 reports that might -- that would be, you know, consolidating
15 financial statements that would be P&Ls. Where we didn't
16 consolidate them, I'm not sure we saw the actual individual-
17 entity P&Ls on a regular basis. We might have seen them if
18 there was a transaction taking place. But again, you know, I
19 don't have -- I don't remember every single one of them, no.

20 Q And you would agree with me, sir, that the Pachulski law
21 firm is an excellent restructuring, reorganization, insolvency
22 law firm, wouldn't you?

23 A Yes, I would agree with you there.

24 Q Okay. And you would expect them to ensure that anything
25 that has to be filed with Her Honor is timely filed, wouldn't

1 you?

2 A I would expect that they would follow the rules.

3 Q Okay. And you have the utmost of confidence, I take it,
4 in your CRO, don't you?

5 A I have a tremendous amount of confidence in our CEO, who
6 also happens to hold the title of CRO, yes, if that's what
7 you're referring to as, Mr. Seery.

8 (Interruption.)

9 MR. RUKAVINA: John.

10 BY MR. RUKAVINA:

11 Q Okay, I think -- yeah, I think I heard that you have
12 tremendous confidence in the CEO, who happens to be the CRO,
13 right?

14 A Yes, that's the case.

15 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
16 witness.

17 THE COURT: All right. Any other cross of Mr. Dubel?
18 All right. Mr. Morris, redirect?

19 MR. MORRIS: Yeah, just very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MORRIS:

22 Q You were asked about that *Pacific Lumber* case, Mr. Dubel;
23 do you remember that?

24 A I do remember being asked about it.

25 Q And you weren't familiar with that case, right?

1 A I'm not familiar with the name of the case, no.

2 Q But you did know that the exculpation and gatekeeping
3 provisions were going to be included in the order; is that
4 fair?

5 A I did.

6 Q And did you testify that you wouldn't have accepted the
7 position without it?

8 A I did testify that way.

9 Q And if you knew that you couldn't get those provisions in
10 the Fifth Circuit, would you ever accept a position as an
11 independent director in the Fifth Circuit on a go-forward
12 basis?

13 A Not in a situation such as this, no.

14 Q Okay. Okay.

15 MR. MORRIS: No further questions, Your Honor.

16 THE COURT: All right. Any recross on that narrow
17 redirect?

18 All right. Well, Mr. Dubel, you are excused from the
19 virtual witness stand.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. I want to go ahead and --

22 MR. DUBEL: Do you mind if I turn my video off?

23 THE COURT: I'm sorry, what?

24 MR. DUBEL: I said, do you mind if I turn my video
25 off?

1 THE COURT: No, you may. That's fine.

2 MR. DUBEL: Thank you, Your Honor.

3 THE COURT: All right. I want to break now, unless
4 there's any quick housekeeping matter. Anything?

5 MR. MORRIS: No, Your Honor, but I would just ask
6 all parties to let me know by email if they have any
7 objections to any of the exhibits on the witness list that was
8 filed at Docket No. 1877, because I want to begin tomorrow by
9 putting into evidence the balance of our exhibits.

10 MR. RUKAVINA: And Your Honor, I was responsible for
11 this due to an internal mistake. The only ones I have an
12 objection to are -- is that 7? John, is that 7, right, 700 --

13 MR. MORRIS: Yes.

14 MR. RUKAVINA: Your Honor, I only have an objection
15 to 70 and 7P, although I think -- think the Court has already
16 admitted 7P, so my objection is moot.

17 THE COURT: I have.

18 MR. RUKAVINA: Okay.

19 THE COURT: So, what --

20 MR. RUKAVINA: Then it would just be --

21 THE COURT: Go ahead.

22 MR. RUKAVINA: I'm sorry. It would just be 70.
23 Septuple O or whatever the word is.

24 THE COURT: All right. So I will go ahead and admit
25 7F through 7Q, with the exception of 70. Again, these appear

1 at Docket Entry 1877. And Mr. Morris, you can try to get in
2 70 the old-fashioned way if you want to.

3 MR. MORRIS: Yeah, I'll deal with 70 and the very
4 limited number of other objections at the beginning of
5 tomorrow's hearing.

6 THE COURT: All right.

7 (Debtor's Exhibits 7F through 7Q, with the exception of
8 70, are received into evidence.)

9 THE COURT: So we will reconvene at 9:30 Central time
10 tomorrow. I think we're going to hear from the Aon, the D&O
11 broker, Mr. Tauber; is that correct?

12 MR. MORRIS: That's right. And that should be
13 shorter than even Mr. Dubel.

14 THE COURT: All right. Well, we will see you at 9:30
15 in the morning. We are in recess.

16 MR. MORRIS: Thank you so much.

17 THE CLERK: All rise.

18 (Proceedings concluded at 5:09 p.m.)

19 --oOo--

20 CERTIFICATE

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

23 **/s/ Kathy Rehling**

02/04/2021

24 _____
25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 4

1 APPEARANCES, cont'd.:

2 For James Dondero: Clay M. Taylor
3 BONDS ELLIS EPPICH SCHAFFER
4 JONES, LLP
5 420 Throckmorton Street,
6 Suite 1000
7 Fort Worth, TX 76102
8 (817) 405-6900

9 For Get Good Trust and Douglas S. Draper
10 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
11 650 Poydras Street, Suite 2500
12 New Orleans, LA 70130
13 (504) 299-3300

14 For Certain Funds and Davor Rukavina
15 Advisors: Julian Vasek
16 MUNSCH, HARDT, KOPF & HARR
17 500 N. Akard Street, Suite 3800
18 Dallas, TX 75201-6659
19 (214) 855-7587

20 For the NexPoint Lauren K. Drawhorn
21 Parties: WICK PHILLIPS
22 3131 McKinney Avenue, Suite 100
23 Dallas, TX 75204
24 (214) 692-6200

25 For the U.S. Trustee: Lisa L. Lambert
OFFICE OF THE UNITED STATES
TRUSTEE
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-8967

For Scott Ellington, Debra A. Dandeneau
Isaac Leventon, Thomas BAKER & MCKENZIE, LLP
Surgent, and Frank 452 Fifth Avenue
Waterhouse: New York, NY 10018
(212) 626-4875

For Certain Funds and A. Lee Hogewood, III
Advisors: K&L GATES, LLP
4350 Lassiter at North Hills
Avenue, Suite 300
Raleigh, NC 27609
(919) 743-7306

1 Recorded by: Michael F. Edmond, Sr.
2 UNITED STATES BANKRUPTCY COURT
3 1100 Commerce Street, 12th Floor
4 Dallas, TX 75242
5 (214) 753-2062

6 Transcribed by: Kathy Rehling
7 311 Paradise Cove
8 Shady Shores, TX 76208
9 (972) 786-3063
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24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 DALLAS, TEXAS - FEBRUARY 3, 2021 - 9:38 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, the Honorable Stacey Jernigan presiding.

5 THE COURT: Good morning. Please be seated. All
6 right. We are ready for Day Two of the confirmation hearing
7 in Highland Capital Management, LP, Case No. 19-34054. I'll
8 just make sure we've got the key parties at the moment. Do we
9 have Mr. Pomerantz, Mr. Morris, for the Debtor team?

10 MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff
11 Pomerantz for the Debtors.

12 MR. MORRIS: And I'm here as well, Your Honor.

13 THE COURT: All right. Good.

14 All right. For our objecting parties, do we have Mr.
15 Taylor and your crew for Mr. Dondero?

16 MR. TAYLOR: Yes, Your Honor.

17 THE COURT: Good morning.

18 All right. For Dugaboy Trust and Get Good Trust, do we
19 have Mr. Draper? (No response.) All right. I do see Mr.
20 Draper. I didn't hear an appearance. You must be on mute.

21 MR. DRAPER: I'm present, --

22 THE COURT: Okay.

23 MR. DRAPER: -- Your Honor.

24 THE COURT: Okay. Good morning.

25 MR. DRAPER: I'm present, Your Honor.

1 THE COURT: Good morning. I heard you that time.
2 Thank you.

3 All right. And now for what I'll call the Funds and
4 Advisors Objectors, do we have Ms. Rukavina present?

5 MR. RUKAVINA: Yes, Your Honor. Good morning.

6 THE COURT: Good morning. All right. And I will
7 check. Do we have Mr. Clemente or your team there?

8 MR. CLEMENTE: Yes. Good morning, Your Honor. Matt
9 Clemente from Sidley Austin on behalf of the Committee.

10 THE COURT: All right. Ms. Drawhorn, do we have you
11 there for the NexPoint Real Estate Partners and related funds?

12 MS. DRAWHORN: Yes, Your Honor. Good morning.

13 THE COURT: Good morning. All right. Did I miss --
14 I think that captured all of our Objectors. Anyone who I've
15 missed?

16 All right. Well, when we recessed yesterday, Mr. Morris,
17 I think you were about to call your third witness; is that
18 correct?

19 MR. MORRIS: It is, Your Honor. But if I may, I'd
20 like to just address the objections to the remaining exhibits,
21 since I hope that won't take too long.

22 THE COURT: All right. You may.

23 MR. POMERANTZ: Actually, Your Honor, before we go
24 there, we filed the supplemental declaration of Patrick
25 Leatham, as we indicated we would do yesterday. We just

1 wanted to get confirmation again that nobody intends to cross-
2 examine him, so that he doesn't have to sit through the
3 festivities today.

4 THE COURT: All right. Well, I did see that you
5 filed that.

6 Does anyone anticipate wanting to cross-examine Mr.
7 Leatham, the balloting agent?

8 MR. RUKAVINA: Your Honor, I take it that that
9 declaration is part of the record. As long as the Court
10 confirms that, I do not intend to call the gentlemen.

11 THE COURT: All right. Well, I will take judicial
12 notice of it and make it part of the record. It appears at
13 Docket Entry No. 1887. Again, it was filed -- well, it was
14 actually filed early this morning, I think. So, all right.
15 So, with --

16 MR. MORRIS: And to avoid --

17 THE COURT: Go ahead.

18 MR. MORRIS: To -- I was just going to say, to avoid
19 any ambiguity, Your Honor, the Debtor respectfully moves that
20 document into the evidentiary record.

21 THE COURT: All right. The Court will --

22 (Interruption.)

23 THE COURT: Someone needs to put their phone on mute,
24 perhaps. Unless someone was intentionally speaking.

25 All right. So, I will grant that request. Docket Entry

1 No. 1887 will be part of the confirmation evidence of this
2 hearing.

3 (Debtor's Patrick Leatham Declaration at Docket 1887 is
4 received into evidence.)

5 THE COURT: All right. Anything else? There were
6 other exhibits I think you were going to talk about?

7 MR. MORRIS: Yeah. Let me just go through them one
8 at a time, if I may, Your Honor.

9 THE COURT: Okay.

10 MR. MORRIS: All right. So, I'm going to deal with
11 the transcripts that have been objected to one at a time. And
12 I'll just take them in order. The first one can be found at
13 Exhibit B. It is on Docket No. 1822.

14 THE COURT: Okay.

15 MR. MORRIS: Exhibit B is the deposition transcript
16 from the December 16, 2020 hearing on the Advisor and the
17 Funds' motion for an order restricting the Debtor from
18 engaging in certain CLO-related transactions.

19 During that hearing, the Court heard the testimony of
20 Dustin Norris. Mr. Norris is an executive vice president for
21 each of the Funds and each of the Advisors.

22 We would be offering the transcript for the limited
23 purposes of establishing Mr. Dondero's ownership and control
24 over the Advisors.

25 Mr. Norris also gave some pretty substantial testimony

1 concerning the so-called independent board of the Funds.

2 And as a general matter, Your Honor, to the extent that
3 the objection is on hearsay grounds, the transcript -- at
4 least the portions relating to Mr. Norris's testimony --
5 simply are not hearsay under Evidentiary Rule 801(d)(2).
6 These are statements of an opposing party, and I think we fall
7 well within that.

8 So, we would respectfully request that the Court admit
9 into the record the transcript from December 16th, at least
10 the portions of which are Mr. Norris's testimony.

11 THE COURT: All right. And, again, these appear at
12 -- I think I heard you say B and then E. Is that correct?

13 MR. MORRIS: Just B. Just B at the moment. B as in
14 boy.

15 THE COURT: Okay. Just B at the moment?

16 All right. Any objections to that?

17 MR. RUKAVINA: Your Honor, I had objected, but now
18 that it's offered for that limited purpose, I withdraw my
19 objection.

20 THE COURT: All right. Then B -- I'm sorry. Was
21 there anyone else speaking?

22 B will be admitted. And, again, it appears at Docket
23 Entry 1822.

24 (Debtor's Exhibit B, Docket Entry 1822, is received into
25 evidence.)

1 MR. MORRIS: Okay. Next, the next transcript can be
2 found at Exhibit 6R, and that's Docket 1866. Exhibit 6R is
3 the transcript of the January 9, 2020 hearing where the Court
4 approved the corporate governance settlement. We think that
5 that transcript is highly relevant, Your Honor, because it
6 reflects not only Mr. Dondero's notice and active
7 participation in the consummation of the corporate governance
8 agreement, but it also reflects the Court and the parties'
9 views and expectations that were established at that time,
10 such that if anybody contends that there's any ambiguity about
11 any aspect of the order, I believe that that would be the best
12 evidence to resolve any such disputes.

13 So, for the purpose of establishing Mr. Dondero's notice,
14 Mr. Dondero's participation, and the parties' discussions and
15 expectations with regard to every aspect of the corporate
16 governance settlement, including Mr. Dondero's stipulation,
17 the order that emerged from it, and the term sheet, we think
18 that that's properly into evidence.

19 THE COURT: Any objection?

20 All right. 6R will be admitted. Again, at Docket Entry
21 1822.

22 (Debtor's Exhibit 6R, Docket Entry 1822, is received into
23 evidence.)

24 MR. MORRIS: Next, Your Honor, we've got Exhibits 6S
25 as in Sam and 6T as in Thomas. They're companions. And they

1 can be found at Docket 1866. And those are the transcripts.
2 The first one is from the October 27th disclosure statement
3 hearing, and the second one actually is from the Patrick
4 Daugherty, I believe, lift stay motion.

5 I'll deal with the first one first, Your Honor. We
6 believe that the transcript of the October 27th hearing goes
7 to the good faith nature of the Debtor's proposed plan. It
8 shows that the Debtor and the Committee were not always
9 aligned on every interest. It shows that the Committee, in
10 fact, strenuously objected to certain aspects of the then-
11 proposed plan by the Debtors. And we just think it goes to
12 the heart of the good faith argument.

13 The transcript for the 28th, we would propose to offer for
14 the limited purpose of the commentary that you offered at the
15 end of that hearing, where Your Honor made it clear that
16 employee releases would not be -- would not likely be
17 acceptable to the Court unless there was some consideration
18 paid.

19 And it was really, frankly, Your Honor's comments that
20 helped spur the Committee and the Debtor to discuss over the
21 next few weeks the resolution of the issues concerning the
22 employee releases.

23 So we're not offering Exhibit 6T for anything having to do
24 with Mr. Daugherty or his claim, but just the latter portion
25 relating to the discussion about the employee releases. And,

1 with that, we'd move those transcripts into evidence.

2 THE COURT: Any objection?

3 MR. RUKAVINA: Your Honor, yes, I do object. 6S is
4 hearsay, and under Rule 804(b)(1) it's admissible only if the
5 witnesses are unavailable to be called. There's been no
6 suggestion that they're not.

7 As far as 6T, what Your Honor says is not hearsay, so as
8 long as it's just what Your Honor was saying, I do not object
9 to 6T. I object to the balance of it.

10 THE COURT: Okay. What about that objection on 6S?

11 MR. MORRIS: Yeah. One second, Your Honor. I would
12 go to the residual exception to the hearsay rule under 807.
13 807 specifically applies if the statement being offered is
14 supported by sufficient guarantees of trustworthiness and it's
15 more probative on the point -- and the point here is simply to
16 help buttress the Debtor's good faith argument -- and it's
17 more probative on the point than any other evidence. And I'm
18 not sure what better evidence there would be than an on-the-
19 record discussion between the Debtor and the Committee as to
20 the disputes they were having on the disclosure statement.

21 THE COURT: All right. I'm going to overrule the
22 objection and accept that 807 exception as being valid here.
23 So, I am admitting both 6S and 6T. And for the record, I
24 think you said they appeared at 1866. They actually appear at
25 1822.

1 MR. MORRIS: Okay, Your Honor. I am corrected. It
2 is 6S and 6T, and they are indeed at 1822. Forgive me.

3 THE COURT: Okay.

4 (Debtor's Exhibits 6S and 6T, Docket Entry 1822, is
5 received into evidence.)

6 MR. MORRIS: The next transcript and the last one is
7 6U, which is also at 1822. 6U is the transcript from the
8 December 10th hearing on the Debtor's motion for a TRO against
9 Mr. Dondero. We believe the entirety of that transcript is
10 highly relevant, and it relates specifically to the Debtor's
11 request for the exculpation, gatekeeper, and injunction
12 provisions of their plan. And on that basis, we would offer
13 that into evidence.

14 THE COURT: Any objection?

15 MR. TAYLOR: Yes, Your Honor. This is Clay Taylor on
16 behalf of Mr. Dondero.

17 We do object, on the same basis that it is hearsay. There
18 has certainly been plenty of testimony before this Court and
19 on the record as to why the Debtor believes that its plan
20 provisions are appropriate and allowable, and there's no need
21 to allow hearsay in for that. All of the witnesses were
22 available to be called by the Debtor. The Debtor is in the
23 midst of its case and can call whoever else it needs to call
24 to get these into evidence or to get those docs into evidence.
25 And therefore, we don't believe that any residual exception

1 should apply.

2 THE COURT: Mr. Morris, your response?

3 MR. MORRIS: First, Your Honor, any statements made
4 by or on behalf of Mr. Dondero would not be hearsay under
5 801(d)(2).

6 And secondly, there is no other evidence of the Debtor's
7 motion of the -- of the argument that was had. There is no
8 other evidence, let alone better evidence, than the transcript
9 itself. And I believe 807 is certainly the best rule to
10 capture that.

11 It is a statement that's supported by sufficient
12 guarantees of trustworthiness. Again, these are the litigants
13 appearing before Your Honor. It may not be sworn testimony,
14 but I would hope that everybody is doing their best to comply
15 with the guarantee of trustworthiness in that regard, putting
16 aside advocacy.

17 And it is more probative on the point for which we're
18 offering -- and that is on the very issues of exculpation,
19 gatekeeper, and injunction -- than anything else we can offer
20 in that regard.

21 THE COURT: All right. I overrule the objection and
22 I will admit 6U. Okay.

23 (Debtor's Exhibit 6U, Docket Entry 1822, is received into
24 evidence.)

25 MR. MORRIS: All right. Going back to the top, Your

1 Honor, Companions Exhibit D as in David and E as in Edward,
2 which are at Docket 1822.

3 Exhibit D is an email string that relates to the Debtor's
4 communications with the Creditors' Committee concerning a
5 transaction known as SSP, which stands for Steel Products --
6 Structural and Steel Products. So that was an asset that the
7 Debtor was selling, trying to sell at a particular point in
8 time. And Exhibit E is a deck that the Debtor had prepared
9 for the benefit of the UCC.

10 And if we looked that those documents, Your Honor, you'd
11 see that the Debtor was properly following the protocols that
12 were put in place in connection with the January 9th corporate
13 governance settlement. And the Committee is being informed by
14 the Debtor of what the Debtor intends to do with that
15 particular asset.

16 And the reason that it's particularly relevant here, Your
17 Honor, is Dustin Norris had submitted a declaration in support
18 of their motion that was heard on September -- on December
19 16th. That declaration is an exhibit to what is Exhibit A on
20 Docket 1822. Exhibit A on the docket is the Advisor and the
21 Funds' motion. Okay? So, Exhibit A is the motion. Attached
22 to that Exhibit A is an exhibit, which is Mr. Norris's
23 declaration.

24 At Paragraph 9 of Mr. Norris's declaration, he takes issue
25 with the Debtor's process for the sale of that particular

1 asset.

2 And so, having admitted already into the record Mr.
3 Norris's declaration, we believe that these documents rebut
4 the statements made in Mr. Norris's declaration, and indeed,
5 were part of the transcript that has now already been admitted
6 into evidence. So we think the documents are needed because
7 they were exhibits during that hearing.

8 THE COURT: All right. Any objection?

9 MR. RUKAVINA: Your Honor, yes, I object based on
10 authenticity. This document has not been authenticated, nor
11 has the attachment. And on hearsay. And I don't think that
12 the Debtor can introduce one exhibit just to introduce another
13 to rebut the first.

14 THE COURT: Your response?

15 MR. MORRIS: You know, in all honesty, I wish that
16 the authenticity objection had been made yesterday and I might
17 have been able to deal with that.

18 These documents have already been admitted by the Court
19 against these very same parties. I think it would be a little
20 unfair for them now to exclude the document that they had no
21 objection to the first time around. They clearly relate to
22 Paragraph 9 of Mr. Norris's declaration, which was admitted
23 into evidence in this case without objection.

24 THE COURT: All right. I overrule the objection. D
25 and E are admitted.

1 (Debtor's Exhibits D and E, Docket Entry 1822, is received
2 into evidence.)

3 MR. MORRIS: Next, Your Honor, we have Exhibits 4D as
4 in David, 4E as in Edward, and 4G as in Gregory. And those
5 can all be found on Docket 1822. And to just cut to the
6 chase, Your Honor, these are the K&L Gates letter that were
7 sent in late December and my firm's responses to those
8 letters.

9 Those letters are being offered, again, to support --
10 well, the Debtor contends that, in the context of this case,
11 and at the time and under the circumstances, the letters
12 constituted interference and evinces a disregard for the
13 January 9th order, for Mr. Dondero's TRO, and for the Court's
14 comments at the December 16th hearing. And they go
15 specifically to the Debtor's request for the gatekeeper,
16 exculpation, and injunction provisions.

17 To the extent that those exhibits contain the letters that
18 were sent on behalf of the Funds and on behalf of the
19 Advisors, they would simply not be hearsay under 801(d)(2).
20 And to the extent the objection goes to my firm's response, I
21 think just as a matter of completeness the Court -- I won't
22 offer them for the truth of the matter asserted. I'll simply
23 offer the Pachulski responses at those exhibits for the
24 purpose of stating the Debtor's position, without regard to
25 the truth of the matter asserted.

1 THE COURT: All right. Any objection?

2 MR. RUKAVINA: Your Honor, with that understanding,
3 I'll withdraw my objection to these exhibits.

4 THE COURT: All right. So, 4D, 4E, and 4G are
5 admitted.

6 (Debtor's Exhibits 4D, 4E, and 4G, Docket Entry 1822, are
7 received into evidence.)

8 MR. MORRIS: Next, Your Honor, we've got Exhibit 5T
9 as in Thomas. That document can be found at Docket No. 1822.
10 Your Honor, that document is a schedule of a long list of
11 promissory notes that are owed to the Debtor by the Advisors,
12 Dugaboy, and Mr. Dondero. But I think that, upon reflection,
13 I'll withdraw that exhibit.

14 THE COURT: All right.

15 (Debtor's Exhibit 5T is withdrawn.)

16 MR. MORRIS: And then, finally, just one last one. I
17 think Mr. Rukavina objected to Exhibit 70 as in Oscar, which
18 can be found at Docket No. 1877. Exhibit 70 are the documents
19 that were admitted in the January 21st hearing, and I believe
20 that they all go -- they're being offered to support the
21 Debtor's application for the gatekeeper, exculpation, and
22 injunction provisions.

23 THE COURT: All right. 70 is being offered. Any
24 objection?

25 MR. RUKAVINA: Yes, Your Honor. I do object. Those

1 are exhibits from a separate adversary proceeding that has not
2 been concluded. In fact, my witness is still on the stand in
3 that.

4 And I'll note that that's another 20,000 pages that's very
5 duplicative of the current record, and we already are going to
6 have an unwieldy record. So I question why Mr. Norris -- why
7 Mr. Morris would even need this.

8 So that's my objection, Your Honor.

9 MR. MORRIS: You know what? That's a fair point,
10 Your Honor. And -- that is a fair point, and I guess what I'd
11 like to do is at some point this morning see if I can single
12 out documents that are not duplicative and come back to you
13 with very specific documents. I think that's a very fair
14 point.

15 THE COURT: All right.

16 MR. MORRIS: And with that, Your Honor, I think we've
17 now addressed every single document that the Debtor has
18 offered into evidence, and I believe, other than the
19 withdrawal of --

20 THE COURT: 5T.

21 MR. MORRIS: -- 5T --

22 THE COURT: Uh-huh.

23 MR. MORRIS: -- and the open question on 70, I
24 believe every single document at Docket 1822, 1866, and 1877
25 has been admitted. Do I have that right?

1 THE COURT: All right. Yes, because I did admit
2 yesterday 7F through 7Q, minus 7O, at 1877. So, yes, I agree
3 with what you just said.

4 MR. RUKAVINA: Your Honor, I apologize. And Mr.
5 Morris. I have that 5S -- or six -- that 5S and 6C, Legal
6 Entities List, have not been admitted. But if I'm wrong on
7 that, then I apologize.

8 THE COURT: Okay. 5S was part of 1866, which I
9 admitted entirely.

10 And what was the other thing?

11 MR. RUKAVINA: I'm counting letters, Your Honor.
12 One, two, three, four. 6D, Legal Entities List, Redacted.

13 THE COURT: Okay. 6B would have been --

14 MR. RUKAVINA: D, Your Honor, as in dog. I'm sorry.
15 6-dog.

16 THE COURT: Okay. 6D, yeah, that was part of 1822
17 that I admitted *en masse* yesterday.

18 MR. MORRIS: Yeah, I didn't hear an objection to that
19 one yesterday, and I agree, Your Honor. My records show that
20 it was already admitted.

21 MR. RUKAVINA: Then I apologize to the Court.

22 THE COURT: All right. Any --

23 MR. MORRIS: No worries. Let's get --

24 THE COURT: Any other housekeeping matters before we
25 go to the next witness?

1 MR. MORRIS: No, Your Honor. Not from the Debtor.

2 THE COURT: Anyone else?

3 All right. Well, let's hear from the next witness.

4 MR. MORRIS: All right, Your Honor. The Debtor calls
5 as its next and last witness Marc Tauber.

6 THE COURT: All right. Mr. --

7 MR. MORRIS: Mr. Tauber, if you're on the phone,
8 please identify yourself.

9 (No response.)

10 THE COURT: Mr. Tauber, we're not hearing you.
11 Perhaps you are on mute. Could you unmute your device?

12 (No response.)

13 THE COURT: All right. If it's a phone, you need to
14 hit *6.

15 Hmm. Any -- do you know which caller he is?

16 THE CLERK: I'm trying to find out.

17 THE COURT: All right. We've got well over a hundred
18 people, so we can't easily identify where he is at the moment.

19 All right. Mr. Tauber, Marc Tauber? This is Judge
20 Jernigan. We cannot hear you, so -- all right. Well, maybe
21 we can --

22 MR. MORRIS: Can we just take a three-minute break
23 and let me see if I can track him down?

24 THE COURT: Yes. Why don't you do that? So let's
25 take a three-minute break.

1 MR. MORRIS: Thank you, Your Honor.

2 THE COURT: Okay.

3 (A recess ensued from 10:02 a.m. until 10:04 a.m.)

4 MR. MORRIS: Your Honor, if we may, he'll be dialing
5 in in a moment. But I've been reminded that there is one more
6 exhibit. It's the exhibit I used on rebuttal yesterday with
7 Mr. Seery. There was the one document that was on the docket,
8 and that was the Debtor's omnibus reply to the plan
9 objections, where we looked at Paragraph 135, I believe. And
10 we would offer that into evidence for the purpose of just
11 establishing that the Debtor had given notice no later than
12 January 22nd of its agreement in principle to assume the CLO
13 management contracts.

14 And then the second exhibit that we had offered that I
15 think I suggested could be marked as Exhibit 10A was the email
16 string between my firm and counsel for the CLO Issuers where
17 they agreed to the agreement in principle for the Debtor's
18 assumption of the CLO management contracts.

19 And we would offer both of those documents into evidence
20 as well.

21 THE COURT: All right. Any objections?

22 All right. Well, I will admit them.

23 As far as this email string with the CLO Issuers that you
24 called 10A, does that appear on the docket? I remember you
25 putting it on the screen, but, if not, you'll need to file a

1 supplement to the record, a supplemental exhibit.

2 MR. MORRIS: We will, Your Honor. We'll do that for
3 both of those exhibits.

4 THE COURT: And then as -- okay, for both? Because I
5 -- I've read that reply, and I could reference the docket
6 number if we need to.

7 MR. MORRIS: We'll clean that up, Your Honor.

8 THE COURT: Okay.

9 (Debtor's Exhibit 10A is received into evidence.)

10 (Clerk advises Court re new caller.)

11 THE COURT: Oh, okay. Just a minute. I was looking
12 up something.

13 (Pause.)

14 THE COURT: All right. Well, you're going to file --
15 hmm, I really wanted to just reference where that reply brief
16 appears on the record. There were a heck of a lot of things
17 filed on January 22nd.

18 (Interruption.)

19 THE COURT: Okay. We'll --

20 MR. MORRIS: All right. We're just going to need one
21 more minute with Mr. Tauber. It's my fault, Your Honor.

22 THE COURT: Okay.

23 MR. MORRIS: I didn't send him easily-digestible
24 dial-in instructions. He'll be just a moment.

25 THE COURT: Okay.

1 (Court confers with Clerk regarding exhibit.)

2 THE COURT: Oh, it's at 1807? Okay. So, the reply
3 brief that we talked about Paragraph 35, that is at Docket No.
4 1807. Okay? All right.

5 (Debtor's Omnibus Reply to Plan Objections, Docket 1807,
6 is received into evidence.)

7 (Pause.)

8 MR. TAUBER: Hi. It's Marc Tauber.

9 THE COURT: All right.

10 MR. MORRIS: Excellent.

11 THE COURT: Mr. Tauber, this is Judge Jernigan. I
12 can hear you, but I can't see you. Do you have a video --

13 MR. TAUBER: Yeah, I don't know why it's not working.

14 THE COURT: Hmm.

15 MR. TAUBER: I'm on WebEx all day. Usually it works
16 no problem.

17 THE COURT: Okay. Well, do you want to give it
18 another try or two?

19 MR. TAUBER: Yeah. It looks like it's starting to
20 come up. It's all -- pictures, so --

21 THE COURT: Okay.

22 MR. TAUBER: -- hopefully you'll be able to see me in
23 a second.

24 THE COURT: Okay. The first thing I'm going to need
25 to do is swear you in, so we'll see if the video comes up here

1 in a minute.

2 MR. TAUBER: Okay.

3 THE COURT: Can you see us, Mr. Tauber?

4 MR. TAUBER: I can see four people. The rest are
5 just names still.

6 THE COURT: Okay.

7 MR. TAUBER: I can go out and try to come back in, if
8 you think that's --

9 THE COURT: I'm afraid of losing you. So, your
10 audio, is it on your phone or is it on --

11 MR. TAUBER: No.

12 THE COURT: -- a computer?

13 MR. TAUBER: On the computer. Yeah.

14 THE COURT: Okay. So you're coming through loud and
15 clear on your computer.

16 MR. TAUBER: Yeah. Like I said, we use WebEx for
17 work, so I have them on all day long without any issues,
18 typically.

19 THE COURT: Okay.

20 (Court confers with Clerk.)

21 THE COURT: Okay. Our court reporter thinks it's a
22 bandwidth issue on your end, so I don't --

23 MR. TAUBER: There's only two of us here at home on
24 the line right now, so I don't know why. It looks like it's
25 trying to come in, and then just keeps --

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25

1 THE COURT: I at least see your name on the screen
2 now, which I did not before.

3 MR. TAUBER: Yeah.

4 THE COURT: So hopefully we're going to -- ah. We
5 got you.

6 MR. TAUBER: There it is.

7 THE COURT: All right.

8 MR. TAUBER: Yeah.

9 MR. MORRIS: There we go.

10 MR. TAUBER: I might lose you, though. Give me one
11 second, because I have a thing saying the WebEx meeting has
12 stopped working. Let me close that.

13 THE COURT: Okay. We've still got you. Please raise
14 your right hand.

15 MR. TAUBER: Okay.

16 MARC TAUBER, DEBTOR'S WITNESS, SWORN

17 THE COURT: All right. Thank you. Mr. Morris?

18 MR. MORRIS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MORRIS:

21 Q Good morning, Mr. Tauber.

22 A Good morning.

23 Q I apologize for the delay in getting you the information.
24 Are you currently employed, sir?

25 A Yes, sir.

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1 Q By whom?

2 A Aon Financial Services.

3 Q And does Aon Financial Services provide insurance
4 brokerage services among its services?

5 A Yes.

6 Q And what position do you currently hold?

7 A Vice president.

8 Q How long have you been a vice president at Aon?

9 A Since October of 2019.

10 Q Can you just describe for the Court generally your
11 professional background?

12 A Sure. I spent about 20 years on Wall Street, working in a
13 variety of jobs, in research, trading, and as the COO of a
14 hedge fund. And then in 2010 I switched to the insurance
15 world. I was an underwriter for ten-plus years for Zurich and
16 QBE. And then in 2019 switched to the brokering side for Aon.

17 Q And what are your duties and responsibilities as a vice
18 president at Aon?

19 A Well, we're responsible for my team and I am responsible
20 for creating bespoke insurance programs, focusing on D&O and
21 E&O insurance for our insureds.

22 Q And what is, for the benefit of the record, what do you
23 mean by bespoke insurance program?

24 A Well, each client is different, so the programs and the
25 policies that we put in place might be off-the-shelf policies,

1 but we endorse and amend them as needed to meet the needs of
2 the individual client.

3 Q And during your work, both as an underwriter and now as a
4 broker, have you familiarized yourself with the market for D&O
5 and E&O insurance policies?

6 A Yes.

7 Q All right. Let's talk about the early part of this case.
8 Did there come a time in early 2020 when Aon was asked to
9 place insurance on behalf of the board of Strand Advisors?

10 A Yes.

11 Q Can you describe for the Court how that came about?

12 A Sure. One of our account executives, a man by the name of
13 Jim O'Neill, had a relationship with a man named John Dubel,
14 who was one of the appointees to serve on -- as a member of
15 Strand, which was being appointed, as we understood it, to be
16 the general partner of Highland Capital Management by the
17 Bankruptcy Court. And they -- we had done -- or, Jim and John
18 had a longstanding relationship. I had actually underwritten
19 an account for a previous appointment of John's when I was an
20 underwriter, so I had some familiarity with John as well, and
21 actually brokered a subsequent deal for John at Aon.

22 So I had, again, some familiarity with John, and we were,
23 you know, tasked with going out and finding a program for
24 Strand.

25 Q Can you describe what happened next? How did you go about

1 accomplishing that task?

2 A So, there are a number of markets or insurance companies
3 that provide management liability insurance, which this was a
4 management liability-type policy. D&O is a synonym for
5 management liability, I guess you'd say. And we approached
6 the, I think, 14 or 15 markets that we knew to provide
7 insurance in this space and that would be willing to buy the
8 type of policy we were seeking and have interest in a risk
9 like this, which had a little hair on it. Obviously, there
10 was the Dondero involvement, as well as the bankruptcy.

11 Q As part of that process, did you and your firm put
12 together a package of information for prospective interested
13 parties?

14 A Yes.

15 Q Can you describe for the Court what was contained in the
16 package?

17 A Had the *C.V.s*, some relevant pleadings from the case,
18 court order. I'd have to go back and look exactly. But sort
19 of just general, you know, general information that was
20 available about the situation at hand and Strand's
21 appointment.

22 Q And the court order that you just mentioned, is that the
23 one that had that gatekeeper provision in it?

24 A Correct.

25 Q And can you explain to the Court why you and your team

1 decided to include the order with the gatekeeper provision in
2 the package that you were delivering to prospective carriers?

3 A Sure. In our initial conversations to discuss our
4 engagement, the gatekeeper function was explained to us by
5 John. And I'm not sure who else was on the initial call.
6 And, but it was explained to us that I guess Judge Jernigan
7 would sit as the gatekeeper between any potential claimant
8 against the insureds and, you know, would basically have to
9 approve any claim that would be made against (indecipherable),
10 which would thereby prevent any frivolous claims from
11 happening.

12 Q All right. Let's just talk for a moment. How did you and
13 your firm decide which underwriters to present the package to?

14 A Again, you know, I -- my background, or my Wall Street
15 background, obviously, sort of made me have a -- it was very
16 unique for the insurance world when I switched over, so I had
17 sort of risen to a certain level of expertise within the
18 space. And, you know, our team also is very experienced, and
19 decades of experience in the insurance world. So we're very
20 familiar with the markets that are willing to provide these
21 types of policies and the markets that would be likely to take
22 a look at a risk such as this.

23 Q Okay. You mentioned that there was -- I think your words
24 were a little hair on this, and one of the things you
25 mentioned was bankruptcy. How did the fact that Strand was

1 the general partner of a debtor in bankruptcy impact your
2 ability to solicit D&O insurance?

3 A Well, it's just not a plain vanilla situation, so people
4 are somewhat, you know, are -- I think -- so, the type of
5 insurance, D&O insurance, that we write is very different from
6 auto insurance, as an example. Auto insurance, people expect
7 there to be a certain amount of claims, and they expect the
8 premiums to cover the claims plus the expenses and then
9 provide them a reasonable profit on top of that.

10 Our insurance is really much more by binary. The
11 expectation for underwriters is that they will be completing
12 ignoring -- or, avoiding risk at all costs, wherever possible.
13 So anytime there is a situation that looks a little risky, so
14 the premium might be a little higher, the deductible might be
15 a little higher, but, again, the underwriters are really
16 making a bet that they will not have a claim. Because the
17 premiums pale in comparison to the limits that are available
18 to the policyholder.

19 Q And so --

20 A So, -- I'm sorry. What were you going to say?

21 Q I didn't mean to interrupt.

22 A Yeah.

23 Q Have you finished your answer?

24 A Sure.

25 Q Okay. So, were some of the 14 or 15 markets that you

1 contacted reluctant to underwrite because there was a
2 bankruptcy ongoing?

3 A Well, I think that probably -- I mean, there are certain
4 markets that we didn't go to in the beginning because they
5 would be very reluctant to write a risk that had that kind of
6 hair on it, based on our experience from dealing with them.
7 And, you know, I think the bankruptcy was certainly a little
8 bit of an issue. And then, obviously, as people did their
9 research and -- or if they weren't already familiar with
10 Highland and got to know, you know, got -- I will just say for
11 a simple Google search and learned a little bit about Mr.
12 Dondero, I think there was definitely some significant
13 reluctance to write this program.

14 Q Was the fact that the Debtor -- was the fact that the
15 Debtor is a partnership an issue that came up, in your -- in
16 your process?

17 A There are certainly some carriers who won't write what's
18 known as general partnership liability insurance. So, yes,
19 that is part of that. It was part of the limiting factor in
20 terms of who we went to.

21 Q Okay. And, finally, you mentioned Mr. Dondero. What role
22 did he play in your ability to obtain insurance for the Strand
23 board?

24 A Well, that's a very significant role. As, you know, as
25 mentioned, the underwriters are very risk-averse, so the

1 litigiousness of Mr. Dondero is a very strong red flag
2 prohibiting a number of people from writing the insurance at
3 all. And the ones that were writing, that were willing to
4 provide options, were looking for protections from Mr.
5 Dondero.

6 Q And what kind of protections were they looking for?

7 A Well, the gatekeeper function was a key factor. That was
8 really the only way we could even start a conversation with
9 any of the people that we were able to engage. And in
10 addition, they wanted a, you know, sort of a belts and
11 suspenders additional protection of having an exclusion
12 preventing any litigation brought by or on behalf of Mr.
13 Dondero.

14 Q Were you able to identify any carrier who was prepared to
15 underwrite D&O insurance for Strand without the gatekeeper
16 provision or without a Dondero exclusion?

17 A We were not.

18 Q Okay. Let's fast-forward now. Has your firm been
19 requested to obtain professional management insurance for the
20 contemplated post-confirmation debtor entities and individuals
21 associated with those entities?

22 A Yes.

23 Q Okay. So let's just talk about the entities first, the
24 Claimant Trust and the Litigation Trust. In response to that
25 request, have you and your team gone out into the marketplace

1 to try to find an underwriter willing to underwrite a policy
2 for those entities?

3 A Yes.

4 Q And have you been able to find any carrier who's willing
5 to provide coverage for the Claimant Trust and the Litigation
6 Trust?

7 A Yes.

8 Q And how many -- how many have expressed a willingness to
9 do that?

10 A Two.

11 Q And have those two carriers indicated that there would be
12 conditions to coverage for the entities?

13 A Both will require a -- the continuation of the gatekeeper
14 function, as well as a Dondero exclusion.

15 Q Okay. Have you also been tasked with the responsibility
16 of trying to find coverage for the individuals associated with
17 the Claimant Trust and the Litigation Trust, meaning the
18 Claimant Trustee, the Litigation Trustee, and the Oversight
19 Board?

20 A Yes. So we did it concurrently.

21 Q Okay. So, are the two firms that you just mentioned
22 willing to provide insurance for the individuals as well as
23 the entities?

24 A Correct. With the same stipulations.

25 Q They require -- they both require the gatekeeper and the

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1 Dondero exclusion?

2 A That's correct.

3 Q Is there any other firm who has indicated a willingness to
4 consider providing D&O insurance for the individuals?

5 A There is one that is willing to do so, as long as the
6 gatekeeper function remains in place. They have indicated
7 that if the gatekeeper function was to be removed, that they
8 would then add a Dondero exclusion to their coverage.

9 Q So is there any insurance carrier that you're aware of who
10 is prepared to insure either the individuals or the entities
11 without a gatekeeper provision?

12 A No.

13 Q And that last company, I just want to make sure the record
14 is clear: If the gatekeeper provision is overturned on appeal
15 or is otherwise not effective, do you have an understanding as
16 to what happens to the insurance coverage?

17 A They will either add an exclusion for any claims brought
18 by or on behalf of Mr. Dondero or cancel the coverage
19 altogether.

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

21 THE COURT: All right. Cross of this witness?

22 CROSS-EXAMINATION

23 BY MR. RUKAVINA:

24 Q Mr. Tauber, I'm a little confused. So, the insurance
25 that's being written now for the post-bankruptcy entities, did

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1 I hear you say that there is one carrier that would give that
2 insurance subject to having a Dondero exclusion?

3 A So, first of all, there's nothing currently being written.
4 We have solicited quotes. So, just to make sure that that --
5 I want to make sure that's clear.

6 We have three carriers that are willing to provide varying
7 levels of coverage. All three will only do so with the
8 existence of the gatekeeper function continuing to be in
9 place. One of the three has -- two of those three will also
10 provide the coverage with -- even with the gatekeeper function
11 and the Dondero exclusion. The third one was not requiring a
12 Dondero exclusion unless the gatekeeper function goes away.

13 Q Okay. So the third one, you believe, will, whatever the
14 term is, write the insurance or provide the coverage without a
15 gatekeeper, as long as there is a strong Dondero exclusion?

16 A No. Their initial requirement is that the gatekeeper
17 function remains in place. That is their preferred option.
18 If the gatekeeper function is removed, then they will add a
19 Dondero exclusion in place of the gatekeeper exclusion. In
20 addition, that carrier is only willing to provide coverage for
21 the individuals, not for the entities.

22 Q Okay. Thank you.

23 MR. RUKAVINA: I'll pass the witness, Your Honor.

24 THE COURT: All right. Other cross?

25 MR. TAYLOR: Clay Taylor on behalf of Mr. Dondero.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MR. TAYLOR:

4 Q Good morning, Mr. Tauber.

5 A Good morning.

6 Q Are you generally familiar with placing D&O insurance at
7 distressed debt level private equity firms?

8 A I am familiar with it probably more from the underwriting
9 side, and I also worked at a fund that was distressed and had
10 to be liquidated, so I -- as the COO, so I have a fair amount
11 of familiarity, yes.

12 Q Okay. Before taking this to market for the first time for
13 the pre-confirmation policies that you have in place, did your
14 firm conduct any due diligence or analysis of comparing the
15 amount of litigation the Highland entities and Mr. Dondero
16 were involved in as compared to other comparable firms in the
17 marketplace? Say, you know, Apollo, Fortress, Cerberus, other
18 similar market participants?

19 A Well, it wouldn't really be our role as the broker.
20 That's the role of the underwriter.

21 Q Are you familiar if any of the underwriters undertook any
22 such analysis?

23 A I would assume that they did, since they all had concerns
24 about Mr. Dondero almost immediately.

25 Q Do you have any -- you didn't conduct any personal due

1 diligence on comparing the amount of litigation that the
2 Highland entities were involved in as compared to, say,
3 Fortress, do you?

4 A Well, again, that wouldn't really be my role as the
5 broker. But I will say that I used to write the primary
6 insurance for Fortress Investment Group when I was at Zurich.
7 So I'm extremely familiar with Fortress, to use your example,
8 and I would say that the level of litigation at Fortress was
9 much, just out of personal knowledge, was significantly less
10 than I had encountered or than I had read about at Highland.

11 Q That you have read about? Is that based upon a number of
12 cases where Fortress was a plaintiff as compared to Highland
13 was a plaintiff? Over what time period?

14 A Again, not my role. Not something that I've done. I'm
15 just generally familiar with Fortress and I'm generally
16 familiar with Highland.

17 Q All right. So you're generally familiar and you say that
18 -- you're telling me and this Court that Fortress is involved
19 in less litigation. Could you quantify that for me, please?

20 A No, but it's really irrelevant to the situation at hand.
21 The issue is not my feelings whatsoever. The issue is the
22 underwriters' feelings and their concern with Mr. Dondero, not
23 mine or anybody else's.

24 Q So, I appreciate your answer and thank you for that, but I
25 believe the question that was before you is, have you

1 quantitatively -- do you have any quantitative analysis by
2 which you can back up the statement that Fortress is less
3 litigious than Highland?

4 A I wouldn't even try, no.

5 Q Okay. Do you have any quantitative analysis for -- that
6 Cerberus is any less litigious than Highland?

7 A I don't have any real knowledge of Cerberus's
8 litigiousness.

9 Q Same question as to Apollo.

10 A Again, the Fortress, you just happened to mention
11 Fortress, which was a special case because I used to be their
12 primary underwriter. I don't have any specific -- I'm not a
13 claims attorney. I don't have any specific knowledge of the
14 level of litigiousness.

15 And, again, it's not up to me, my decision. It's the
16 underwriters' decision of whether or not they're willing to
17 write the coverage, not mine.

18 Q You mentioned that the -- when you took this out to
19 market, it had a little hair on it. Correct?

20 A Correct.

21 Q And you put together a package of materials that you sent
22 out to 14 or 15 market participants; is -- did I get that
23 correct?

24 A Yes.

25 Q And in that package, you had certain pleadings, including

1 the court order, correct?

2 A Yes. I believe that's correct.

3 Q And that was after your initial conversation with John and
4 -- where he pointed out the gatekeeper role. Correct?

5 A Correct.

6 Q And so when you went out to market, presumably you
7 highlighted the gatekeeper role to all the people you
8 solicited offers from because you thought it included less
9 risk, correct?

10 A It offered a level of protection that was not -- that's
11 not common. So it's, yes, it's a huge selling point for the
12 risk.

13 Q Okay. So, to be clear, you never went out to the market
14 to even see if you could get underwriting the first time
15 without the gatekeeper function; is that correct?

16 A Well, it's my job as a broker to present the risk in the
17 best possible light. So if we have a fact that makes the risk
18 a better write for the underwriters, we, of course, will
19 highlight it. So, no, I did not do that.

20 Q Okay. So, the quick answer to the question is no, you did
21 not go out and solicit any bids without the gatekeeper
22 function?

23 A Correct.

24 Q When you have approached the market for the post-
25 confirmation potential coverage, did you approach the same 14

1 or 15 parties that you did before?

2 A I don't have the two lists in front of me. They would
3 have been vastly similar, yes.

4 Q Okay. And so, again, all of the 14 or 15 parties or the
5 lists that you solicited were already familiar with the
6 gatekeeper function, correct?

7 A Yes.

8 Q And so therefore they already had that right; they're not
9 going to trade against themselves and therefore say that,
10 without it, we'll go ahead and write coverage. Correct?

11 A I -- I -- it'd be hard to answer that question. I don't
12 know.

13 Q Okay. Because you didn't try that, did you?

14 A I would have had no reason to, no.

15 Q Okay. So you don't know if a market exists without the
16 gatekeeper function because you haven't asked, have you?

17 A I guess that's fair, yeah.

18 MR. TAYLOR: I have no further questions.

19 THE COURT: All right. Any other Objectors with
20 cross-examination?

21 MR. DRAPER: I have no questions for the witness,
22 Your Honor.

23 THE COURT: All right. Anyone else? Mr. Morris,
24 redirect?

25 MR. MORRIS: Just one.

Tauber - Redirect

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1 REDIRECT EXAMINATION

2 BY MR. MORRIS:

3 Q One question, Mr. Tauber. Is there any -- do all
4 underwriters -- any underwriters for Fortress require, as a
5 condition to underwriting the D&O insurance, require a
6 gatekeeping provision?

7 A In my, you know, 11, 12 years of experience in this
8 industry, in this space, I have never seen that gatekeeper
9 function be available, as an underwriter or as a broker. So,
10 no.

11 MR. MORRIS: No further questions, Your Honor.

12 THE COURT: Any recross on that redirect?

13 All right. Well, Mr. Tauber, you are excused. We thank
14 you for your testimony today. So you can log off.

15 THE WITNESS: Thank you.

16 THE COURT: Okay.

17 (The witness is excused.)

18 THE COURT: Mr. Morris, does the Debtor rest?

19 MR. MORRIS: The Debtor does rest, Your Honor.

20 THE COURT: All right. Well, what are we going to
21 have from the Objectors as far as evidence?

22 MR. RUKAVINA: Your Honor, I will be very short. I
23 will call Mr. Seery for less than ten minutes. I will call
24 Mr. Post for less than ten minutes. I will have one exhibit.
25 And I think that that's it for all the Objectors, unless I'm

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1 mistaken, gentlemen.

2 MR. TAYLOR: Your Honor, I had one witness, Mr.
3 Sevilla, under subpoena to testify, and needed a brief moment
4 to discuss with my colleagues whether we're going to call him,
5 and if so, put him on notice that he would be coming up
6 probably about -- I don't know your schedule, Your Honor, but
7 probably, I'm guessing, either before lunch or after, and I
8 need to let him know that also.

9 So I do need a brief three to five minutes to confer with
10 my colleagues and some direction from the Court to, if we
11 decide to call him, as to when we would tell him to be
12 available.

13 THE COURT: All right. Well, before I get to that,
14 Mr. Draper, do you have any witnesses?

15 MR. DRAPER: I do not.

16 THE COURT: All right. Well, let's see. It's 10:34.
17 We're making good time this morning. If Seery is truly ten
18 minutes of direct, and Post is truly ten minutes of direct,
19 and I don't know how long the documentary exhibits are going
20 to take, it sounds to me like we are very likely to get to Mr.
21 Sevilla before a lunch break.

22 So if you want to -- you know, I don't know what that
23 involves, you sending text messages or making a quick phone
24 call. Do you need a five-minute break for that?

25 MR. TAYLOR: Yes, Your Honor. It involves a phone

1 call and an email. Just a confirmatory phone call just to
2 make sure that the guy -- just so you know who he is, he is
3 actually a Highland employee, but he's represented by separate
4 counsel, and so we do need to go through him just because
5 that's the right thing to do.

6 THE COURT: All right. Well, again, I mean, I never
7 know how long cross is going to take, but I'm guessing, you
8 know, we're going to get to him in an hour or so, if not
9 sooner, it sounds like. So, all right. So, do we need a
10 five-minute break?

11 MR. RUKAVINA: And Your Honor, it might make more
12 sense to make it a ten-minute break. I suspect that Mr.
13 Taylor will be able to release his witness if he and I will
14 just be able to talk. So I would ask the Court's indulgence
15 for a ten-minuter.

16 THE COURT: Okay. We'll take a ten-minute break.
17 We'll come back at 10:46 Central time.

18 THE CLERK: All rise.

19 (A recess ensued from 10:36 a.m. until 10:46 a.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. We're going back on
22 the record in the Highland confirmation hearing. Are the
23 Objectors ready to proceed?

24 MR. RUKAVINA: Your Honor, Davor Rukavina. We are.

25 THE COURT: All right. Well, Mr. Rukavina, are you

1 going to call your witnesses first?

2 MR. RUKAVINA: Yes, I will. Before that, if it might
3 help the Court and Mr. Morris: Mr. Morris, with respect to
4 that last exhibit, I do not object to the admission of any of
5 the exhibits that were admitted at that PI hearing.

6 But I do think, Your Honor, for the record, that -- and I
7 would ask Mr. Morris that he should refile those exhibits here
8 in this case, except for those that are duplicative. Because,
9 again, there's 10,000 pages of indentures, et cetera.

10 MR. MORRIS: Thank you very much, sir.

11 Your Honor, if that's acceptable to you, we'll do that as
12 soon as possible.

13 THE COURT: All right. And let me make sure the
14 record is clear. Are we talking about what you've described
15 as 70? I'm getting mixed up now. Am I --

16 MR. MORRIS: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. MORRIS: It's 70, which is the documents that
19 were introduced into evidence in the prior hearing. And Mr.
20 Rukavina is exactly right, that there is substantial overlap
21 between that and other documents that have already been
22 admitted in the record in this case. So we'll just file an
23 abridged version of Exhibit O that only includes non-
24 duplicative documents.

25 THE COURT: All right. So that will be admitted, and

Seery - Direct

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1 we'll look for your filed abridged version to show up on the
2 docket. 70.

3 (Debtor's Exhibit 70 is received into evidence as
4 specified.)

5 THE COURT: All right. What's next?

6 MR. RUKAVINA: Your Honor, Jim Seery, please. Mr.
7 James Seery.

8 THE COURT: All right. Mr. Seery, welcome back.
9 Please raise your right hand.

10 MR. SEERY: Can you -- can you hear me, Your Honor?

11 THE COURT: I can now.

12 JAMES P. SEERY, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

13 THE COURT: All right. Thank you.

14 Mr. Rukavina, go ahead.

15 DIRECT EXAMINATION

16 BY MR. RUKAVINA:

17 Q Mr. Seery, --

18 MR. RUKAVINA: Thank you.

19 BY MR. RUKAVINA:

20 Q Mr. Seery, good morning.

21 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
22 the schedules.

23 What we have here, Your Honor, is Docket 247, the Debtor's
24 schedules. I'd ask the Court to take judicial notice of it.

25 THE COURT: All right. The Court will do so.

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1 BY MR. RUKAVINA:

2 Q Mr. Seery, are you familiar with these entities listed
3 here on the Debtor's schedules?

4 A Generally. Each one a little bit different.

5 Q Okay. Do you agree that the Debtor still owns equity
6 interests in these entities?

7 A I believe it does, yes.

8 Q Okay. Is it true that none of these entities are publicly
9 traded?

10 A I don't believe any of these are publicly-traded entities,
11 no.

12 Q Okay. And none of these, to your knowledge, are debtors
13 in this bankruptcy case, right?

14 A No. We only have one debtor in the case.

15 Q Okay. So, Highland Select Equity Fund, LP, the Debtor
16 owns more than 20 percent of the equity in that entity, right?

17 A I believe the Debtor owns the majority of that entity.
18 That is a fund with an on- and offshore feeder. And I, off
19 the top of my head, don't recall exactly how the allocations
20 of equity work. But I believe we do.

21 Q Does 67 percent refresh your memory? Are you prepared to
22 say that the Debtor owns 67 percent of that equity?

23 A I'm not prepared to say that, no.

24 Q Okay. Wright, Ltd. Does the Debtor own more than 20
25 percent of that equity?

Seery - Direct

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1 A There's about -- I don't recall. There's about at least
2 25 artist, designers, or designs. Wright, AMES, Hockney,
3 Rothco, all own in different places, and they all own in turn
4 some other thing. So I don't know what each of them, off the
5 top of my head, own. There's -- they're part of a myriad of
6 corporate structures here.

7 Q Strak, Ltd. Do you know whether the Debtor owns more than
8 20 percent of the equity of that entity?

9 A Stark? I don't know.

10 Q Okay. I don't know how to pronounce the next one. Eamis
11 (phonetic) Ltd. Do you know whether the Debtor owns more than
12 20 percent of that equity?

13 A Off the top of my head, I don't recall.

14 Q What about Maple Avenue Holdings, LLC?

15 A I believe, I don't know if it's directly or indirectly,
16 that we own a hundred percent of that entity. But I'm not
17 sure.

18 Q What about Highland Capital Management Korea, Ltd.?

19 A Effectively, Highland Capital Management is owned a
20 hundred percent.

21 Q What about Highland Capital Management Singapore Pte.
22 Ltd.?

23 A We are in the process of shutting it down, so I don't know
24 that -- what the equity percentages are. It's really just a
25 question -- it's -- it's dissolved save for a signature from a

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Seery - Direct

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1 Singaporean.

2 Q Okay. But did the Debtor own more than 20 percent of that
3 entity?

4 A I don't know the specific allocations of equity ownership.

5 Q Okay. What about Pennant (phonetic) Management, LP? Do
6 you know whether the Debtor owns or owned more than 20 percent
7 of that entity?

8 A I don't recall, no.

9 MR. RUKAVINA: You can take that exhibit down, Mr.
10 Vasek.

11 BY MR. RUKAVINA:

12 Q Mr. Seery, very quick, are you familiar with Bankruptcy
13 Rule 2015.3?

14 A I am, yes.

15 Q Okay. Has the Debtor filed any Rule 2015.3 statements in
16 this case?

17 A I don't believe we have.

18 Q Okay.

19 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
20 witness.

21 THE COURT: All right. Any other Objector
22 questioning? None from Mr. Taylor, none from Mr. Draper, none
23 from Ms. Drawhorn?

24 All right. Any cross -- any examination from you, Mr.
25 Morris?

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Seery - Cross

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1 MR. MORRIS: Just one question.

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION

4 BY MR. MORRIS:

5 Q Mr. Seery, do you know why the Debtor has not yet filed
6 the 2015.3 statement?

7 A I have a recollection of it, yes.

8 Q Can you just describe that for the Court?

9 A When we -- when we initially filed, when the Debtor filed
10 and it was transferred over, we started trying to get all the
11 various rules completed. There are, as the Court is aware, at
12 least a thousand and maybe more, more like three thousand,
13 entities in the total corporate structure.

14 We pushed our internal counsel to try to get that done,
15 and were never able to really get it completed. We did not
16 have -- we were told we didn't have separate consolidating
17 statements for every entity, and it would be difficult. And
18 just in the rush of things that happened from the first
19 quarter into the COVID into the year, we just didn't complete
20 that filing. There was no reason for it other than we didn't
21 get it done initially and I think it fell through the cracks.

22 MR. MORRIS: Nothing further, Your Honor.

23 THE COURT: All right. Anything further, Mr.
24 Rukavina?

25 REDIRECT EXAMINATION

001709

Seery - Redirect

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1 BY MR. RUKAVINA:

2 Q Mr. Seery, I appreciate that answer. But you never sought
3 leave from the Bankruptcy Court to postpone the deadlines for
4 filing 2015.3, did you?

5 A No. If it hadn't fallen through the cracks, it would have
6 been something we recalled and we would have done something
7 with it. But, frankly, it just fell off the -- through the
8 cracks. We didn't deal with it.

9 Q Okay.

10 MR. RUKAVINA: Thank you, Your Honor. Thank you, Mr.
11 Seery.

12 THE COURT: All right. Any other Objector
13 examination?

14 Mr. Morris, anything further on that point?

15 MR. MORRIS: No, thank you, Your Honor. No further
16 questions.

17 THE COURT: All right. Mr. Seery, thank you. You're
18 excused once again from the witness stand.

19 (The witness is excused.)

20 THE COURT: Your next witness?

21 MR. SEERY: Thank you, Your Honor.

22 THE COURT: Uh-huh.

23 MR. RUKAVINA: Your Honor, I'll call Jason Post. Mr.
24 Post, if you're listening, which I believe you are, if you'll
25 please activate your camera.

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Post - Direct

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1 THE COURT: Mr. Post, we do not see or hear you yet.

2 MR. RUKAVINA: Talk, Mr. Post, and I think it'll
3 focus on you.

4 MR. POST: Yes. Can you hear me now?

5 THE COURT: We can hear you. We cannot see you yet.
6 Could you say, "Testing, one, two; testing, one, two"?

7 MR. POST: Testing, one, two. Testing, one, two.

8 THE COURT: There you are. Okay. Please raise your
9 right hand.

10 JASON POST, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

11 THE COURT: All right. Thank you. You may proceed.

12 DIRECT EXAMINATION

13 BY MR. RUKAVINA:

14 Q Mr. Post, good morning. State your name for the record,
15 please.

16 A Robert Jason Post.

17 Q How are you employed?

18 A I'm employed by NexPoint Advisors, LP.

19 Q What is your title?

20 A Chief compliance officer.

21 Q Were you ever employed by the Debtor here?

22 A Yes.

23 Q Between when and when? Approximately?

24 A I believe it was July of '08 through October of 2020.

25 Q What was your last title while you were employed at the

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1 Debtor?

2 A Still chief compliance officer. For the retail funds.

3 Q Okay. Very, very quickly, what does a chief compliance
4 officer do? Or what do you do?

5 A It's multiple things. Interaction with the regulators.
6 Adherence to prospectus and SAI limitations for the funds.
7 And then establishment of written policies and procedures to
8 prevent and detect violations of the federal securities laws
9 and then testing those on a frequent basis.

10 Q And I believe you mentioned you're the CCO for NexPoint
11 Advisors and Highland Capital Management Fund Advisors. Are
12 you also the CCO for any funds that they advise?

13 A Yes. For all the funds that they advise.

14 Q Okay. Does that include so-called retail funds?

15 A Yes. They're all retail funds.

16 Q What is a retail fund?

17 A It typically constitutes funds that are subject to the
18 Investment Company Act of 1940, such as open-end mutual funds,
19 closed-end funds, ETFs.

20 Q Obviously, you know who my clients are. Are any of my
21 clients so-called retail funds that you just described?

22 A Yes.

23 Q Name them, please.

24 A You've got NexPoint Capital, Inc., Highland Income Fund,
25 and NexPoint Strategic Opportunities Fund.

1 Q Do those three retails funds hold any voting preference
2 shares in the CLOs that the Debtor manages?

3 A Yes.

4 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
5 Exhibit 2.

6 Your Honor, I believe I have a stipulation with Mr. Morris
7 that this exhibit can be admitted, so I'll move for its
8 admission.

9 MR. MORRIS: No objection, Your Honor.

10 THE COURT: All right. Exhibit 2 will be admitted.
11 And let's be clear. That appears at -- is it Docket No. --
12 let's see. Is it 1673 that you have your -- no, no, no, no.
13 1670? Is that where your exhibits are?

14 MR. RUKAVINA: No, Your Honor. It's 1863. I think
15 we did an amended one because we numbered our exhibits instead
16 of having seventeen Os and Ps. So it's 1863.

17 THE COURT: 1863? Okay. All right. There it is.
18 Okay. Again, this is -- I'm sorry. I got sidetracked. What
19 exhibit? It's Exhibit 2, is admitted. Okay.

20 MR. RUKAVINA: Thank you, Your Honor.

21 (Certain Funds and Advisors' Exhibit 2 is received into
22 evidence.)

23 BY MR. RUKAVINA:

24 Q Real quick, Mr. Seery. What do these HIF, NSOF, NC, what
25 do they stand for? Do they stand for the retail funds you

Post - Direct

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1 just named?

2 MR. SEERY: I don't think he meant me.

3 THE WITNESS: Yeah.

4 BY MR. RUKAVINA:

5 Q I'm sorry, Mr. Post. I didn't hear you.

6 A You addressed me as Mr. Seery.

7 Q Oh. I apologize. What do those initials stand for?

8 A The names of the funds that I mentioned.

9 Q Okay. And what do these percentages show?

10 A The percentages show the amount of shares outstanding and
11 the preference shares that each of the respective funds hold
12 of the named CLOs.

13 Q And those CLOs on the left there, those are the CLOs that
14 the Debtor manages pursuant to agreements, correct?

15 A Yes. Those are some of them, correct.

16 Q Yes. The ones that the retail funds you mentioned have
17 interests in, correct?

18 A Correct.

19 Q And what does the far-right column summarize or show?

20 A That would be the aggregate across the three retail funds.

21 Q In each of those CLOs?

22 A Correct.

23 Q Thank you.

24 MR. RUKAVINA: Mr. Vasek, you may pull this down.

25 BY MR. RUKAVINA:

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Post - Direct

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1 Q Mr. Post, in the aggregate, how much do those three retail
2 funds have invested in those CLOs, ballpark?

3 A I believe it's approximately \$130 million, give or take.

4 Q Is it closer to 140 or 130?

5 A A hundred -- I think it's 140, actually.

6 Q Okay. Thank you. Who controls those three retail funds?

7 A Ultimately, the board --

8 Q And what --

9 A -- of the funds.

10 Q What is -- what do you mean by the board? Do they have
11 independent boards?

12 A Yes. They have a majority independent board, the funds
13 do.

14 Q Do you report to that board?

15 A Yes.

16 Q Does Mr. Dondero sit on those boards?

17 A He does not.

18 Q Okay.

19 MR. RUKAVINA: I'll pass the witness, Your Honor.

20 Thank you, Mr. Post.

21 THE COURT: All right. Any other Objector
22 examination of Mr. Post?

23 All right. Mr. Morris, do you have cross?

24 MR. MORRIS: Yes, Your Honor, I do.

25 THE COURT: Okay.

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Post - Cross

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1 CROSS-EXAMINATION

2 BY MR. MORRIS:

3 Q Mr. Post, can you hear me okay, sir?

4 A Yes, I can hear you.

5 Q Okay. Nice to see you again. When did you first join
6 Highland?

7 A I believe it was July of '08.

8 Q So you've worked with the Highland family of companies for
9 about a dozen years now; is that right?

10 A Yes.

11 Q And you were actually employed by the Debtor from 2008
12 until October 2020; is that right?

13 A Correct.

14 Q And you left at that time and went to join Mr. Dondero as
15 the chief compliance officer of the Advisors; do I have that
16 right?

17 A Yes. I transitioned to NexPoint Advisors shortly, I
18 believe, after Mr. Dondero left, but I was already the named
19 CCO for that entity.

20 Q Right, but your employment status changed from being an
21 employee of the Debtor to being an employee of NexPoint; is
22 that right?

23 A Correct.

24 Q And that happened shortly after Mr. Dondero resigned from
25 the Debtor and went to NexPoint Advisors, correct?

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1 A Correct.

2 Q Okay. You mentioned that the funds are controlled by
3 independent boards; do I have that right?

4 A It's a majority independent board, correct.

5 Q Okay. There's no independent board member testifying in
6 this hearing, is there?

7 A I --

8 MR. RUKAVINA: Your Honor, Mr. Post wouldn't know
9 that, but I'll stipulate to that as a fact.

10 THE COURT: All right.

11 MR. MORRIS: Okay.

12 BY MR. MORRIS:

13 Q Did you -- do you speak with the board members from time
14 to time?

15 A Yes.

16 Q Did you tell them that it might be best if they came and
17 identified themselves and helped persuade the Court that they
18 were, in fact, independent?

19 A They have counsel to assist them with that determination.
20 I never mentioned anything along those line to them.

21 Q Okay. Can you tell me who the board members are?

22 A Yes. Ethan Powell, Bryan Ward, Dr. Bob Froehlich, John
23 Honis, and then Ed Constantino. He is only a board member,
24 though, for NSOF. NexPoint Strategic Opportunities Fund.

25 Q All right. Mr. Honis, is he -- has he been determined to

1 be an interested director, for purposes of the securities
2 laws?

3 A Yes.

4 Q Okay. Mr. Froeh..., do you know much about his
5 background?

6 A I believe he worked at Deutsche Bank and a couple of the
7 other -- or maybe a couple of other investment firms in the
8 past. And he also owns a minor league baseball team.

9 Q Do you know how long he served as a director of the funds?

10 A I don't know, approximately. I think maybe seven -- six,
11 seven years.

12 Q Okay. How about Mr. Ward? Did Mr. Froehlich ever work
13 for Highland?

14 A Not that I can recall.

15 Q Did Mr. Ward ever work for Highland?

16 A Not that I can recall.

17 Q Do you recall how long he's been serving as a director of
18 the funds?

19 A Mr. Ward?

20 Q Yes.

21 A I believe -- I'd be -- I don't recall specifically. I
22 think it's been, you know, 10 to 12 years, give or take.

23 Q He was a director when you got to Highland; isn't that
24 right?

25 A He was on the board of directors.

1 Q Yeah. So fair to say that Mr. Ward has been a director
2 since at least the mid to late oughts? 2005 to 2008?

3 A I'm sorry, you cut out. Late what?

4 Q The late oughts. Withdrawn. Is it fair to say that Mr.
5 Ward's been a director of the funds since somewhere between
6 2005 and 2008?

7 A Again, I don't recall specifically. You know, I joined
8 the complex, the retail complex as the named CCO in 2015, and
9 he had been serving in that role prior to that, and I believe
10 it was for probably a period of five to seven years, so that
11 sounds in line.

12 Q Did you have a chance to review Dustin Norris's testimony
13 from the December 16th hearing?

14 A I did not.

15 Q Do you know -- are you aware that he testified at some
16 length regarding the relationship of each of these directors
17 to Mr. Dondero and Highland?

18 A I didn't review anything, so I don't know what he said or
19 how long it took.

20 Q Do you know if Mr. Powell's ever worked for Highland?

21 A He has.

22 Q Do you know in what capacity and during what time periods?

23 A He was -- I think his last title was -- I believe was
24 chief product strategist, I believe. And he was also the
25 named PM for one of -- or, a suite of ETF funds. I think he

1 was last employed maybe --from my recollection, 2014,
2 possibly. Or 2015. Somewhere around in there.

3 Q Okay. And to the best of your knowledge, did Mr. Dondero
4 appoint Mr. Powell to be the chief product strategist?

5 A I don't -- I don't know. I wasn't involved in the
6 decision for his appointment. I don't know how he attained
7 that role.

8 Q To the best of your knowledge, did Mr. Dondero appoint Mr.
9 Powell as the PM of the ETF funds?

10 A Again, I wasn't involved in that determination, but he
11 probably would have had a role in making the determination on
12 who was the PM, along with probably some other investment
13 professionals.

14 Q Okay. And did Mr. Powell join the board of the funds
15 before or after he left Highland around 2015?

16 A I can't recall specifically if he was already on the board
17 or was an interested member, but I believe he, you know, I
18 believe he joined shortly after he left.

19 Q Okay. So he went from being an employee and being a
20 portfolio manager at Highland to being on the board of these
21 funds. Do I have that right?

22 A Again, I can't recall specifically. He may have already
23 been on the board as an interested board member. But, you
24 know, I believe, you know, if that wasn't the case, he would
25 have joined the board shortly after leaving.

1 Q And Mr. Ward, I think you said, has been on the funds'
2 board since somewhere between 2005 and 2008. Does that sound
3 right?

4 A I think that was a time frame you referenced, and I think
5 that was kind of in line, walking it back. But I don't recall
6 specifically when he joined.

7 Q And to the best of your knowledge, have the Advisors for
8 which you serve as the chief compliance officer managed the
9 Funds for which Mr. Ward has served as a director since the
10 time he became a director?

11 A I'm sorry. Can you repeat the question?

12 Q Yeah. I'm just trying to understand if the advisors --
13 withdrawn. The Advisors manage the Funds; do I have that
14 right?

15 A They provide investment advice on behalf of the Funds.

16 Q And they do that pursuant to written agreements; do I have
17 that right?

18 A Correct.

19 Q And is it your understanding that, for the entire time
20 that Mr. Ward has served as a member of the board of the
21 Funds, the Advisors have provided the investment advice to
22 each of those Funds?

23 A Yes, in one form or fashion. I believe at one period in
24 time, historically, the Advisor may have changed its name, but
25 it would have been, you know, at the end of the day, one or

1 more -- one of either NexPoint Advisors or Highland Capital
2 Management Fund Advisors would have advised those Funds.

3 Q Is it fair to say that each of the Advisors for which you
4 serve as the chief compliance officer has always been managed
5 by an Advisor owned and controlled by Mr. Dondero?

6 A I believe so, yes.

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

8 THE COURT: All right. Any redirect?

9 MR. RUKAVINA: Yes.

10 THE COURT: Okay. Mr. Rukavina?

11 MR. RUKAVINA: Your Honor, was I on mute? I
12 apologize.

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MR. RUKAVINA:

16 Q Mr. Post, why did you leave Highland?

17 A It -- because I was a HCMLP employee and it was --
18 basically, there was conflicts that were created by being an
19 employee of the Debtor and by also serving as the CCO to the
20 named Funds and the Advisors, and it coincided with Jim
21 toggling over from HCMLP to NexPoint. It just made sense more
22 functionally and from a silo perspective for me to be the
23 named CCO for that entity since he was no longer an employee
24 of HCMLP.

25 Q And by Jim, you mean Jim Dondero?

1 A Yes, sorry. Jim Dondero.

2 Q You're not some kind of lackey for Mr. Dondero, where you
3 go wherever he goes, are you?

4 MR. MORRIS: Objection to the question.

5 THE WITNESS: No.

6 THE COURT: Overruled. He can answer.

7 MR. RUKAVINA: Okay.

8 THE WITNESS: No.

9 MR. RUKAVINA: Okay. Thank you, Your Honor. I'll
10 pass the witness.

11 THE COURT: Any other Objector examination?

12 All right. Any recross, Mr. Morris?

13 RECROSS-EXAMINATION

14 BY MR. MORRIS:

15 Q Just one question, sir. The conflicts that you just
16 mentioned, they were in existence for the one-year period
17 between the petition date and the date you left; isn't that
18 right?

19 A I think -- I believe so, and I think they became more
20 evident as, you know, time progressed.

21 Q Okay. But they existed on day one of the bankruptcy
22 proceeding; isn't that right?

23 A Yes, I believe so.

24 Q All right.

25 MR. MORRIS: No further questions, Your Honor.

1 THE COURT: All right. Thank you, Mr. Post. You're
2 excused from the virtual witness stand.

3 (The witness is excused.)

4 THE COURT: All right. Your next witness?

5 MR. RUKAVINA: Your Honor, my exhibit has been
6 admitted, I promised I'd be short, and my evidentiary
7 presentation is done. Thank you.

8 THE COURT: All right. Well, Mr. Taylor, your
9 evidence?

10 MR. TAYLOR: First of all, given the testimony that
11 we have received just recently, we have released Mr. Sevilla
12 from his subpoena and are not going to call him.

13 With that being said, we do have some documents that we
14 would like to get into evidence. We filed our witness and
15 exhibit list at Docket No. 1874. I don't believe any of these
16 are controversial. I'm trying to keep from duplicating those
17 that are already into evidence by the Debtor. And therefore I
18 would like to offer into evidence Exhibits No. 6 through 12
19 and 17. And that is it, Your Honor.

20 THE COURT: Okay. Is there any objection to Dondero
21 Exhibits 6 through 12 and 17, appearing at Docket 1874?

22 MR. MORRIS: I just want to be clear that Exhibits 6
23 and 7, which are letters, I believe, from Mr. Lee (phonetic)
24 are not being offered for the truth of the matter asserted in
25 either letter.

1 MR. TAYLOR: That is correct, Your Honor. Just
2 merely that those requests and the words that were stated in
3 there were indeed sent on those dates.

4 MR. MORRIS: And the same comment, Your Honor, with
5 respect to Exhibits 9 through 12, that those documents are not
6 being offered for the truth of the matter asserted.

7 MR. TAYLOR: Again, just that those requests were
8 sent and those responses as stated were sent.

9 And I apologize. I missed one, Your Honor. Also No. 15.
10 6 through 12, 15, and 17.

11 MR. MORRIS: Your Honor, the Debtor has no objection
12 to Exhibits 15, 16, and 17.

13 THE COURT: All right. So, so they are all admitted
14 with the representation that 6 and 9 through 12 are not being
15 offered for the truth of the matter asserted. With that
16 representation, you have no objection, Mr. Morris?

17 MR. MORRIS: That's right. I do just want to get
18 confirmation that Exhibits 1 through 5 and 13 through 16 -- 13
19 and 14 are not being offered at all.

20 THE COURT: Mr. Taylor?

21 MR. TAYLOR: So, that -- that is correct. 1 through
22 5 would be duplicative of what has already been introduced
23 into the record by Mr. Morris, so I am not offering those.
24 And do not believe that 13 and 14 are relevant anymore, and so
25 therefore did not offer those.

1 THE COURT: Okay. So, with that, I have admitted 6
2 through 12, 15, 16, and 17 at Docket Entry 1874.

3 (Dondero Exhibits 6 through 12 and 15 through 17 are
4 received into evidence.)

5 THE COURT: All right. Anything else, Mr. Taylor?

6 MR. TAYLOR: No, Your Honor. We are not calling any
7 witnesses.

8 THE COURT: All right. Mr. Draper, what about you?
9 Any evidence?

10 MR. DRAPER: No evidence or witnesses. The evidence
11 that's been introduced by Mr. Taylor and Mr. Rukavina are
12 sufficient for me.

13 THE COURT: All right. Ms. Drawhorn, anything from
14 you?

15 MS. DRAWHORN: No additional evidence, Your Honor.

16 THE COURT: All right. Well, then, Mr. Morris, did
17 you have anything in rebuttal?

18 MR. MORRIS: No, Your Honor. I think we can proceed
19 to closing statements. I would just appreciate confirmation
20 by the Objecting Parties that they rest.

21 THE COURT: All right. Well, I guess we'll get that
22 clear if it is isn't clear. All of the Objectors rest.
23 Confirm, yes, Mr. Rukavina?

24 MR. RUKAVINA: Confirm.

25 THE COURT: And Mr. Taylor?

1 MR. TAYLOR: Confirmed, Your Honor.

2 THE COURT: Okay. And Draper and Drawhorn?

3 MR. DRAPER: Yes, Your Honor.

4 MS. DRAWHORN: Confirmed, Your Honor.

5 THE COURT: All right. By the way, I assume Mr.

6 Dondero has been participating this morning. I didn't

7 actually get that clarification before we started. Mr.

8 Taylor, is he there with you this morning?

9 MR. TAYLOR: Your Honor, he is. He has been
10 participating. He is sitting directly to my left about
11 slightly more than six feet apart.

12 THE COURT: Okay. All right. Good.

13 All right. Well, let's talk about our closing arguments
14 and let me figure out, do we have -- should we break a bit
15 before starting? I have an idea in my brain about a time
16 limitation, but before I do that, let me ask. Mr. Morris,
17 first I'll ask you. How much time do you think you need for a
18 closing argument?

19 MR. MORRIS: Your Honor, --

20 MR. POMERANTZ: Your Honor?

21 MR. MORRIS: -- I'll defer to Mr. Pomerantz, who's
22 going to deliver that portion of our presentation today.

23 THE COURT: All right. Mr. Pomerantz?

24 MR. POMERANTZ: Your Honor, I will be making -- yes,
25 Your Honor. I will be making the majority portion of the

1 argument. Mr. Kharasch will be making the portion of the
2 argument dealing with the Advisor and Funds' objection. But I
3 expect my closing to be quite lengthy, given the 1129
4 requirements, all the legal issues, which I plan to spend a
5 fair amount of time. So I would anticipate a range of an hour
6 and 45 minutes.

7 THE COURT: An hour and 45 minutes? All right.

8 Well, --

9 MR. POMERANTZ: Correct.

10 THE COURT: I'm getting an echo.

11 MR. CLEMENTE: Your Honor, it's Matt Clemente on
12 behalf on the Committee. I'll have 15 minutes or less, Your
13 Honor. Just some things I would like to touch on.

14 THE COURT: All right. So, two hours. If I were to
15 --

16 MR. POMERANTZ: And then you need, Your Honor, to add
17 Mr. Kharasch. I think he's on. He can indicate how long his
18 part of the closing will be.

19 THE COURT: Mr. Kharasch?

20 MR. KHARASCH: Yes. I would figure my argument would
21 probably be about 20 minutes to 30 minutes.

22 THE COURT: Okay.

23 MR. RUKAVINA: Your Honor, let me interject something
24 that I think will help everyone out. With the CLOs having
25 consented through their counsel to the assumption, the bulk of

1 my objection is now moot. We no longer can and will argue
2 that the contracts are unassignable under 365(b) or (c)
3 because we do have now their consent. So that will hopefully
4 help the Debtor on that issue.

5 MR. KHARASCH: Your Honor, Ira Kharasch again. I was
6 not anticipating that. I believe that that will take away the
7 bulk of my argument. I'm still going to be dealing with some
8 of the other non-assumption-type arguments raised by the CLO
9 Objectors, kind of dovetailing with Mr. Pomerantz's arguments
10 on the injunction. But that will greatly reduce, Your Honor,
11 my argument.

12 THE COURT: All right. So if I say two hours of
13 argument for the Debtor and Creditors' Committee, Rukavina,
14 Taylor and Draper and Drawhorn, can you collectively manage to
15 share that two hours? Have a two-hour argument in the
16 aggregate? That seems fair to me.

17 MR. RUKAVINA: Your Honor, I think -- I think that's
18 fine, Your Honor.

19 THE COURT: All right. And I guess I'll --

20 MR. TAYLOR: This is Mr. Taylor. And yes, I agree.

21 THE COURT: Okay. And Mr. Draper?

22 MR. DRAPER: This is Douglas Draper. I agree. I
23 agree also, Your Honor.

24 THE COURT: All right. And I'm going to ask --

25 MR. POMERANTZ: Your Honor, I --

1 THE COURT: Go ahead.

2 MR. POMERANTZ: Your Honor, we -- I think we may need
3 like two hours and ten minutes, because mine was 1:45, Mr.
4 Clemente was 15, and then Mr. Kharasch. But we'll be around
5 that. And I tend to speak fast, so I might even shorten mine.

6 THE COURT: Okay. You negotiated me up to two hours
7 and ten minutes, Debtors/Objectors, each.

8 I'm going to ask one more time. The U.S. Trustee lobbed a
9 written objection, but we've not heard anything from the U.S.
10 Trustee. Are you out there wanting to make an oral argument?

11 MS. LAMBERT: Yes, Your Honor. The United States
12 Trustee is on the line. And we've been listening to the
13 hearing. I can turn my video on. I think you're --

14 THE COURT: Yes. I can hear you. I can't see you.

15 MS. LAMBERT: Okay. All right. And so the U.S.
16 Trustee feels that the issues about the releases have been
17 adequately joined and raised by the other parties and that
18 it's an issue of law. The U.S. Trustee does not feel that we
19 can add to that dialogue by, you know, wasting more of the
20 Court's time. I think it's been adequately briefed and it's
21 been adequately argued here today.

22 THE COURT: Okay.

23 MS. LAMBERT: And we do have an agreement to include
24 governmental release language in the order. I understand that
25 agreement is still being honored. That's a separate agreement

1 than the issue of whether the releases are precluded. But
2 we're going to let the other people carry the water on that.

3 THE COURT: Okay.

4 MR. POMERANTZ: Yeah. And that is correct. That is
5 correct, Your Honor. They asked for some information -- a
6 provision on government releases. They also asked for a
7 provision regarding joint and several liability for Trustee
8 fees.

9 As I mentioned previously, the IRS has asked for a
10 provision in the confirmation order, as have the Texas Taxing
11 Authorities.

12 We have not uploaded a proposed confirmation order, but I
13 will state right now on the record that, before we do so, we
14 will, of course, give Ms. Lambert, Mr. Adams, and the Texas
15 Taxing Authorities the opportunity to review. We expect there
16 won't be any issue because the language has already been
17 agreed to.

18 THE COURT: All right. Well, how about this. It's
19 11:23 Central time. Let's break until 12:00 noon Central
20 time, okay, so that gives everyone a little over 30 minutes to
21 have a snack and get their notes together, and we'll start
22 with closing arguments at 12:00 noon. All right? So we're in
23 recess until then.

24 THE CLERK: All rise.

25 (A recess ensued from 11:24 a.m. until 12:05 p.m.)

1 THE COURT: All right. Please be seated. All right.
2 This is Judge Jernigan. We are back on the record in
3 Highland. Let me make sure we have the people we need. Do we
4 have the Pachulski team there? Mr. Pomerantz, Mr. Kharasch?

5 MR. POMERANTZ: Yes, you do, Your Honor.

6 THE COURT: All right. For our Objectors, Mr.
7 Taylor, are you there?

8 MR. TAYLOR: Yes, Your Honor, I am.

9 THE COURT: All right. I see Mr. Draper there on the
10 video. You're there.

11 MR. DRAPER: I'm here. Can you hear me?

12 THE COURT: I can hear you loud and clear, yes.

13 MR. DRAPER: Great, because I didn't -- I'm not
14 hearing, something so I apologize.

15 THE COURT: All right. So we have Mr. Rukavina, and
16 I think I see Mr. Hogewood there as well. Is that correct?
17 You're ready to go forward?

18 MR. RUKAVINA: Yes, Your Honor.

19 THE COURT: All right.

20 MR. RUKAVINA: Yes, Your Honor. Good afternoon.

21 THE COURT: All right. And Ms. Drawhorn, you're
22 there?

23 MS. DRAWHORN: Yes, Your Honor.

24 THE COURT: Okay. Committee. Mr. Clemente, are you
25 there?

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 8**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional Debtors <i>Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

1 MR. CLEMENTE: Yes, Your Honor. I'm here, Your
2 Honor.

3 THE COURT: Okay. Very good. All right. So, let me
4 reiterate. We've given two-hour and 10-minute time
5 limitations for the Debtor, and that'll be both any time you
6 reserve for rebuttal and your closing, initial closing
7 argument. Mr. Clemente, you're going to be in that time frame
8 as well. Okay?

9 MR. CLEMENTE: Yes, Your Honor.

10 THE COURT: And so, as supporters of the plan.

11 And then, of course, the Objectors, they have collectively
12 two hours and ten minutes.

13 A couple of things. I'm going to have my law clerk, Nate,
14 who you can't see but he's to my right, he's going to keep
15 time. I promise I won't be a jerk and cut anyone off
16 midsentence, but please don't push the limit if I say, you
17 know, "Time."

18 The other thing I will tell you is I'll probably have some
19 questions here or there. And I've told Nate, cut off the
20 timer if we're in a question-answer session. I won't count
21 that as part of the two hours and ten minutes.

22 All right. So, with that, Mr. Pomerantz, you may begin.

23 CLOSING STATEMENT ON BEHALF OF THE DEBTOR

24 MR. POMERANTZ: Thank you, Your Honor. As Your Honor
25 is aware, the Debtor has been able to resolve all objections

1 to confirmation other than the objection by Mr. Dondero or his
2 entities and the United States Trustee.

3 Your Honor, I have a very lengthy closing argument, given
4 the number of issues that are raised in the objections, and I
5 want to make a complete record, since I understand that
6 there's a good likelihood that (garbled) appeal.

7 With that in mind, Your Honor, I'm prepared to go through
8 each and every confirmation requirement in Section 1129.
9 However, as an alternative, I might propose that I can go
10 through each of the Section 1129 requirements that are the
11 subject of pending objections or otherwise depend upon
12 evidence that Your Honor has heard.

13 THE COURT: Okay.

14 MR. POMERANTZ: And of course, I'll be happy to
15 answer any questions that you have in the process.

16 THE COURT: Okay.

17 MR. POMERANTZ: And after my closing argument, I will
18 turn it over to Mr. Kharasch to address the Advisor and Funds'
19 objections.

20 THE COURT: Okay.

21 MR. POMERANTZ: Before I walk the Court through the
22 confirmation requirements, I did want to note for the Court,
23 as I did previously, that we filed an updated ballot summary
24 at Docket No. 1887. And as reflected in the summary, Classes
25 2 and 7 have voted to accept the plan with the respective

1 numerosity and amounts required. In fact, the votes are a
2 hundred percent.

3 Class 8, however, has voted to reject the plan. Seventeen
4 creditors in Class 8 voted yes and 24 objectors, which are, I
5 think, all but one the employees with one-dollar claims for
6 voting purposes, voted against.

7 In dollar amount, Class 8 has accepted the plan by 99.8
8 percent of the claims. And I will address the issues of the
9 cram-down over that class a little bit later on.

10 Lastly, during the course of my presentation, I will
11 identify for the Court certain modifications we have made to
12 address the objections that were filed on January 22nd and
13 then also on February 1st. And at the end of my presentation,
14 I will raise a couple of other modifications that I won't get
15 to during my presentation and will explain to the Court why
16 all the modifications do not require resolicitation and are
17 otherwise appropriate under Section 1127.

18 Your Honor, as Your Honor is aware, Section 1129 requires
19 the Debtors to demonstrate to the court that the plan
20 satisfies a number of statutory requirements. 1129(a)(1)
21 provides that the plan requires -- complies with all statutory
22 provisions of Title 11, and courts interpreted this provision
23 as requiring the debtor to demonstrate it complies with
24 Section 1122 and 1123.

25 With respect to classification, Your Honor, there has been

1 one objection that was raised to essentially a classification,
2 and that was raised by Mr. Dondero to Article 3C of the plan
3 on the grounds that it purports to eliminate a class that did
4 not have any claims in it as of the effective date but which
5 may later have a claim in that class.

6 I think he was primarily concerned about Class 9
7 subordinated claims. But Mr. Dondero misunderstands the
8 provision. It only eliminates a claim for voting purposes,
9 and if there's later a claim in that class, it will be treated
10 as the plan provides the treatment.

11 In any event, Class 9, as we know now, will be populated
12 by the HarbourVest claims, as well as the UBS claims and the
13 Patrick Daugherty claims, if the Court approves the settlement
14 approving those claims.

15 Next, Your Honor, Section 1123(a) contains seven mandatory
16 requirements that a plan must include. Sections 1, 2, and 3
17 of 1123(a) apply to the classification of claims and where
18 they're impaired and treatment. The plan does that.

19 There has been an objection to 1123(a)(3) raised by
20 several parties with respect to the classification and
21 treatment of subordinated claims. The concerns stem from the
22 mistaken belief that the Debtor reserved the right to
23 subordinate claims without providing parties with notice and
24 without obtaining a court order.

25 The Debtor never intended to have unilateral ability to

1 subordinate claims without affording parties due process
2 rights, and we've added some clarificatory language to so
3 provide.

4 We made changes to the plan on January 22nd, and then on
5 February 1st, and the plan addresses all those issues in
6 Article 3(j) and it talks about when a claim is going to be
7 subordinated as a non-creditor. We've also redefined the
8 definition of subordinated claims to make clear that a claim
9 is only subordinated upon entry of an order subordinating that
10 claim.

11 Mr. Dondero also objected on the grounds that the plan did
12 not contain a deadline pursuant to which the Debtor would be
13 required to seek any subordination, and we have revised
14 Article 7(b) of the plan to provide that any request to
15 subordinate a claim would have to be made on or before the
16 claim objection deadline, which is 180 days after the
17 effective date.

18 Lastly, certain former employees, Mr. Yang and Borud,
19 objection also joined by Mr. Deadman, Travers, and Kauffman,
20 objected to the inclusion of language in the definition of
21 "Subordinated Claims" that a claims arising from a Class A, B,
22 or C limited partnership is deemed automatically subordinated.
23 The concerns were that the language could broadly apply to any
24 potential claims by a former partner, and could be also read
25 to encompass claims outside the statutory scope of 510(b) or

1 otherwise relating to limited partnership interests.

2 While the Debtor does reserve the right to seek to
3 subordinate the claims on any basis, we have modified the plan
4 to address that concern and to address the concern that we're
5 not attempting to create any new causes of action for
6 subordination that don't otherwise exist under applicable law,
7 but it just preserves the parties' rights with respect to
8 subordination and deals with that at a later date.

9 Next, Your Honor, Section 1123(a)(5). I skipped over
10 1123(a)(4) because there are no objections to that provision.

11 THE COURT: Okay.

12 MR. POMERANTZ: Section 1123(a)(5), a plan must
13 provide for adequate means of implementation. And the plan
14 provides a detailed structure and blueprint how the Debtor's
15 operations will continue, how the assets will be monetized,
16 including the establishment of the Claimant Trust,
17 establishment of the Litigation Sub-Trust, the Reorganized
18 Debtor, the Claimant Trust Oversight Board. And the documents
19 precisely describing how this will occur were filed as part of
20 the various plan supplements.

21 1123(a)(7), Your Honor, requires that the plan only
22 contain provisions that are consistent with the interest of
23 equity holders and creditors with respect to the manner,
24 selection, and -- of any director, officer, or trustee under
25 the plan. And as discussed in the plan, at the disclosure

1 statement, and as testified to by Mr. Seery, the Committee and
2 the Debtor had arm's-length negotiations regarding the post-
3 effective date corporate governance and believe that the
4 selection of the claimant Trustee, the Litigation Sub-Trustee,
5 and the Claimant Trust Oversight Board are in the best
6 interest of stakeholders.

7 HCMFA has raised a particular objection, I think, to these
8 issues, but I will address it in the context of the
9 requirement under Section 1129(a)(5).

10 Your Honor, Section 1129(a)(2) requires that the plan
11 comply with the disclosure and solicitation requirements under
12 the plan. Section 1125 requires that the Debtor only solicit
13 with a court-approved disclosure statement. The Court
14 approved the disclosure statement on November 23rd, and
15 pursuant to the proofs of service on file, the plan and
16 disclosure statement were mailed, along with solicitation
17 materials that the court approved.

18 Now, there has been an objection raised by Dugaboy, and
19 also alluded to by Mr. Taylor in some of his comments before,
20 that the plan does violate 1129(a)(2) because the Debtor's
21 disclosure statement was deficient.

22 In support of that argument, Dugaboy points to the
23 reduction in the anticipated distribution to creditors from
24 the November plan analysis to the January plan analysis, and
25 argues that that reduction requires resolicitation. However,

1 those arguments are not well-taken.

2 First, none of the people making these objections were
3 solicited for their vote on the plan, or if they had been,
4 they didn't vote or decided to reject the plan. And to the
5 extent that Class 8 creditors, the distribution has gone down
6 -- that's the class that Mr. Taylor and Mr. Draper are
7 concerned about -- you don't hear the Committee, Acis,
8 Redeemer, UBS, HarbourVest, Daugherty, or the Senior Employees
9 making their argument, this argument, and they represent over
10 99 percent of the claims in that class. And in fact, of the
11 17 Class 8 creditors that have accepted the plan, 15 are
12 represented by the parties I just mentioned.

13 So who are the two creditors that they're so concerned
14 about? One is Contrarian, which is a claims trader that
15 actually elected to be treated in Class 7, and one is one of
16 the employees who voted to accept the plan.

17 Second, Your Honor, the argument conflates the difference
18 between adverse change to the treatment of a claim or interest
19 that would require a resolicitation under Section 1127 and a
20 change to the distribution that would not.

21 More importantly, Your Honor, the argument is specious.
22 As Mr. Seery testified yesterday, the material differences
23 between the analysis contained on November and late January
24 and the one we filed on February 1st were based on three types
25 of changes: an update regarding the increased value of assets

1 based upon events that had transpired during this period,
2 which included an increase in asset value, no recoveries, and
3 revenues expected to be generated by the CLO management
4 agreements; an update to the expected costs of the Reorganized
5 Debtor and the Claimant Trust as a result of the continued
6 evaluation of staffing needs, operational expenses, and
7 professional fees; and an update to reflect resolution of the
8 HarbourVest and UBS claims.

9 In the filing Monday, Your Honor, we updated the plan
10 projection, a liquidation analysis which revised the unsecured
11 claims based upon the UBS settlement that I was able to
12 disclose to Your Honor. And in the filing, the distribution
13 now revised to Class 8 creditors is now 71 percent, compared
14 to the 87 percent that was in the disclosure statement that
15 went out for solicitation.

16 Your Honor, there can be no serious argument that the
17 creditors in this case were not fully aware of the potential
18 for the UBS and HarbourVest creditors receiving claims. Your
19 Honor's UBS 3018 order granting its claim for voting purposes
20 was entered right around the time that the disclosure
21 statement was approved. And, in fact, a last-minute addition
22 to the disclosure statement disclosed the 3018 amount,
23 although the amount did not make it to the attachment to the
24 disclosure statement. And that reference, Your Honor, to the
25 UBS claim being allowed for voting purposes can be found at

1 Page 41 of Docket No. 1473.

2 And the HarbourVest settlement was filed on about December
3 23, two weeks before the voting deadline, sufficient time for
4 people to take that into consideration.

5 And as Your Honor surely knows, the hearings in this case
6 have been very well-attended by the major parties, and I
7 believe that if we went back and looked at the records of who
8 was on the WebEx system during the HarbourVest and UBS
9 hearings, you would find that representatives of basically
10 every creditor, every major creditor in this case in Class 8
11 participated.

12 Moreover, Your Honor, creditors were not guaranteed any
13 percentage recovery under the plan and disclosure statement,
14 which clearly identified the size of the claims pool as a
15 material risk.

16 Article 4(a)(7) of the disclosure statement, which is at
17 Docket 1473, is entitled "Claims Estimation" and warns
18 creditors that there can be no assurances that the Debtor's
19 claims estimates will prove correct, and that the actual
20 amount of the allowed claims may vary materially.

21 And if Dugaboy is arguing it was misled as the holder of a
22 disputed administrative claim and general unsecured claim,
23 that argument is simply preposterous.

24 Dugaboy cites several cases for the proposition that
25 deficient disclosure may warrant resolicitation, and the

1 Debtor agrees with the proposition as a general matter. But
2 if one looks at the cases that were filed -- that Dugaboy
3 cited to, it will see that they are clearly inapposite and
4 distinguishable.

5 *In re Michaelson*, the Bankruptcy Court for the Eastern
6 District of California, revoked confirmation because the
7 debtor failed to disclose in the disclosure statement a mail
8 fraud indictment of the turnaround specialist who was to lead
9 the reorganization effort and a prior Chapter 7 company he
10 drove into the ground.

11 In *In re Brotby*, the Ninth Circuit BAP affirmed a decision
12 of the Bankruptcy Court that the individual debtor's decision
13 to modify its financial projections on the eve of confirmation
14 did not require a resolicitation. And there, the financial
15 projections were off by 75 percent.

16 And in *Renegade Holdings*, the Bankruptcy Court granted a
17 motion by a group of states to revoke confirmation by the
18 debtors, who manufactured and distributed tobacco products,
19 because the debtors failed to disclose in its disclosure
20 statement that the debtor and its principals were under
21 criminal investigation for unlawful trafficking in cigarettes,
22 which was not disclosed to creditors.

23 Your Honor, none of these cases are remotely analogous to
24 this case, and they certainly do not stand for the proposition
25 that the Debtor was required to resolicit.

1 Next, Your Honor, the next requirement is 1129(a)(3),
2 which requires that any plan be proposed in good faith. As
3 Mr. Seery testified at length, and the Court has personal
4 knowledge of, having presided over this case for a year, the
5 plan is the result of substantial arm's-length negotiations
6 with the Committee over a period of several months.

7 Mr. Seery testified yesterday that, soon after the board
8 was appointed, the Committee wanted to immediately pursue down
9 the path of an asset monetization plan. However, as Mr. Seery
10 testified, the board decided that it was inappropriate to rush
11 to judgment and that it should consider all potential
12 restructuring alternatives for the Debtor. And Mr. Seery
13 testified what those alternatives were: a traditional
14 restructuring and continuation of the Debtor's business; a
15 potential sale of the Debtor's assets in one or more
16 transactions; an asset monetization plan like the one before
17 the Court today; and, last but not least, a grand bargain plan
18 that would involve Mr. Dondero sponsoring the plan with a
19 substantial equity infusion.

20 As Mr. Seery testified, by the early summer of 2020, the
21 Debtor decided that it was appropriate to start moving down
22 the path of an asset monetization plan while it continued to
23 work on the grand bargain plan. Accordingly, Mr. Seery
24 testified that the Debtor commenced good-faith negotiations
25 with the Committee regarding the asset monetization plan, and

1 that those negotiations took several months, were hard-fought
2 and at arm's-length, and involved substantial analysis of the
3 appropriate post-confirmation corporate structure, governance,
4 operational, regulatory, and tax issues. And on August 12th,
5 Your Honor, the plan was filed with the Court.

6 And although the Debtor at that time had not reached an
7 agreement with the Committee on some of the most significant
8 issues, Mr. Seery testified that the independent board
9 believed that it was important to file that plan at that time,
10 a proverbial stake in the ground to act as a catalyst for
11 reaching a consensual plan with the Committee or others, which
12 it has done.

13 As Mr. Seery testified, he continued to work with Mr.
14 Dondero to try to achieve a grand bargain plan, while at the
15 same time proceeding down the path of the filed plan.

16 He testified that the parties participated in mediation at
17 the end of August and early September to try to reach an
18 agreement on a grand bargain plan, but were unsuccessful. And
19 the Debtor proceeded on the path of the August 12th plan and
20 sought approval of its disclosure statement on August 27th,
21 2020.

22 Mr. Seery testified that, at that time, the Debtor still
23 had not reached an agreement with the Committee on certain
24 significant issues involving post-confirmation governance and
25 the scope of releases. And as a result, after a contested

1 hearing, Your Honor, Your Honor did not approve the disclosure
2 statement on October 27th, but asked us to go back again to
3 try to work out the issues, and we came back on November 23rd.

4 Mr. Seery testified that the Debtor continued to negotiate
5 with the Committee to resolve the material disputes leading --
6 which led up to the November 23rd hearing, where we came in
7 with the support of the Committee. But as Mr. Seery has also
8 testified, he has continued to try to reach a consensus on a
9 global plan, notwithstanding the approval of the disclosure
10 statement. And he spent personally several hundred hours
11 since his appointment trying to build consensus.

12 As part of this process, Mr. Seery testified that Mr.
13 Dondero received access to substantial information regarding
14 the Debtor's assets and liabilities, most recently in
15 connection with a series of informal document requests which
16 were made at the end of December.

17 And after the Court asked the parties to again reengage in
18 efforts to try to reach a global hearing after the Debtor's
19 preliminary injunction motion, Mr. Seery testified that he and
20 the board participated in calls with Mr. Dondero and his
21 advisors and the Committee to see if common ground could be
22 attained.

23 Unfortunately, as Mr. Seery testified, the Committee and
24 Mr. Dondero were not able to reach an agreement.

25 Accordingly, Your Honor, the testimony unequivocally and

1 overwhelmingly demonstrates that the plan was proposed in good
2 faith.

3 I expect the Objectors may argue in closing that they have
4 filed a plan under seal that is a better alternative than that
5 being proposed by the plan that the Debtor seeks to confirm.
6 Your Honor, as a threshold matter, yesterday I said any
7 mention of the specifics of the recent plan would be
8 inappropriate. We are not here today to debate the merits of
9 Mr. Dondero's plan, which the Court permitted him to file
10 under seal. He had ample opportunity to file this plan after
11 exclusivity was terminated, seek approval of a disclosure
12 statement, and, if approved, solicit votes in connection with
13 a confirmation hearing, but he failed to do so.

14 What matters today, Your Honor, is whether the Debtor's
15 plan, the plan that has been accepted by 99.8 percent of the
16 amount of creditors, and opposed only by Mr. Dondero, his
17 related entities, and certain employees, meets the
18 confirmation requirements of Section 1129, which we most
19 certainly argue it does.

20 And perhaps most importantly, Your Honor, the Court
21 remarked at the last hearing that, without the Committee's
22 support for a competing plan, Mr. Dondero's plan would be dead
23 on arrival. And as you have heard from Mr. Clemente, Mr.
24 Dondero does not yet have the Committee's support.

25 Next, Your Honor, is Section 1129(a)(5). That requires

1 that the plan disclose the identity of any director,
2 affiliate, officer, or insider of the debtor, and such
3 appointment be consistent with the best interest of creditors
4 and equity holders. Courts have held that this section
5 requires the disclosure of the post-confirmation governance of
6 the reorganized entity.

7 HCMFA objects to the plan, arguing that it did not comply
8 with Section 1129(a)(5) because it didn't disclose the people
9 who would control and manage the Reorganized Debtor and who
10 might be a sub-servicer. HCMFA's objection is off-base.
11 Under the plan, Mr. Seery will be the claimant Trustee and
12 Marc Kirschner will be the Litigation Trustee. Mr. Seery
13 testified extensively about his background, and he has
14 appeared before the Court many times and the Court is familiar
15 with him. We have also introduced his C.V. into evidence.

16 As he testified, he will be paid \$150,000 per month,
17 subject to further negotiations with the Claimant Trust
18 Oversight Committee regarding the monthly amount and any
19 success fee and severance fee, which negotiation is expected
20 to be completed within the 45 days following the effective
21 date.

22 Mr. Seery also testified regarding the names of the
23 members of the Claimant Trust Oversight Committee, which
24 information was also contained in the plan supplement and it
25 generally includes the four members of the Committee and David

1 Pauker, a restructuring professional with decades of
2 restructuring experience.

3 The members of the Oversight Committee will serve without
4 compensation, except for Mr. Pauker, who Mr. Seery testified
5 will receive \$250,000 in the first year and \$150,000 for
6 subsequent years.

7 As set forth in the Claimant Trust agreement, if at any
8 time there is a vacant seat to be filled by another
9 independent member, their compensation will be negotiated by
10 and between the Claimant Trust Oversight Board and them.

11 Mr. Seery has also testified that he believed the Claimant
12 Trust will have sufficient personnel to manage its business.
13 Specifically, he has testified that he intends to employ
14 approximately ten of the Debtor's employees, who will be
15 sufficient to enable him to continue to operate the Debtor's
16 business, including as an advisor to the managed funds and the
17 CLOs, until the Claimant Trust is able to effectively and
18 efficiently monetize its assets for fair value, whether that
19 takes two years or whether that takes 18 months or whether
20 that takes longer.

21 Mr. Seery further testified that he believes that the
22 operations can be best conducted by the Debtor's employees.
23 And while he did consider the retention of a sub-servicer, he
24 ultimately decided, in consultation with the Committee, that
25 the monetization would be a lot more effective if done with a

1 subset of the Debtor's current employees.

2 The proposed corporate governance is also consistent with
3 the interests of the Debtor and its stakeholders. The Court
4 is very familiar with Mr. Seery and the Debtor, and I believe
5 that Mr. Clemente, when he comments, will say the Committee
6 can think of no better person to continue managing the
7 Claimant Trust than Mr. Seery.

8 Mr. Kirschner is also well qualified to be the Litigation
9 Trustee. His C.V. is part of the evidence that's been
10 admitted and contains additional information regarding his
11 background. And he will receive \$40,000 a month for the first
12 three months and \$20,000 a month thereafter, plus a to-be-
13 negotiated success fee.

14 There just simply can be no challenge to Mr. Seery's or
15 Mr. Kirschner's qualifications or abilities to act in a manner
16 contemplated by the plan or that their involvement is not in
17 the best interest of the estate and its creditors.

18 Your Honor, the next requirement that is objected to is
19 Section 1129(a)(7). That, of course, requires the Debtor to
20 demonstrate that creditors will receive not less under the
21 plan than they would receive if the Debtor was to be
22 liquidated in Chapter 7. And on February 1st, Your Honor, we
23 filed our updated liquidation analysis, which contains the
24 latest-and-greatest evidence to support that.

25 These documents, the updated documents, in connection with

1 the prior analysis, was provided to objecting parties in
2 advance of the January 29th deposition, and Your Honor has
3 heard the differences between the January 29th and the
4 February 1st documents being very minimal.

5 The Court heard extensive evidence and testimony from Mr.
6 Seery regarding the assumptions that went into the preparation
7 of the liquidation analysis and the differences of what
8 creditors are projected to receive under the plan as compared
9 to what they are projected to receive in a Chapter 7.

10 Such testimony also included a comparison between the
11 liquidation analysis that was filed with the plan in November,
12 the updated liquidation analysis filed on the -- or, provided
13 to parties on January 28th, and the last version, filed on
14 February 1st.

15 Mr. Seery testified that, on the revenue side, the
16 liquidation analysis was updated to include the HCLOF
17 interest, which was required as part of the settlement with
18 HarbourVest; the increase in value of certain assets,
19 including Trussway; revenue expected to be generated from
20 continued management of the CLOs; and increased recovery on
21 notes as a result of the acceleration of certain related
22 notes.

23 On the expense side, Mr. Seery testified regarding his
24 best estimate of the likely expenses to be incurred by a
25 Chapter 7 trustee -- by the Claimant Trust, including

1 personnel costs; professional costs, which increase because of
2 the litigious nature this case has become; and operating
3 expenses.

4 And lastly, on the claim side, Your Honor, Mr. Seery
5 testified that the claims numbers have been updated to include
6 the settlement from HarbourVest and initially the amount
7 approved to UBS pursuant to the 3018 order and then the
8 reduction at \$50 million based upon the settlement announced.
9 And like the prior liquidation analysis, the current analysis
10 demonstrates that creditors will fare substantially better
11 under in Chapter -- under the plan than in Chapter 7. In
12 fact, the projected recovery under the plan is 85 percent for
13 Class 7 creditors and 71.32 percent for Class 8 creditors, as
14 compared to 54.96 percent for all unsecured creditors in a
15 Chapter 7.

16 Mr. Seery also testified that expenses are expected to be
17 more under Chapter 11 than under Chapter 7, but he also
18 testified that the tens of millions of dollars in greater
19 revenue and asset recoveries under the plan will more than
20 offset the additional expenses.

21 As a result, the Court has more than sufficient
22 evidentiary basis to conclude that the Debtor has carried its
23 burden to prove that it meets the best interest of creditors
24 best.

25 But Mr. Dondero's counsel spent a lot of time crossing --

1 cross-examining Mr. Seery, in a vain attempt to demonstrate to
2 the Court that a Chapter 7 actually would be much better for
3 creditors. And this argument has also been made by Dugaboy
4 and the Advisors and the Funds.

5 Before I address these arguments on its merits, Your
6 Honor, I just wanted to remind the Court of the Objectors --
7 these Objectors' interest in this case. Mr. Dondero owns no
8 equity in the Debtor. He owns a general partner. Strand, in
9 turn, owns a quarter-percent -- a quarter of one percent of
10 the total equity in the Debtor. And Mr. Dondero's claim, it's
11 only a claim for indemnification. Dugaboy asserts two claims:
12 a frivolous administrative claim relating to the postpetition
13 management of a Multi-Strat, which, as an administrative
14 claim, if it's valid, would not even be affected by the best
15 interest of creditors test, because it would have to be paid
16 in full. And he also asserts a claim that the Debtor's
17 subsidiary -- against the Debtor's subsidiary for which it
18 tries to pierce the corporate veil.

19 Just think about it. Dugaboy, Mr. Dondero's entity, is
20 arguing that he should be able to pierce the corporate veil to
21 get at the entity that was his before the bankruptcy.

22 Dugaboy's only other interest in this case relates to a --
23 a one -- point eighteen and several-hundredths percent of the
24 equity interest of the Debtor, and that is out of the money.

25 And as I mentioned previously, Your Honor, Mr. Rukavina's

1 clients either didn't file any general unsecured claims or
2 filed them and withdrew them. Their only claim is a disputed
3 administrative claim against the Debtor that was filed a week
4 ago and which, at the appropriate time, the Debtor will
5 demonstrate is without merit.

6 And I understand that, just today, NexPoint Advisors also
7 filed administrative claim.

8 So I'm not going to argue to Your Honor that these parties
9 do not have standing, although their standing is tenuous, at
10 best, to assert this argument. The Court should keep their
11 relative interests in mind when evaluating the merits and the
12 good faith of this objection.

13 The principal objection, as I said, is that creditors will
14 do better in a Chapter 7. Essentially, they argue that a
15 Chapter 7 trustee can liquidate the assets just as well as Mr.
16 Seery can and not require the cost structure that is included
17 in the Debtor's plan projections. Yes, they argue that a
18 Chapter 7 will be more efficient.

19 Mr. Seery's testimony, the only testimony on the topic,
20 however, establishes that this preposterous proposition has no
21 basis in reality. Mr. Seery testified that a Chapter 7
22 trustee's mandate would be to reduce Debtor's assets as fast
23 as possible, while he will monetize assets as and when
24 appropriate to maximize the value.

25 But even if you can assume that the Chapter 7 trustee

1 could get court authority in a Chapter 7 to operate, there are
2 several reasons Mr. Seery testified why a liquidation by a
3 Chapter 7 trustee would be far worse than the plan.

4 First, Your Honor, no matter how competent the Chapter 7
5 trustee is -- and Mr. Seery did not say he is more competent
6 than anyone else out there -- the lack of a learning curve
7 that Mr. Seery established through the 13 months in this case
8 puts Mr. Seery at such a major advantage compared to a Chapter
9 7 trustee.

10 Second, Mr. Seery questioned whether the Chapter 7 trustee
11 would be able to retain the Debtor's existing professionals,
12 even assuming they were willing to be retained. I'm not sure
13 what's the Court's practice or the practice in the Northern
14 District, but in many districts around the country debtor's
15 counsel and professionals cannot be retained by Chapter 7
16 trustee, as general counsel, at least.

17 And I could just imagine, Your Honor, Mr. Dondero's
18 position if the Chapter 7 trustee actually sought to hire
19 Pachulski Stang and DSI.

20 Third, Your Honor, regardless of whether the Chapter 7
21 trustee obtained some operating authority, the market
22 perception will be that a Chapter 7 trustee will sell assets
23 for less value than would Mr. Seery as claimant Trustee. Mr.
24 Seery testified to that.

25 The argument that the Objectors make that a Chapter 7

1 process, whereby the trustee would seek court approval of
2 assets, is better for value than a process overseen by the
3 Claimant Trust Board lacks any evidentiary basis and also is
4 contradicted by Mr. Seery's testimony.

5 In fact, Mr. Seery testified that the Chapter 7 process,
6 the public process of it, would very likely result in less
7 recovery than a sale conducted in the Claimant Trust.

8 And lastly, Mr. Seery testified that it's unlikely that
9 the ten or so valuable employees who Mr. Seery is planning to
10 heavily rely on to assist him with post-confirmation would
11 agree to a work for Chapter 7 trustee. Your Honor is all too
12 familiar with the fights in the *Acis* case and Chapter 7
13 trustee, and it's just hard to believe that any of the
14 Highland employees would go work for the Chapter 7 trustee.

15 So why is Mr. Dugaboy -- why is Dugaboy and Mr. Dondero
16 actually making this objection and advocating for a Chapter 7?
17 It's because they would expect to buy the Debtor's assets on
18 the cheap from a Chapter 7 trustee, exactly what they've been
19 trying to do in this case.

20 Your Honor, moving right now to Section 1129(a)(11), that
21 requires the debtor to demonstrate that the plan is feasible.
22 In other words, it's not likely to be followed by a further
23 liquidation or restructuring. Under the Fifth Circuit law,
24 the debtor need only demonstrate that the plan will have a
25 reasonable probability of success to satisfy the feasibility

1 requirement, and the Debtor has easily met this standard.

2 As Mr. Seery testified, the Debtor's plan contemplates
3 continued operations through which time the assets will be
4 monetized for the benefit of creditors. The plan contemplates
5 that Class 7 creditors will be paid off shortly after the
6 effective date. Class 8 creditors are not guaranteed any
7 recovery but will receive pro rata distributions over a period
8 of time. Class 2, Frontier secured claim, will be paid off
9 over time, and the projections demonstrate that it will -- the
10 Debtor will have money to do so.

11 Mr. Seery testified at length regarding the assumptions
12 that went into the preparation of the projections most
13 recently filed on February 1, and based on that testimony, the
14 Debtor has clearly demonstrated that the plan is feasible.

15 Your Honor, I think that brings us to Section 1129(b). Of
16 course, again, Your Honor, if Your Honor has any other
17 questions with the sections I'm skipping over. I believe
18 we've adequately covered them in the briefs and I don't think
19 there's any objection.

20 But as I mentioned before, we have three classes that have
21 voted to reject the plan. Class 8 is the general unsecured
22 claims. They voted to reject the plan. Yes. Even though,
23 based upon the ballot summary, 99 percent of the amount of
24 claims in that class voted to accept the plan, approximately
25 24 employees voted to reject the plan. And accordingly, the

1 Debtor cannot satisfy the numerosity requirement of Section
2 1126(c).

3 I do want to briefly recount for Your Honor Mr. Seery's
4 testimony regarding the nature of the claims of the 24
5 employees who voted to reject the plan. And I'm not doing
6 this to argue that the votes from these contingent creditors
7 are not valid or that the Debtor doesn't need to satisfy the
8 cram-down requirements. The Debtor understands it needs to
9 demonstrate to the Court that Section 1129(b) is satisfied for
10 the Court to confirm the plan.

11 Rather, why I do this, Your Honor, is to provide the Court
12 with context about the nature and extent of the creditors in
13 this class as the Court determines whether the plan is, in
14 fact, fair and equitable and can be crammed down to a
15 dissenting vote.

16 Mr. Seery testified that these employees originally had
17 claims under the annual bonus plan and the deferred
18 compensation plan. And as he testified, in order for claims
19 under each of those plans to vest -- I think he referred to
20 them as be-in-the-seat plans -- the employee was required to
21 remain employed as of that date.

22 Mr. Seery testified that the Debtor terminated the annual
23 bonus plan in the middle of January and replaced it with the
24 key employee retention plan that the Court previously
25 approved.

1 Accordingly, Mr. Seery testified that no employee who
2 voted to reject the plan anymore has a claim on the annual
3 bonus plan. He also testified that, with respect to the
4 deferred compensation plan, people have contingent claims
5 under that plan and that no payments are due until May 20 --
6 2021.

7 As Mr. Seery testified, if the employees who would be
8 entitled to receive payments under the deferred compensation
9 plan do not agree to enter into a separation agreement that
10 was approved by the Court, they will be terminated before May
11 and there will no -- not longer be any deferred compensation
12 due.

13 Accordingly, while the 24 employees who voted to reject
14 the plan do technically have claims at this time they have
15 voted, Mr. Seery testified the claims will go away soon.

16 I do want to point out something that's obviously
17 painfully obvious at this point, that while Class 8 voted to
18 reject the plan, the Committee, the statutory fiduciary for
19 all unsecured creditors, supports the plan enthusiastically
20 and I believe it does so unanimously.

21 The other classes to reject the plan, Your Honor, are
22 Class 11, the A limited partnerships, and none of the holders
23 in Class B and C limited partnerships voted on the plan, so
24 cram-down is required over those classes as well. So Your
25 Honor is able to confirm the plan pursuant to the cram-down

1 procedures under 1129(b) if the Court determines that the plan
2 is fair and equitable and does not discriminate unfairly
3 against the rejecting classes.

4 Let's first turn to the fair and equitable requirement. A
5 plan is fair and equitable if it follows the absolute priority
6 rule, meaning that if a class does not receive payment in
7 full, no junior class will receive anything under the plan.
8 With respect to Class 8, no junior class -- junior class to
9 Class 8 will receive payment, and here is the key point,
10 unless Class 8 is paid in full, with appropriate interest.
11 NPA and Dugaboy -- Dugaboy in a brief filed on Monday -- argue
12 that the plan does not satisfy the absolute priority rule
13 because Class 10 and Class Equity Interests have a contingent
14 right to receive property under the plan.

15 Your Honor, this argument misunderstands the absolute
16 priority rule. Class 10 and Class Creditors will only receive
17 payment after distribution to 8 and 9, the unsecured claims
18 and the subordinated claims, are all paid in full, plus
19 interest.

20 And, in fact, Dugaboy, in its brief, to its credit, admits
21 that the argument is contrary to the Bankruptcy Court's
22 decision of Judge Gargotta in the Western District case of *In*
23 *re Introgen Therapeutics*. There, the Court was faced with a
24 similar argument by a group of unsecured creditors who argued
25 that the debtor's plan violated the absolute priority rule

1 because equity was retaining a contingent interest that would
2 only be payable if general unsecured claims were paid in full.

3 In rejecting the argument, the Court reasoned, and I
4 quote, "The only way Class 4 will receive anything is if Class
5 3, in fact, gets paid in full, in satisfaction of
6 1129(b)(2)(B)(i)," meaning that the absolute priority rule
7 would not be an issue. If Class 3 is not paid in full, Class
8 4's property interest is not -- is just -- is not just
9 valueless, it just doesn't exist.

10 Your Honor, this is precisely the situation in this case.
11 Equity interests will only receive a recovery if Class 8 and 9
12 are paid in full.

13 But Dugaboy attempts to escape the logical reading of the
14 absolute priority rule by claiming that *Introgen* was wrongly
15 decided and goes against the Supreme Court's decision in
16 *Ellers* (phonetic). Dugaboy argues that because the Supreme
17 Court decided that property given to a junior class without
18 paying a senior class in full is property, even if it's
19 worthless.

20 But Dugaboy misses the point. Like the debtor in the
21 *Introgen*, the Debtor here is not arguing that the property --
22 the absolute priority rule is not violated because the
23 contingent trust is worthless. Rather, the argument is that
24 the absolute priority rule is not violated; it's, in order to
25 receive anything on account of the junior -- of the equity,

1 the senior creditors have to be paid a hundred percent plus
2 interest.

3 In fact, Your Honor, if the plan just didn't give any
4 recovery to the equity Class 10 and 11, I bet you Dugaboy and
5 Mr. Dondero would be arguing that it violated the absolute
6 priority rule because senior classes, unsecured creditors,
7 could potentially receive more than a hundred percent of their
8 interest. And there's a case in the Southern District of
9 Texas, *In re MCorp*, where the Bankruptcy Court said that for a
10 plan to be confirmed, its stockholders eliminated, creditors
11 must not receive more than payment in full.

12 Excess proceeds, Your Honor, if any, have to go somewhere.
13 They can't go to creditors, so they have to go to equity. And
14 the absolute priority rule is not violated.

15 And how is Dugaboy harmed? They say they may want to buy
16 the contingent interests, and the lack of a marketing effort
17 violates the *LaSalle* opinion as well. And who holds the Class
18 B and Class C partnership interests that come before Dugaboy
19 that Dugaboy is concerned may have this opportunity rather
20 than them? Yes, it's Hunter Mountain, Your Honor, an entity,
21 like Dugaboy, that's owned and controlled by Mr. Dondero.

22 Accordingly, the argument that the plan violates the
23 absolute priority rule is actually a frivolous argument.

24 Turning now to unfair discrimination, Your Honor, Dugaboy
25 argued in its brief Monday that because the projected

1 distribution to unsecured creditors has gone down in the
2 recent plan projections, the discrepancy between Class 7 and
3 Class 8 is so large that that amounts to unfair
4 discrimination.

5 Again, the Court should first ask why is Dugaboy even the
6 right party to be making the objection. Its claim against the
7 Debtor to pierce the corporate veil, as I mentioned, is
8 frivolous. It's subject to objection. It didn't even bother
9 to have the claim temporarily allowed for voting purposes, as
10 did other creditors who thought they had a valid claim. Yet
11 this is another example of Mr. Dondero, through Dugaboy,
12 trying to throw as many roadblocks in front of confirmation as
13 he can.

14 But this argument, like the other ones, fails as well.
15 Class 8 contains the general unsecured creditor claims,
16 predominately litigation claims that have been pending against
17 the Debtor for years. The Debtor was justified in treating
18 the other unsecured creditors differently.

19 Class 6 consists of the PTO claims in excess of the cap,
20 which are of different quality and nature than the other
21 claims.

22 Class 7 consists of the convenience class. And it's
23 appropriate to bribe convenience class creditors with a
24 discount option for smaller claims to be cashed out for
25 administrative convenience.

1 Mr. Seery testified that when the plan was formulated, the
2 concept was to separately classify liquidated claims in small
3 amounts in Class 7 and unliquidated claims in Class 8. Mr.
4 Seery also testified that there's a valid business
5 justification to treat the -- hold business 7 -- Class 7
6 claims differently. These creditors had a reasonable
7 expectation of getting paid promptly, as compared to
8 litigation creditors, who would expect to be paid over time.

9 As the Court is aware, the litigation claims in Class 8
10 involve litigation that has been pending for several years in
11 the case of Acis, Daugherty, Redeemer, and more than a decade
12 in UBS.

13 And most importantly, as Mr. Seery testified, the
14 Committee and the Debtor had significant negotiation regarding
15 the classification and treatment provisions of the plan for
16 Class 7.

17 The Committee does have one constituent who is a Class 7
18 creditor. However, the other three creditors are all in Class
19 8 and hold claims in excess of \$200 million and supported the
20 separate classification and the different treatment.

21 So, Your Honor, discrimination, different treatment among
22 Class 7 and 8 is appropriate, and the different treatment is
23 not unfair. In the February 1 projections, the Class 8
24 creditors are estimated to receive 71.32 percent of their
25 claims, but that's just an estimate. As Mr. Seery testified,

1 the number can go up based upon the value he can generate from
2 the assets and, importantly, from litigation claims. Class 8
3 creditors could up end up receiving a hundred percent on
4 account of their claims. Class 7 creditors are fixed at 85
5 percent.

6 Giving Class 8 creditors the opportunity to roll the dice
7 and potentially get more or less than the 85 percent offered
8 to Class 7 is not at all unfair.

9 For these reasons, Your Honor, the Court has the ability
10 and should confirm the plan pursuant to the cram-down
11 provisions of 1129(b).

12 Your Honor, I'm now going to switch from the statutory
13 requirements to all the issues raised by the release,
14 injunction, and exculpation provisions.

15 I'd just like to take a brief sip of water.

16 Dugaboy -- I will first deal with the Debtor release
17 provided in Article 9(f) of the plan, which we claim is
18 appropriate. Dugaboy and the U.S. Trustee have objected to
19 the release contained in Article 9(f). Dugaboy objects
20 because it believes that the Debtor release releases claims
21 that the Claimant Trust or Litigation Trust have that have not
22 yet arisen, and the U.S. Trustee objects because it believes
23 that the release is a third-party release.

24 These objections have no merit, and they should be
25 overruled.

1 I would like to ask Ms. Canty to put up a demonstrative
2 which contains the provision Article 9(f) of the plan.

3 Your Honor, as set forth in this Article 9(f), only the
4 Debtor is granting any release. While that --

5 THE COURT: And for the record, it's 9(d)? 9(d),
6 right?

7 MR. POMERANTZ: 9(d)? 9(d), correct, Your Honor.

8 THE COURT: Yes. Okay.

9 MR. POMERANTZ: Sorry about that.

10 THE COURT: Uh-huh.

11 MR. POMERANTZ: While the release is broad, it does
12 not purport to release the claims of any third party. The
13 Claimant Trust and the Litigation Trust are only included in
14 the release as successors of the Debtor. The release is
15 specifically only for claims that the Debtor or the estate
16 would have been legally entitled to assert in their own right.

17 Section 1123(b)(3)(A) of the Bankruptcy Code provides that
18 a plan may provide for the settlement or adjustment of any
19 claims or interests belonging to the debtor or the estate, and
20 that's exactly what the Debtor release provides.

21 Accordingly, Dugaboy is wrong that the release effects a
22 release of claims that the Claimant Trust or the Litigation
23 Sub-Trust have that won't arise until after the effective
24 date. And the U.S. Trustee is simply wrong; there's no third-
25 party release aspect under the release.

1 The last point I will address on the release, Your Honor,
2 is who is being released and why and what does the evidence
3 show. The Debtor release extends to release parties which
4 include the independent directors, Strand, for actions after
5 January 9th, Jim Seery as the CEO and CRO, the Committee,
6 members of the Committee, professionals, and employees.

7 You have heard Mr. Seery's testimony that the Debtor does
8 not believe that any claims against the parties that are
9 proposed to be released actually exist. You have heard Mr.
10 Seery's testimony that he worked closely with the employees
11 and believes that not only have they all been instrumental in
12 getting the Debtor to the -- be on the cusp of plan
13 confirmation, but that also Mr. Seery is not aware of any
14 claims against them.

15 Moreover, as Mr. Seery testified, the release for the
16 employees is only conditional. He testified that the
17 employees are required to assist in the monetization of assets
18 and the resolution of claims, and if they do not like -- if
19 they do not lose their release, then any Debtor claims are
20 tolled, such that could be pursued by the Litigation Trustee
21 at a future time.

22 Lastly, I'm sure that the Dondero entities will argue that
23 someone needs to investigate claims against Mr. Seery for
24 mismanagement or for, God forbid, having failed to file the
25 2015.3 statements. Such claims are part of the continuing

1 harassment of Mr. Seery that the Dondero entities have
2 embarked on after it was apparent that nobody would support
3 their plan.

4 There is no evidence of any claims that exist, Your Honor.
5 In fact, the Committee and its professionals have watched the
6 Debtor through this case like a hawk. They have not been
7 afraid to challenge the Debtor's actions in general and Mr.
8 Seery's in particular. FTI has worked on a daily basis with
9 DSI and the company, had access to information. When COVID
10 was happening, they were looking at trades going on on a daily
11 basis.

12 So if the Committee, whose members hold approximately \$200
13 million of claims against the estate, are okay with the
14 release against the independent directors and Mr. Seery, that
15 should provide the Court with comfort to approve the releases
16 as part of the plan.

17 In summary, Your Honor, the Debtor release is entirely
18 appropriate and does not affect the release of third-party
19 claims that have not yet arisen.

20 Next, Your Honor, I want to go to the discharge. There's
21 been objections to the discharge. Dugaboy and NexPoint have
22 objected that the Debtor receiving a discharge under the plan
23 -- argue a debtor is liquidating. The objection is not well
24 taken based upon Mr. Seery's testimony regarding what it is
25 the Claimant Trust and the Reorganized Debtor plan to do after

1 the effective date, as compared to what the limitations of a
2 discharge are under 1141(d)(3).

3 Your Honor, Article 9 of the -- 9(b) of the plan provides
4 that as -- except as otherwise expressly provided in the plan
5 or the confirmation order, upon the effective date, the Debtor
6 and its estate will be discharged or released under and to the
7 fullest extent provided under 1141(d)(A) [sic] and other
8 applicable provisions of the Bankruptcy Court. Bankruptcy
9 Code.

10 Section 1141(d)(3) provides an exception to the discharge,
11 and I'd like to have that section put up for Your Honor at
12 this point. Ms. Canty?

13 As this -- as the section reflects, and as the Fifth
14 Circuit has ruled in the *TH-New Orleans Limited Partnership*
15 case cited in our materials, in order to deny the debtor a
16 discharge under 1141(d)(3), three things must be true: (1)
17 the plan provides for the liquidation of all or substantially
18 all of the property in the estate; (2) the debtor does not
19 engage in business after consummation of the plan; and (3) the
20 debtor would be denied a discharge under 727(a) of this title
21 if the case was converted to Chapter 7. Here, only C applies.

22 With respect to A, Your Honor, while the plan does project
23 that it will take approximately two years to monetize the
24 Debtor's assets for fair value, the Debtor is just not
25 liquidating within the meaning of Section A.

1 As Mr. Seery testified, during the post-confirmation
2 period, post-effective date period, the Debtor will continue
3 to manage its funds and conduct the same type of business it
4 conducted prior to the effective date. It'll manage the CLOs.
5 It'll manage Multi-Strat. It'll manage Restoration Capital.
6 It'll manage the Select Fund, and it'll manage the Korea Fund.

7 The Bankruptcy Court for the Southern District of New
8 York's 2000 opinion in *Enron*, cited in our materials, is on
9 point. There, the Court found that a debtor liquidating its
10 assets over an indefinite period of time that is likely to
11 take years is not liquidating within the meaning of Section
12 1141(b)(3)(A), justifying a denial of discharge.

13 But even if we failed A, based upon Mr. Seery's testimony,
14 we would not fail B. The Debtor will be continuing to do what
15 it has done during the case, as it did before, as I said,
16 managing its business. B says the debtor does not engage in
17 the business after management. So while Mr. Seery testified
18 that it would take approximately two years, it could take
19 more, it could take less, and there is no requirement to
20 liquidate assets over a period of time.

21 Accordingly, Your Honor, the Debtor is conducting the type
22 of business contemplated by Section B so as not to just deny a
23 discharge.

24 As the Fifth Circuit said in the *TH-New Orleans* case, the
25 court granted a discharge there because it was likely that the

1 debtor would be liquidating its assets and conducting business
2 (indecipherable) years following a confirmation date. And
3 this result makes sense, Your Honor, because the Debtor will
4 need the discharge and the tenant injunctions, which I'll get
5 to in a moment, in order to prevent interference with the
6 Debtor's ability to implement the terms of the plan and make
7 distributions to creditors.

8 I would now like, Your Honor, to turn to the exculpation
9 provisions, which there's been -- there's been a lot of
10 briefing on it, and I know Your Honor is very aware of the
11 exculpation provisions and the *Pacific Lumber* case. And
12 several parties have objected to the exculpation contained in
13 the plan, based primarily on the Fifth Circuit ruling in
14 *Pacific Lumber*.

15 The exculpation provision, which is not dissimilar to what
16 is found in many plans around the country, including in plans
17 confirmed in bankruptcy courts in the Fifth Circuit, acts to
18 exculpate the exculpated parties for negligent-only acts as it
19 contains the standard carve-outs for gross negligence,
20 intentional conduct, and willful misconduct.

21 I do want to bring to the Court's attention a deletion we
22 made to the parties protected by the exculpation in the plan
23 and now -- were filed on February 1st. The definition of
24 exculpated parties included, before February 1, not only the
25 Debtor but its direct and indirect majority-owned subsidiaries

1 and the managed funds. In the plan amendment, we have deleted
2 the Debtor's direct and indirect majority-owned subsidiaries
3 and managed funds from the definition and are not seeking
4 exculpation for those entities.

5 But before, Your Honor, I address *Pacific Lumber* and why
6 the Debtor believes it does not preclude the Court from
7 approving the exculpation in this case, I do want to focus on
8 something that the Objectors conveniently ignore from their
9 argument.

10 As I mentioned in my opening argument, Your Honor, the
11 independent directors were appointed pursuant to the Court's
12 order on January 9, 2020. They have resolved many issues
13 between the Debtor and the Committee, and avoided the
14 appointment of a Chapter 11 trustee.

15 The January 9th order was specifically approved by Mr.
16 Dondero, who was in control of the Debtor at the time, and I
17 believe the transcripts that are admitted into evidence will
18 demonstrate that he was fully behind the approval of the
19 January 9th order.

20 In addition to appointing the independent directors into
21 what was sure to be a contentiously litigious case, the
22 January 9th order set the standard of care for the independent
23 directors, and specifically exculpated them from negligence.

24 You have heard Mr. Seery and Mr. Dubel testify that they
25 had input into what the order said and would have not agreed

1 to be appointed as independent directors if it did not include
2 Paragraph 10, as well as the provisions regarding
3 indemnification and D&O insurance.

4 I would like to put a demonstrative on the screen, which
5 is actually Paragraph 10 of that order. Your Honor, Paragraph
6 10, there's two concepts embedded here. First, it requires
7 any parties wishing to sue the independent directors or their
8 agents to first seek such approval from the Bankruptcy Court.
9 Secondly, and importantly for purposes of the independent
10 directors and their agents, who would include the employees,
11 it set the standard of care for them during the Chapter 11 and
12 entitled them to exculpation for negligence. Paragraph 10
13 says the Court will only permit a suit to go forward if such
14 claim represents a colorable claim for willful misconduct or
15 gross negligence.

16 And Your Honor, Paragraph 10 does not expire by its terms.

17 By not including negligence in the definition of what a
18 colorable claim might be, the Court has already exculpated the
19 independent directors and their agents, which include the
20 employees acting at their direction.

21 And because the independent directors and their agents are
22 exculpated under Paragraph 10, Strand needs to be exculpated
23 as well for actions occurring after January 9th. This is
24 because a suit against Strand for conduct after the
25 independent board was appointed is effectively a suit against

1 the independent directors, who were the only people in control
2 of Strand at that time.

3 After the effective date, Mr. Dondero will regain control
4 of Strand, as the independent directors will be discharged.
5 And for parties able to sue Strand essentially for negligence
6 for conduct conducted by the independent directors after
7 January 9th, Strand will then be able to seek indemnification
8 from the Debtor under the Debtor's partnership agreement
9 because the partnership agreement does provide the general
10 partner is entitled to indemnification.

11 Accordingly, an exculpation for Strand is really the
12 functional equivalent of an exculpation for the independent
13 directors and the Debtor.

14 The January 9th order was not appealed, and an objection
15 to exculpation at this point as it relates to the independent
16 directors, their agents, and Strand is a collateral attack on
17 this order. So, Your Honor, Your Honor does not even need to
18 get to the thorny issues addressed by *Pacific Lumber*.

19 However, even in the absence of the January 9th order,
20 exculpation of the independent directors and their employees,
21 as well as the other exculpated parties, is not prohibited by
22 *Pacific Lumber*. In *Pacific Lumber*, the Fifth Circuit reversed
23 a bankruptcy court order confirming a plan because the
24 exculpation provision was too broad and included parties that
25 the Fifth Circuit thought could not be exculpated under

1 Section 524(e) of the Code.

2 A close look at the issue before the Court, Your Honor,
3 the reasoning for the Court's ruling and why certain parties
4 like Committee and its members were entitled to exculpation,
5 reflects that this case does not prevent the Court from
6 approving exculpation of this case.

7 A careful read of the underlying briefs and opinions in
8 *Pacific Lumber* reveals that the concern that the Appellants
9 had in that case was the application of exculpation to non-
10 fiduciary sponsors. There were two competing plans in the
11 case. The first was filed by the indenture trustee. The
12 second was filed by the debtor's parent and lender, and was
13 deemed -- called the Marathon Plan. The Court confirmed the
14 Marathon Plan, and the indenture trustee appealed, and the
15 indenture trustee argued that the plan sponsors could not be
16 exculpated.

17 After determining that the appeal of the exculpation
18 provisions were not equitably moot, the Fifth Circuit
19 determined that exculpation was not authorized under 524(e) of
20 the Code because that section provides a discharge of the
21 debtor does not affect the liability of any other entity on
22 such debt.

23 However, and here's the important part, Your Honor: The
24 Fifth Circuit did not say that all exculpations are prohibited
25 under the Code and authorized the exculpation of the Committee

1 and its members. And why did the Court do that? Because it
2 looked at the Committee's qualified immunity under 1103 and
3 also reasoned that Committee members are essentially
4 disinterested volunteers that should be entitled to
5 exculpation on negligence.

6 The Court also cited approvingly *Colliers* for the
7 proposition that if Committee members were not exculpated for
8 negligence and subject to suit by people who are unhappy with
9 them, they just would not serve.

10 Accordingly, the Fifth Circuit based its willingness to
11 exculpate Committee members on the strong public policy that
12 supports exculpation for those parties under those
13 circumstances. And against this backdrop, Your Honor, there
14 are several reasons why the Court should authorize exculpation
15 in this case, notwithstanding *Pacific Lumber*.

16 First, Your Honor, the independent directors in this case
17 are analogous -- much more analogous to the Committee members
18 that the Fifth Circuit ruled were entitled to than the
19 incumbent officer and directors.

20 Your Honor has the following facts before the Court, based
21 upon the testimony of Mr. Seery and Mr. Dubel and other
22 evidence in the record. The independent board members were
23 not part of the Highland enterprise before the Court appointed
24 them on January 9th. The Court appointed the independent
25 directors in lieu of a Chapter 11 trustee to address what the

1 Court perceived as the serious conflicts of interest and
2 fiduciary duty concerns with current management, as identified
3 by the Committee.

4 The independent directors would not have agreed to accept
5 their role without indemnification, insurance, exculpation,
6 and the gatekeeper function provided by the January 9th order.

7 And Mr. Dubel testified regarding the significant
8 experience he has as an independent director during his 30-
9 plus years in the restructuring community, including several
10 engagements as an independent director in Chapter 11 cases.

11 And he testified that independent directors have become
12 commonplace in complex restructurings over the last several
13 years and have been appointed in many cases, including high-
14 profile cases. We've cited to just a few of those cases in
15 our brief, but we could go on and on.

16 Mr. Dubel testified that the independent directors are a
17 critical tool in proper corporate governance and restoring
18 creditor confidence in management in modern-day
19 restructurings, and he testified that, based upon his
20 experience, independent directors expect to be indemnified by
21 the company, expect to obtain directors and officers
22 insurance, and expect to be exculpated from claims of
23 negligence when they agree to be appointed.

24 He further testified that if independent directors cannot
25 be assured that they will be exculpated for simple negligence,

1 he believes they will be unwilling to serve in contentious
2 cases like the one we have here, which will have a material
3 adverse effect on the Chapter 11 restructuring process as we
4 know it.

5 Based upon the foregoing testimony, Your Honor, which is
6 uncontroverted, the Court should have no problem finding that
7 the independent directors are much more analogous to the
8 Committee members in *Pacific Lumber* who the Fifth Circuit said
9 could be exculpated.

10 The facts, these facts also distinguish this case from the
11 *Dropbox v. Thru* case which Your Honor decided and which was
12 reversed on this issue by the District Court. In neither
13 *Pacific Lumber* or *Thru* was there an argument that the policy
14 reasons that supported exculpation of Committee members also
15 supported the exculpation of the parties sought to be
16 exculpated.

17 Moreover, Your Honor, the independent directors in this
18 case were pointed as essentially as substitute for a Chapter
19 11 trustee. There was a Chapter 11 trustee motion filed a few
20 days before, I believe, and the Court, in approving this, said
21 that you -- better than a Chapter 11 trustee. And Chapter 11
22 Trustees are entitled to qualified immunity. So, while, yes,
23 the independent directors aren't truly Chapter 11 trustees,
24 they are analogous.

25 Second, Your Honor, while there is language in *Pacific*

1 *Lumber* that says that the directors and officers of the debtor
2 are not entitled to exculpation, the issue before the Court
3 really on appeal was the plan sponsors and whether they were.
4 So I would argue that any discussion of the exculpation not
5 being available for directors and officers in the Fifth
6 Circuit opinion in *Palco* is actually dicta.

7 Third, Your Honor, as I discussed before, the *Pacific*
8 *Lumber* decision was based solely on 524(e) of the Bankruptcy
9 Code, which only says that the discharge of a claim against
10 the debtor does not affect the discharge of a third party.
11 However, the Debtor is not relying on 524(e) as the basis of
12 their exculpation. As we outline in our brief, Your Honor, we
13 believe that the exculpation is appropriate under Section 105
14 and 1123(b)(6) as a means -- part of an implementation of the
15 plan.

16 Importantly, Your Honor, as other courts hostile to third-
17 party releases have determined, exculpation only sets a
18 standard of care for parties and is not an effort to relieve
19 fiduciaries of liability.

20 Other courts that have aligned with the Fifth Circuit and
21 rejected third-party releases, like the Ninth Circuit, have
22 recently determined exculpation has nothing to do with 524(e).
23 In *In re Blixseth*, a Ninth Circuit case decided at the end of
24 2020 cited in our materials, they examined several of their
25 circuit cases that had strongly prohibited non-consensual

1 third-party releases under 524(e). But again, the Court
2 concluded that 524(e) only prohibits third parties from being
3 released from liability of a prepetition claim for which the
4 debtor receives a discharge. The Court reasoned that the
5 exculpation clause, however, protects parties from negligence
6 claims relating to matters that occurred during the Chapter 11
7 case and has nothing to do with 524(e).

8 The Ninth Circuit, which along with the Fifth Circuit has
9 been notorious for prohibiting third-party releases, issued
10 its ruling against this backdrop and said that exculpations
11 are appropriate.

12 Your Honor, the Objectors made a point yesterday of
13 pointing out that Strand, as the Debtor's general partner, is
14 liable for the debts under applicable law. To the extent they
15 intend to argue that the exculpation is seeking to discharge
16 any such prepetition liability, they would be wrong. The
17 exculpation only applies to postpetition matters. And to the
18 extent they argue that the exculpation seeks to discharge
19 Strand's potential postpetition liability, for the reasons I
20 discussed, a claim against Strand will essentially be a claim
21 against the Debtor because the Debtor will be obligated to
22 indemnify them.

23 Accordingly, Your Honor, we submit that if this matter
24 goes up to appeal to the Fifth Circuit, which it may very well
25 do, that the Fifth Circuit may very well come out the same way

1 as the Ninth Circuit and start relaxing the standard or
2 otherwise provide that the independent directors are much more
3 like Committee members.

4 Lastly, Your Honor, if the Court does confirm the plan,
5 which we certainly hope it will do, it will have made a
6 finding that the plan has been proposed in good faith, and in
7 doing so, the Court essentially finds that the independent
8 directors and their agents have acted appropriately and
9 consistent with their fiduciary duties, and it makes --
10 exculpation for negligence naturally flows from that finding.

11 Your Honor, I would now like to go to the injunction
12 provisions, and my argument is that the injunction provisions
13 as amended are appropriate.

14 THE COURT: Can I stop you?

15 MR. POMERANTZ: We received several of -- yes.

16 THE COURT: I want to just recap a couple of things I
17 think I heard you say. You're not asking this Court, you say,
18 to go contrary to *Pacific Lumber* per se. You have thrown out
19 there the possibility that *Pacific Lumber* mistakenly relied on
20 524(e) in rejecting exculpations of plan sponsors. You're
21 saying, eh, as a technical matter, I think they were wrong in
22 focusing on that statute because that statute seems to deal
23 with prepetition liability. Okay? Its actual wording, 524(e)
24 states, discharge of a debt of a debtor does not affect the
25 liability of any other entity on such debts.

1 And reading between the lines, I think you're saying --
2 well, maybe this isn't what you're saying, but here's what I
3 inferred -- "debt" is defined in 101(12) to mean liability on
4 a claim, and then "claim" is defined in 101(5) of the
5 Bankruptcy Code as meaning right to payment. It doesn't say
6 as of the petition date, but I think if you look at, then,
7 Section 502 of the Bankruptcy Code that addresses claims and
8 interests, clearly, it seems to be referring to the
9 prepetition time period, you know, claims and interest as of
10 the petition date. And then -- that's 502. And then 503
11 speaks of, for the most part, postpetition administrative
12 expenses.

13 So that was my rambling way of saying I'm understanding
14 you to say, eh, as a technical matter, we think the Fifth
15 Circuit was wrong to focus on 524(e) because when you're
16 talking about exculpation you're talking about postpetition
17 liability, not prepetition liability. And 524(e) is talking
18 more about prepetition liability.

19 But I think what I also hear you saying is, at bottom,
20 *Pacific Lumber* was sort of a policy-driven holding where, you
21 know, we're worried about no one would ever sign up for being
22 on an unsecured creditors' committee if they could be exposed
23 to lawsuits. They're fiduciaries, we think, for policy
24 reasons. Exculpation is appropriate for this one group. And
25 you're saying, well, they didn't have an independent board

1 that they were considering. They were just considering non-
2 fiduciary plan sponsors. And so the rationale presented by
3 *Pacific Lumber* applies equally here, and just they didn't make
4 a holding in this factual context.

5 Have I recapped what you're saying?

6 MR. POMERANTZ: Your Honor, that's generally --
7 generally correct, with a couple of nuances. So, yes, first,
8 I think, on a policy basis, Your Honor -- again, putting aside
9 the January 9th order, because we don't see --

10 THE COURT: Right. Right.

11 MR. POMERANTZ: -- Your Honor even needs to get to
12 this issue.

13 THE COURT: I understand.

14 MR. POMERANTZ: But if Your Honor does get to this
15 issue, we think, as a first point, Your Honor could be totally
16 consistent with *Pacific Lumber* because there's policy reasons
17 and there was not a categorical rejection of exculpation.
18 Okay. So if there was a categorical rejection, then it
19 wouldn't have been okay for committee members. Okay.

20 Second argument, yes, we don't think -- we think it's part
21 of dicta. It's not part of the holding. We understand that
22 other courts may have not agreed, maybe your *Thru* case, which
23 Your Honor was appealed on.

24 But the third issue, our argument is all they looked at
25 was 524(e). They said 523 -- 4(e) does not authorize it.

1 They did not say 524(e) prohibits it.

2 We think there's other provisions in the Code. And then
3 when you basically add in the analysis that Your Honor
4 provided, which we agree with, and what 524 was -- to do,
5 524(e) just says that discharge doesn't affect. It doesn't
6 say that under another provision of the Code or for another
7 reason you are authorized to give an exculpation. I think
8 it's a nuance and it's a difference there.

9 And my point of bringing up the *Blixseth* case -- which, of
10 course, is Ninth Circuit and it's not binding on Your Honor,
11 it's not binding on the Fifth Circuit -- is to say, when that
12 was presented to them, they saw the distinction that 524(e)
13 has nothing to do with an exculpation. And while, yes, the
14 Fifth Circuit hasn't ruled on that, and if the Fifth -- if
15 that argument is made to the Fifth Circuit, we don't know how
16 they would rule, I think that, based upon their analysis --
17 which, again, Your Honor, is no more than a page and a half of
18 their opinion, right, of a long, lengthy opinion on the
19 confirmation issues. So I think, Your Honor, with the Fifth
20 Circuit, there is a good chance that based upon the developing
21 case law of exculpation, based upon the sister circuit in
22 *Blixseth* making that distinction, that there is a very good
23 chance that the Fifth Circuit would change.

24 But look, I recognize that argument requires Your Honor to
25 say, okay, this is outside and -- and what *Pacific Lumber* did

1 or didn't do. But I think, Your Honor, there's several
2 potential reasons, there's several potential arguments that
3 you can get to the same place.

4 THE COURT: Okay. Thank you.

5 MR. POMERANTZ: Okay. If I may just get another
6 glass of -- sip of water before my time starts?

7 THE COURT: Okay.

8 MR. POMERANTZ: Okay, Your Honor. We're now turning
9 to the injunction provision. The Debtor received several
10 objections to the injunction provisions in -- I think I have
11 it right now -- Article 9(f) to the plan. And we've modified
12 Article 9(f) to address certain of those concerns, and we
13 believe that, as modified, that the injunction provision
14 implements and enforces the plan's discharge, release, and
15 exculpation provisions to prevent parties from pursuing claims
16 in interest that are addressed by the plan and otherwise
17 interfering with consummation and implementation of the plan.

18 I'd like to put up the first paragraph of the injunction
19 on the screen now.

20 Okay, Your Honor. The first paragraph, all it does is
21 prohibits the enjoined parties from taking action to interfere
22 with consummation or implementation of the plan. I suspect a
23 sentence like that is probably in hundreds of plans in the
24 Fifth Circuit and elsewhere.

25 Initially, to address a concern that it applied to too

1 many parties, the Debtor added a definition in the revised
2 plan that defines "enjoined parties," which I'd like to now
3 put that definition up on the screen.

4 The changes -- it's a little hard to read there, but you
5 have it in the -- oh, there you go. The changes made clear
6 that only parties who have a relationship to this case, either
7 holding a claim or interest, having appeared in the case, be a
8 -- or be a party in interest, Jim Dondero, or related entity,
9 or related person of the foregoing are covered. The claim
10 objectors argue that the word "implementation and
11 consummation" is vague, or vague and unclear. Your Honor,
12 these terms are both defined in the Bankruptcy Code and under
13 the case law, and they're, as I said, common features of many
14 plans.

15 Section 1123(a)(5) of the Code provides that a plan shall
16 provide for its implementation, and identifies a list of items
17 that the plan can include. Article 4 of our plan is defined
18 as "Means of Implementation of This Plan," and describes the
19 various corporate steps required to implement the provisions
20 of the plan, including canceling equity interests, creation of
21 new general partners and a limited part of the Reorganized
22 Debtor, the restatement of the limited partnership agreement,
23 and the establishment of the various trusts.

24 Paragraph 1 rightly and appropriately enjoins efforts to
25 interfere with these steps.

1 Nor is the term "consummation of the plan" vague.
2 "Consummation" also is a commonly-used term and has been
3 defined by the Fifth Circuit and the Code. 1102 -- 1101(2)
4 defines "Substantial Consummation" to be the transfer of
5 assets to be transferred under the plan, the assumption by the
6 debtor of the management of all the property dealt with by the
7 plan, and the commencement of distributions under the plan.

8 Section 1142 gives the Court authority to direct a party
9 to perform any act necessary for consummation of a plan. And
10 as the Fifth Circuit, in *United States Brass Corp.*, which is
11 said in our material, states, said the Bankruptcy Court had
12 post-confirmation jurisdiction to enforce the unperformed
13 terms of a plan with respect to a matter that could affect the
14 parties' post-confirmation rights because the plan had not
15 been fully consummated.

16 And Your Honor just wrote on this issue last year in the
17 *Senior* -- the *Texas* -- the *TXMS Real Estate v. Senior Care*
18 case, and you cited to *U.S. Brass* to find that, in that case,
19 post-confirmation jurisdiction existed to resolve a dispute
20 relating to an assumed contract because the matter related to
21 interpretation, implementation, and execution of the plan.

22 Accordingly, Your Honor, neither implementation or
23 consummation are vague, and the first paragraph of the
24 injunction is necessary and appropriate to enforce the
25 Debtor's discharge.

1 As I said before, I will leave it to Mr. Kharasch to
2 address specifically the concerns that the Advisor and the
3 Funds have with the injunction.

4 The second and third paragraphs of the injunction, Your
5 Honor, certain parties have objected to them on the ground
6 that they constitute an improper release of the independent
7 directors as well as the release of claims against the
8 Reorganized Debtor, the Claimant Trust, and the Litigation
9 Sub-Trust, entities that will not have come into existence
10 until after the effective date.

11 We believe we have addressed these concerns by
12 modifications to the second and third paragraphs of the
13 injunction, which I would now like to put the second and third
14 paragraphs on the screen.

15 (Pause.)

16 MR. POMERANTZ: As that is happening, Your Honor, I
17 will -- there we go.

18 We believe that the changes that were made to these
19 paragraphs should address the Objectors' concerns.

20 First, as with the first paragraph, we have created a
21 defined term of "Enjoined Parties" who are subject to the
22 injunction which is narrower than all persons, I believe, or
23 all entities that was included in the prior plan. So we've
24 narrowed that.

25 "Enjoined Parties" are generally defined, as I mentioned

1 before, as entities involved in this case or related to Jim
2 Dondero, or have appeared in this case.

3 Second, we have removed independent directors from these
4 paragraphs to address the concern that the injunction was a
5 disguised third-party release.

6 Third, we have removed the Reorganized Debtor and the
7 Claimant Trust from the second paragraph and moved them to the
8 third paragraph. We did this to make clear that the
9 Reorganized Debtor and Claimant Trust were only getting the
10 benefit of the injunction as the successors to the Debtor. As
11 the Reorganized Debtor and the Claimant Trust receives the
12 property from the Debtor free and clear of all claims and
13 interests and equity holders under 1141(c), they are entitled
14 to the benefit of the injunction.

15 Fourth, we have addressed the concern that the injunction
16 improperly affected set-off rights. We added language to make
17 clear that the injunction would only affect the parties' set-
18 off of an obligation owed to the Debtor to the extent that
19 that was permissible under 553 and 1141 of the Bankruptcy
20 Code.

21 In other words, we are punting the issue for another day,
22 and there's nothing in the plan that gives the Debtor any more
23 set-off rights than it otherwise has under the Bankruptcy
24 Code.

25 Lastly, Your Honor, certain Objectors have argued that the

1 injunction somehow prevents them from enforcing the rights
2 they have under the plan or the confirmation order. We don't
3 really understand this concern, as the language leading into
4 the second paragraph of the injunction says, except as
5 expressly provided in the plan, the confirmation order, or a
6 separate order of the Bankruptcy Court.

7 With these modifications, Your Honor, the provisions do
8 nothing more than implement 1123(b)(6) and 1141 by preventing
9 parties from taking actions to interfere with the Debtor's
10 plan.

11 The Court has also heard testimony from Mr. Seery
12 regarding the importance of the injunction to implementation
13 of the plan. He testified that he intends to monetize assets
14 in a way that will maximize value. And to effectively do
15 that, he has testified that the Claimant Trust needs to be
16 able to pursue its objectives without interference and
17 continued harassment from Mr. Dondero and his related
18 entities.

19 In fact, Mr. Seery testified that if the Claimant Trust
20 were subject to interference by Mr. Dondero, it would take him
21 more time to monetize assets, they would be monetized for less
22 money, and creditors would be harmed.

23 If Your Honor doesn't have any questions for me on the
24 injunction provisions, I'd like to turn to the last part of
25 the injunction, which is really the gatekeeper provision.

1 THE COURT: All right. You may.

2 MR. POMERANTZ: Your Honor, the last paragraph in
3 Article 9(f) is really not an injunction but is rather a
4 gatekeeper provision. And as originally drafted, it'd do two
5 things: first, it'd require that before any entity, which is
6 defined very broadly, could file an action against a protected
7 party relating to certain specified matters, the entity would
8 have to seek a determination from this Court that the claim
9 represented are colorable claim of bad faith, criminal
10 conduct, willful misconduct, fraud, or gross negligence. The
11 specified matters to which the gatekeeper provision would
12 apply included the Chapter 11 case, negotiations regarding the
13 plan, the administration of the plan, the property to be
14 distributed under the plan, the wind-down of the Debtor's
15 business, the administration of the Claimant Trust, or
16 transactions related to the foregoing.

17 Subject to certain exceptions for Dondero-related parties,
18 protected parties were defined to include the Debtor, its
19 successors and assigns, indirect and direct, majority-owned
20 subsidiaries and managed funds, employees, Strand, Reorganized
21 Debtor, the independent directors, the Committee and its
22 members, the Claimant Trust, the Claimant Trustee, the
23 Litigation Trust, the Litigation Sub-Trustee, the members of
24 the Oversight Committee, retained professionals, the CEO and
25 CRO, and persons related to the foregoing. Essentially,

1 parties related to the pre-effective-date administration of
2 the estate or the post-confirmation implementation of the
3 plan.

4 Second, the gatekeeper provision as originally presented
5 gave the Bankruptcy Court exclusive jurisdiction to adjudicate
6 any cause of action that it determined would pass through the
7 gate. The gatekeeper provision, Your Honor, is not a release
8 in any way. Rather, it permits enjoined parties who believe
9 they have a claim against the protected parties to pursue such
10 a claim, provided they first make a showing that the claim is
11 colorable to the Bankruptcy Court.

12 Several parties, Your Honor, objected to the Bankruptcy
13 Court having exclusive jurisdiction to adjudicate the claims
14 that pass through the gate. The Debtor believes that the
15 Bankruptcy Court would ultimately have jurisdiction of any of
16 those claims that pass through the gate. However, the Debtor
17 did, upon reflection, appreciate the concern that if the Court
18 agreed to that now, it would essentially be determining its
19 jurisdiction before a claim was filed.

20 Accordingly, in the January 22nd plan, Your Honor, we
21 amended the provision to provide that the Bankruptcy Court
22 will only have jurisdiction over such claims to the extent it
23 was legally permissible to do so, essentially deferring the
24 issue to a later time.

25 And as Your Honor, I believe, in one of cases called the

1 *Icing on the Cake*, the retention and jurisdiction provisions
2 in the plan only are to the extent under applicable law and
3 are quite broad and include the things that we would have the
4 Court -- have jurisdiction for the Court, otherwise
5 determined.

6 The Court made some other changes to the gatekeeper
7 provision, and I would like to place the amended gatekeeper
8 provision on the screen right now. In addition to the change
9 I mentioned, the Debtor made the following changes: the
10 provision is limited now to apply only to enjoined parties,
11 rather than any entity. Than any entity. Much narrower. The
12 provision added the administration of the Litigation Sub-Trust
13 to the matters to which the provision would apply. The
14 provision makes clear now that any claim, including
15 negligence, is a claim that could be sought and pursued
16 through the gatekeeper function. And the provision made some
17 other syntax changes.

18 We believe, Your Honor, with these changes, we believe
19 that the gatekeeper provision is within the Court's
20 jurisdiction and it's appropriate to include under the plan.

21 But certain parties have argued that the Court does not
22 have the authority, the jurisdictional authority to perform
23 the gatekeeper function, separate and apart from whether it
24 has jurisdiction to adjudicate the claims that pass through
25 the gate.

1 Your Honor, we submit that these arguments represent a
2 fundamental misunderstanding of Bankruptcy Court jurisdiction
3 and the Court's authority to make sure the Debtor is free of
4 interference in carrying out the plan which I'll get to in a
5 couple moments.

6 As a preliminary matter, Your Honor, it is important for
7 the Court to remember that Paragraph 10 of the January 9 order
8 already contains a gatekeeper provision as it relates to the
9 independent directors and their agents. And as I mentioned on
10 a couple of occasions, that order is not going away, it
11 doesn't expire by its terms, and it cannot be collaterally
12 attacked in this forum.

13 The Debtor does acknowledge, though, that the gatekeeper
14 provision in the plan is broader in terms of the people it
15 protects and it applies to post-confirmation matters.

16 Before I address the Court's authority to approve the
17 gatekeeper provision, I want to summarize the evidence that it
18 has heard from Mr. Seery and Mr. Tauber regarding why the
19 gatekeeper is so important a provision to the success of the
20 plan.

21 Although the Court is all too familiar with the history of
22 litigation initiated by and filed against Mr. Dondero and his
23 related affiliates, Mr. Seery spent some time on the stand
24 testifying about the litigation so the Court would have a
25 complete record for this hearing. He testified that prior to

1 the petition date, the Debtor faced years of litigation from
2 Mr. Terry and Acis that led to the *Acis* bankruptcy case, which
3 Your Honor has said many times it's still in your mind. Years
4 of litigation with the Redeemer Committee which precipitated
5 the filing of a bankruptcy case and resulted in an award very
6 critical of the Debtor's conduct. Years of litigation with
7 UBS. Years of litigation with Patrick Daugherty. And we
8 placed all the dockets for all these matters before the Court.

9 Also, during the bankruptcy and after the Committee
10 essentially rejected the Debtor's pot plan proposal and
11 indicated -- and the Debtor indicated it would be terminating
12 the shared service agreements with Mr. Dondero and his related
13 entities, the Debtor was the subject of harassment from Mr.
14 Dondero and related entities which resulted in the temporary
15 restraining order against him, a preliminary injunction
16 against him, a contempt motion, which Your Honor is scheduled
17 to hear Friday, a motion by the Debtor's controlled -- by the
18 Dondero-controlled investors and funds in CLO managed --
19 managed by the Debtor, which the Court referred to that motion
20 as being frivolous and a waste of the Court's time. Multiple
21 plan objections, most of which are focused on allowing the
22 Debtors to continue their litigation crusade against the
23 Debtor and its successors post-confirmation. An objection to
24 the Debtor approval of the *Acis* order and a subsequent appeal.
25 An objection to the HarbourVest settlement and subsequent

1 appeal. A complaint and injunction against the Advisors and
2 the Funds to prevent them from violating Paragraph 9 of the
3 January 9th order. And a temporary restraining order against
4 those parties, which was by consent.

5 Mr. Dondero's counsel tends to argue that he is the victim
6 here and that the litigation is being commenced against him
7 and -- instead of by him. That response does not even deserve
8 a response, Your Honor. It is disingenuous.

9 Mr. Tauber testified that he was part of the team at Aon
10 that sourced coverage for the independent directors after
11 their appointment in January 2020 and that he has over 20
12 years of underwriting experience. He testified that at Aon he
13 builds bespoke insurance programs which are not cookie-cutter
14 programs for his clients, with an emphasis on D&O and E&O.
15 And he was asked by the independent board to obtain D&O and
16 E&O insurance after the board's appointment on January 9th.

17 Based upon the process Aon conducted in reaching out to
18 insurance carriers, Mr. Tauber testified that Aon was only
19 able to obtain D&O insurance based upon the inclusion of
20 Paragraph 10 of the January 9 order, the gatekeeper provision.
21 I know Mr. Taylor said that that was spoon-fed to the
22 insurers, but Mr. Tauber's testimony is they knew about Mr.
23 Dondero and they knew about his litigation tactics, so it is
24 not a good inference to be made from the testimony that they
25 would not have required something. They probably would have

1 just said no.

2 Aon has now been -- Mr. Tauber testified that Aon has now
3 been asked to obtain D&O coverage for the Claimant Trustee,
4 the Litigation Trustee, the Oversight Committee, the members,
5 the Claimant Trust, and the Litigation Sub-Trust. He
6 testified that he and Aon have approached the insurance
7 carriers that they believe might be interested in underwriting
8 coverage.

9 And no, he hasn't approached every D&O and E&O carrier out
10 there, and there may be, just like an investment banker
11 doesn't have to approach everyone. They are experts in the
12 field, and he testified they approached the people they
13 thought would likely be willing or interested and potentially
14 be willing to extend coverage. And as a result of Aon's
15 efforts, Mr. Tauber has determined that there's a continued
16 resistance to provide any coverage that does not contain an
17 exclusion for actions relating to Mr. Dondero or his related
18 entities. And he further believes that all carriers that will
19 -- that have discussed a willingness to provide coverage will
20 only do so if there is a gatekeeper provision, and only one
21 carrier will agree to provide coverage without a Dondero
22 exclusion.

23 Mr. Tauber testified that he believes that any ultimate
24 policy will provide that if at any time the gatekeeper
25 provision is not in place, either the carrier will not cover

1 any actions related to Mr. Dondero or his affiliates or that
2 the coverage will be vacated or voided.

3 Based upon the foregoing record, Your Honor, which is
4 uncontroverted, there's ample justification on a factual basis
5 for approval of the gatekeeper provision.

6 I will now turn to the Court's authority to approve the
7 gatekeeper provision.

8 There are three alternative bases upon which the Court can
9 approve the gatekeeper provision. First, several provisions
10 of the Bankruptcy Code give broad authority to approve a
11 provision like the gatekeeper provision.

12 Second, the Court can analogize to the Barton Doctrine the
13 facts and circumstances in this case and authorize the Court
14 to act as a gatekeeper to prevent frivolous litigation from
15 being filed against court-appointed officers and directors and
16 those that will lead the post-confirmation monetization of the
17 estate's assets.

18 And third, Your Honor, the Court can find that Mr. Dondero
19 and his entities are vexatious litigants, and use the
20 gatekeeper provision as a sanction to prevent the filing of
21 baseless litigation designed merely to harass those in charge
22 of the estate post-confirmation.

23 So, Bankruptcy Court authority. Your Honor, there are
24 several provisions in the Bankruptcy Code which we rely on to
25 support the Court's authority. First, Section 1123(a)(5)

1 permits the plan to approve adequate means of implementation,
2 and contains a long, non-exclusive list. Mr. Seery's
3 testimony is uncontroverted that a gatekeeper provision is
4 necessary for the adequate implementation of the plan.

5 Second, Your Honor, 1123(b)(6) authorizes a plan to
6 include any appropriate provision in a plan not inconsistent
7 with any other provision in this Code. There are not any
8 provisions and none have been cited by the Objectors that
9 would prohibit a gatekeeper provision. Section 1141
10 effectively holds that the terms of a plan bind the debtor and
11 its creditors and vest property in a reorganized debtor, free
12 and clear of the interests of third parties.

13 If nothing else, Your Honor, the spirit of 1141 allows the
14 Court to prevent, in appropriate cases, vexatious litigation
15 by unhappy creditors and parties in interest from torpedoing
16 the plan.

17 1142(b), Your Honor, provides that the confirmation --
18 that, after confirmation, the Court may direct any parties to
19 perform any act necessary for the consummation of the plan,
20 and requiring the party to seek court-approval before filing
21 an action is certainly an act.

22 And lastly, Your Honor, Section 105 allows the Court to
23 enter orders necessary to order other things, enforce orders
24 of the Court like the confirmation order, and prevent an abuse
25 of process which would certainly occur if baseless litigation

1 were filed against the parties in charge of the Reorganized
2 Debtor and the trust vehicles entrusted with carrying out the
3 plan.

4 Your Honor, gatekeepers are not a novel concept and have
5 been approved by courts in appropriate circumstances. In the
6 *Madoff* cases, the Court has been the gatekeeper post-
7 confirmation to determine whether investor claims are
8 derivative or direct claims.

9 In *General Motors*, the Court has been the gatekeeper post-
10 confirmation to determine whether product liability claims are
11 proper claims against the reorganized debtor.

12 Closer to home, Judge Lynn, Mr. Dondero's counsel,
13 approved a gatekeeper provision, arguably even more far-
14 reaching than the provision here, in the *Pilgrim's Pride* case.
15 In that case, Judge Lynn held that *Pacific Lumber* prevented
16 him -- prevented the Court from approving the exculpation
17 provision in the plan. However, he did hold that it was
18 appropriate for the Court to ensure that debtor
19 representatives are not improperly pursued for their good-
20 faith actions by requiring that any actions against the debtor
21 or its representatives, and further, on the performance of
22 their obligations as debtor-in-possession, be heard
23 exclusively before the Bankruptcy Court.

24 And *Pilgrim's Pride* is not the only case in this district
25 to include a gatekeeper provision, as Judge Houser approved

1 one in the *CHC Group* in 2016, which is cited in our materials.

2 The theme in all these cases, Your Honor, is that there
3 are circumstances where it is necessary and appropriate for
4 the Bankruptcy Court to act as a gatekeeper as a means of
5 reducing litigation that could interfere with a confirmed plan
6 and that a Court has the authority to approve such provisions.

7 The Objectors argue that the Bankruptcy Court does not
8 have jurisdiction to approve that provision. The Debtor
9 understands the argument as it related to the prior provision,
10 which gave the Court exclusive jurisdiction over any claim it
11 found colorable, and we've amended the plan to address that
12 issue. The jurisdiction to deal with those claims could be
13 left to a later day.

14 But to the extent the Objectors still pursue the
15 jurisdiction argument in light of the current provision,
16 they're really conflating two very different things: the
17 ability to determine whether a claim is colorable and the
18 ability to adjudicate that claim if the Court determines it's
19 colorable.

20 None of the authorities cited by the Objectors hold that
21 the Court is without jurisdiction to approve a gatekeeper
22 provision like the one here. So, rather, what they do is they
23 try to -- they argue, based upon the *Craig's Stores* case,
24 which is narrower than other circuits of post-confirmation
25 jurisdiction in the Bankruptcy Court, and argue that the

1 gatekeeper provision doesn't fall within that. But that --
2 such reliance is misplaced, Your Honor.

3 *Craig* held that the Bankruptcy Court did not have
4 jurisdiction to adjudicate a post-confirmation dispute over a
5 private-label credit card agreement between the debtor and the
6 bank. In declining to find jurisdiction, the Fifth Circuit
7 remarked that there was no antagonism or claim pending between
8 the parties as of the reorganization and no facts or law
9 deriving from the reorganization or the plan was necessary to
10 the claim asserted by the debtor.

11 However, in so ruling, Your Honor, the Fifth Circuit did
12 reason that post-confirmation jurisdiction in the Bankruptcy
13 Court continues to exist for matters pertaining to
14 implementation and execution of the plan. Requiring parties
15 to seek Bankruptcy Court determination the claim is colorable
16 before embarking on litigation that will impact
17 indemnification rights and affect distributions to creditors
18 is not an expansion of jurisdiction and fits well within the
19 *Craig* reasoning.

20 Unlike the credit card agreement dispute in *Craig*, Mr.
21 Dondero and his entities have demonstrated tremendous
22 antagonism towards the Debtor. And while the Debtor's plan
23 may be confirmed, further litigation has been threatened by
24 Mr. Dondero. It's in the pleadings. That's one of the
25 reasons Mr. Dondero says his plan is better. It'll avoid

1 tremendous amount of litigation.

2 After *Craig*, the Fifth Circuit again examined the
3 bankruptcy court's post-confirmation jurisdiction in the
4 *Stoneridge* case in 2005. In that case, the Fifth Circuit
5 ruled that a bankruptcy court has post-confirmation
6 jurisdiction to resolve a dispute between two nondebtors that
7 could trigger indemnification claims against a liquidating
8 trust formed as a result of a confirmed plan.

9 And lastly, as I mentioned Your Honor's decision before,
10 the *TXMS Real Estate* case, I think just a couple of months
11 ago, it stands for the proposition that post-confirmation
12 jurisdiction exists for matters bearing on the implementation,
13 interpretation, and execution of a plan. In that case, Your
14 Honor ruled that Your Honor had jurisdiction to resolve a
15 post-confirmation dispute between a liquidating trust formed
16 under a plan and a landlord, the result of which could
17 significantly and adversely affect the value of the
18 liquidating trust and monies available for unsecured
19 creditors.

20 And you have heard Mr. Seery testify that litigation will
21 have an adverse effect on the ability to make distributions to
22 creditors.

23 So, Your Honor, under these authorities, the Court
24 undoubtedly would have jurisdiction to act as the gatekeeper
25 for the litigation.

1 There's also an independent basis for the gatekeeper
2 provision, Your Honor, the Barton Doctrine, which the Court is
3 very familiar from your opinion in the *In re Ondova* case in
4 2017 and which provides that before a suit may be brought
5 against a trustee, leave of Court is required. In *Ondova*, the
6 Court reviewed the history of the doctrine in connection with
7 litigation brought by a highly-litigious debtor against a
8 trustee and his professionals. This Court noted that there
9 are several important policies followed by the doctrine,
10 including a concern for the overall integrity of the
11 bankruptcy process and the threat of trustees being distracted
12 from or intimidated from doing their jobs. And Your Honor's
13 language still: For example, losers in the bankruptcy process
14 might turn to other courts to try to become winners there by
15 alleging the trustee did a negligent job.

16 Your Honor, this is precisely what the Debtor is trying to
17 prevent here, Mr. Dondero and his entities from putting the
18 bad experience before Your Honor in this case behind it and
19 going to try to find better luck in a more hospitable court.

20 Your Honor, the Barton Doctrine originally only applied to
21 receivers, and over the course of time has been extended to
22 apply to various court-appointed fiduciaries, as we have cited
23 in our materials: trustees, debtors-in-possession, officers
24 and directors, employees, and attorneys representing the
25 debtor.

1 And I expect the Objectors to argue that there is a
2 statutory exception to the Barton Doctrine under 28 U.S.C. 959
3 and it does not apply to acts or transactions in carrying out
4 business conducted with a property. The exception, Your
5 Honor, is very narrow and was meant to apply for things like
6 slip-and-fall cases. In fact, the Eleventh Circuit in the
7 *Carter v. Rodgers* case, 220 F.3d 1249 in 2000, held that
8 Section 11 -- 28 U.S.C. 959(a) does not apply to suits against
9 trustees for administering or liquidating the bankruptcy
10 estate.

11 The Objectors also argue that the gatekeeper provision
12 violates *Stern v. Marshal*. However, as the Court acknowledged
13 in *Ondova*, the Fifth Circuit in *Villegas v. Schmidt* has
14 recognized that the Barton Doctrine remains viable post-*Stern*
15 *v. Marshal*. The Fifth Circuit reasoned that while Barton
16 Doctrine is jurisdictional in that a court does not have
17 jurisdiction of an action if preapproval has not been
18 obtained, it does not implicate the extent of a bankruptcy
19 court's jurisdiction to adjudicate the underlying claim,
20 precisely the distinction we're making here. The bankruptcy
21 court would be the gatekeeper for deciding whether the claim
22 passes through the gate, and then after will decide if it has
23 jurisdiction to rule on the underlying claim.

24 And this is important especially in a case like this, Your
25 Honor, where Your Honor has had extensive experience with the

1 parties and is in the best position to determine whether the
2 claims are valid or attempted to be used as harassment.

3 The Objectors will complain about the open-ended nature of
4 the gatekeeper provision, whether it will or won't apply after
5 the case is closed or a final decree is issued, and the unfair
6 burden of their rights.

7 Your Honor has a previous reported opinion where basically
8 jurisdiction does extend after a case is closed or a final
9 decree is entered, so that issue is a red herring.

10 As Your Honor is well aware, it's a decade-long -- a
11 decade of litigation against the Dondero-controlled entities
12 that caused the Highland bankruptcy. And the Court is very
13 well aware of the litigation that occurred in *Acis*, very well
14 aware of the litigation that's occurred here that I mentioned
15 a few minutes ago. Your Honor, it is not over, you'll be
16 presiding over the contempt hearing.

17 And if the Court needs yet another ground to approve the
18 gatekeeper provision, the Debtor submits that the procedure is
19 an appropriate sanction for Dondero's vexatious litigation
20 activities. We cited the *In re Carroll* case in the Fifth
21 Circuit of 2017 that held that a bankruptcy court has the
22 authority to enjoin a litigant from filing any pleading in any
23 action without the prior authority from the bankruptcy court.

24 And in affirming the decision of the bankruptcy court, the
25 Fifth Circuit commented on the reasons the bankruptcy court

1 gave for its ruling. After recounting the bad faith of
2 appellants, the bankruptcy court determined that the Carrolls'
3 true motives were to harass the trustee and thereby delay the
4 proper administration of the estate, in the hope that they
5 would be able to retain their assets or make pursuit of the
6 assets so unappealing that the trustee would be compelled to
7 settle on terms favorable to appellants.

8 Sounds familiar, Your Honor. The same can certainly be
9 said about what Mr. Dondero is doing in this case.

10 And to make a showing that a party is vexatious litigant,
11 the Court must find that the party has a history of vexatious
12 and harassing litigation, whether the party has a good faith
13 -- the litigation or has filed it as a means to harass, the
14 burden to the Court and other parties, and the adequacy of
15 alternative sanctions.

16 And as Your Honor is well aware from all the litigation,
17 Your Honor is well, well able to make the finding required for
18 the vexatious litigation finding.

19 But here, we don't ask for the drastic sanction of
20 enjoining from any further filings. Rather, we just ask for a
21 less-severe sanction, requiring Mr. Dondero and his entities
22 to first make a showing that he has a colorable claim.

23 The Fifth Circuit in *Baum v. Blue Moon*, 2007, did exactly
24 that. In *Baum*, the district court barred a vexatious litigant
25 from initiating litigation without first obtaining the

1 approval of the district court. Ultimately, the matter
2 reached the Fifth Circuit after the district court had
3 modified the pre-filing injunction to limit it to a certain
4 case, and then broadened it again based upon continued bad
5 faith conduct.

6 On appeal, the Fifth Circuit, citing several prior cases,
7 noted that a district court has the authority to impose a pre-
8 filing injunction to defer vexatious, abusive, and harassing
9 litigation.

10 And for those reasons, Your Honor, the Debtor asks the
11 Court to overrule any objections to the gatekeeper provision.

12 Your Honor, I was just going to then go to the plan
13 modification provisions, but I wanted to stop and see if you
14 had any questions at this point.

15 THE COURT: I do not. Let's give him a time
16 estimate, Nate. About how --

17 THE CLERK: Twenty.

18 MR. POMERANTZ: I have another five or six minutes, I
19 think, based upon --

20 THE COURT: Okay.

21 MR. POMERANTZ: And then I'll be ready to turn it
22 over to --

23 THE COURT: Okay.

24 MR. POMERANTZ: -- to Mr. Kharasch.

25 THE COURT: All right. Yes. You've got -- you've

1 done an hour and 33 minutes. So you have about, I guess, 37
2 minutes left. Okay. Go ahead.

3 MR. POMERANTZ: Thank you, Your Honor.

4 I would like to address the modifications of the plan that
5 were contained in our January 22nd plan and the additional
6 changes filed on February 1, several of which I have referred.

7 As a preliminary matter, Your Honor, under 1127(b), the
8 Debtor can modify a plan at any time prior to confirmation if
9 -- and not require resolicitation if there's no adverse change
10 in the treatment of claim or interest of any equity holder.

11 With that background, I won't go through the changes we
12 made that I've already discussed, but I will point out a
13 couple, Your Honor, that I would like to point out now. We
14 have modified the plan with respect to conditions of the
15 effective date in Article 8. First, a condition to the
16 effective date will now be entry of a final order confirming a
17 plan, as opposed just to entry of order. And final order is
18 defined as the exhaustion of all appeals.

19 In addition, the ability to obtain directors and officers
20 insurance coverage on terms acceptable to the Debtor, the
21 Committee, the Claimant Trustee, the Claimant Trustee
22 Oversight Board, and the Litigation Trustee is now a condition
23 to the effective date.

24 The Court heard testimony today and has experienced
25 firsthand the litigiousness of Mr. Dondero and his related

1 entities. And the Court heard testimony from Mr. Tauber and
2 Aon that the D&O insurance will not be available post-
3 effective date without assurances that the gatekeeper
4 provision will be in effect for the duration of the policy and
5 any run-off period.

6 Mr. Tauber further testified that he expected the final
7 terms from the insurance carrier to provide that if the
8 confirmation order was reversed on appeal and the gatekeeper
9 was removed, it would void -- it would either void the
10 directors and officers coverage or it'd result in a Dondero
11 exclusion.

12 Mr. Dondero and his entities are no strangers to the
13 appellate process, as Your Honor knows. They appealed several
14 of your orders, and continue the tack in this case, having
15 appealed the Acis and the HarbourVest orders and the
16 preliminary injunction. It would not surprise the Debtor if
17 Mr. Dondero and his entities appealed your confirmation order,
18 if Your Honor decides to confirm the plan.

19 The Debtor is confident that it will prevail on any appeal
20 in the confirmation order, as we believe the Debtor has made a
21 compelling case for confirmation.

22 The Debtor also believes a compelling case exists that if
23 the plan went effective without a stay pending appeal, that
24 the appeal would be equitably moot, but we understand we are
25 facing headwinds from the courts, bankruptcy court have

1 addressed that issue before.

2 However, given the effect a reversal would have on the
3 availability of insurance coverage, the Claimant Trustee, the
4 Claimant Oversight Committee, and the Litigation Trustee are
5 just not willing to take that risk.

6 We are hopeful that Mr. Dondero and his entities will
7 recognize that any appeal is futile and step aside and let the
8 plan proceed and become effective.

9 If Mr. Dondero and his related entities do appeal the
10 confirmation order, preventing it from becoming final and
11 preventing the effective date from the occurring, the Debtor
12 intends to work closely with the Committee to ratchet down
13 costs substantially and proceed to operate and monetize assets
14 as appropriate until an order becomes final.

15 None of these modifications adversely affect the treatment
16 of claims or interests under the plan, Your Honor, and for
17 those reasons, Your Honor, we request that the Court approve
18 those modifications.

19 And with that, I would like to turn the podium over to Mr.
20 Kharasch to briefly address the remaining CLO objections.

21 THE COURT: All right. Mr. Kharasch?

22 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

23 MR. KHARASCH: Good afternoon, Your Honor. I'll be
24 as brief as possible. I know we're under a deadline.

25 As you've heard yesterday, you've heard before in other

1 proceedings, Your Honor, the CLO Objecting Parties, the so-
2 called investors, do have rights under the CLO management
3 agreements and indentures, including contractual rights to
4 terminate the management agreements under certain
5 circumstances.

6 What they complain about today, Your Honor, is that the
7 injunction language in the plan, including the language
8 preventing actions to interfere with the implementation and
9 consummation of the plan, is so broad and ambiguous that their
10 rights are or may be improperly impacted, especially any
11 rights to remove the manager for acts of malfeasance.

12 But the Debtor is primarily relying, Your Honor, not so
13 much on the plan injunctions but on the clear provisions of
14 the January 9 order, to which Mr. Dondero consented and which
15 provides that Mr. Dondero shall not cause any of his related
16 entities to terminate any agreements with the Debtor.

17 Yes, that is a broad provision, but it is very clear, and
18 it does not even allow the CLO Objecting Parties to come to
19 court under a gatekeeper-type provision. But that is what Mr.
20 Dondero consented to on behalf of himself and his related
21 entities.

22 Important to note, Your Honor, we are not here today to
23 litigate who is and who is not a related entity. That will be
24 left for another day. However, Your Honor, we have considered
25 these issues, including last night and this morning, and we

1 are going to propose -- well, we will modify our plan through
2 a provision in the confirmation order to provide the
3 following: Notwithstanding anything in the plan or the
4 January 9 order, the CLO Objecting Parties will not be
5 precluded from exercising their contractual or statutory
6 rights in the CLOs based on negligence, malfeasance, or any
7 wrongdoing, but before exercising such rights shall come to
8 this Court to determine whether those rights are colorable and
9 to also determine whether they are a related entity. If the
10 Court has jurisdiction, the Court can determine the underlying
11 colorable rights or claims.

12 This does not impact the separate settlement we have with
13 CLO Holdco, Your Honor.

14 We think that such modification addresses some of the
15 concerns raised yesterday by the objecting parties by
16 providing more clarity as to what the plan is doing and not
17 doing with respect to the plan and the January 9 order, and we
18 think it is also a fair resolution of some legitimate
19 concerns.

20 So, with that, Your Honor, we think that, with that
21 clarification that we did not have to make but are willing to
22 make, that this should fully satisfy the CLO Objecting Parties
23 with regard to their objections to the injunction and the
24 gatekeeper.

25 Thank you, Your Honor.

1 THE COURT: All right. Mr. Clemente?

2 CLOSING ARGUMENT ON BEHALF OF THE CREDITORS' COMMITTEE

3 MR. CLEMENTE: Yes, Your Honor. And I actually am
4 going to be brief. Mr. Pomerantz's discussion, obviously, was
5 very, very thorough, so I'm able to cut out a lot of stuff.

6 Thank you, Your Honor. Matt Clemente, Sidley Austin, on
7 behalf of the Committee.

8 The plan, Your Honor, meets the confirmation standards and
9 should be confirmed. Mr. Pomerantz covered a lot of ground,
10 and I will endeavor not to repeat that, but there are a few
11 points that I think the Committee wishes to emphasize.

12 Your Honor, since I first appeared in front of you, I have
13 maintained consistently that no plan can or should be
14 confirmed without the consent of the Committee. Your Honor,
15 in her wisdom, understood this immediately, as it was obvious
16 -- it was the obvious conclusion, given the makeup of the
17 creditor body, the asset pool, and the impetus for the filing
18 of the case.

19 Unfortunately, not everyone came to this conclusion so
20 easily, and it took much hard-fought negotiations as well as a
21 defeated disclosure statement, among other things, and
22 tireless dedication and commitment by each individual
23 Committee member to drive for a value-maximizing plan that is
24 in the best interests of its constituencies and for us to get
25 to where we are today.

1 And where we are today, Your Honor, is at confirmation for
2 a plan that the Committee unanimously supports, which was the
3 inevitable outcome for this case from the very beginning.

4 I've also said, Your Honor, that context is critical in
5 this case. It has been from the beginning, and it remains so
6 now. Mr. Draper, interestingly, began his comments yesterday
7 by saying that even a serial killer is entitled to *Miranda*
8 rights. While I will admit that at times the rhetoric in this
9 case has been heated, I have never certainly likened Mr.
10 Dondero to a serial killer. But the record shows, and Mr.
11 Dondero's own words and actions show, that he is, in fact, a
12 serial litigator who has no hesitation at all to take any
13 position in an attempt to leverage an outcome that suits his
14 self-interest. And he has no hesitation at all to use his
15 many tentacles in a similar fashion.

16 That is a very important context in which the Court should
17 view the remaining objections of the Dondero tentacles and
18 weigh confirmation of the Debtor's plan.

19 Against this context of a serial litigator, Your Honor, we
20 have a plan supported by each member of the Official Committee
21 of Unsecured Creditors, accepted by two classes of claims,
22 Class 2 and Class 7, and holders of almost one hundred percent
23 in amount of non-insider claims in Class 8.

24 The parties that have voted against the plan are either
25 employees who are not receiving distributions under the plan

1 or are insiders or parties related to Mr. Dondero.

2 The overwhelming number and amount of creditors who are
3 receiving distributions under this plan, therefore, have
4 accepted the plan. The true creditors and economic parties in
5 interest have spoken, they have spoken loudly, and they have
6 spoken in favor of confirming the plan.

7 Your Honor, I'm not going to address the technical
8 requirements, as Mr. Pomerantz did that. So I'm going to skip
9 over my remarks in that regard, except I do want to emphasize
10 the remarks regarding the gatekeeper, exculpation, and
11 injunction provisions as they're of critical importance to the
12 plan.

13 The testimony has shown and the proceedings of this case
14 has shown, again, Mr. Dondero is a serial litigator with a
15 stated goal of causing destruction and delay through
16 litigation.

17 The testimony has further shown that none of the
18 independent board members would have signed onto the role
19 without the gatekeeper and injunction provisions and the
20 indemnity from the Debtor.

21 Therefore, it follows that such provisions are necessary
22 to entice parties to serve in the Claimant Trustee and other
23 roles under the plan, which, as I remarked in my opening
24 comments, are integral to providing the structure that the
25 creditors believe is necessary to unlocking the value and

1 unlocking themselves from the Dondero web.

2 Regarding the exculpation and injunction provisions
3 specifically, Your Honor, the Court will recall that the
4 Committee raised objections to them in connection with the
5 first disclosure statement hearing. In response, the Debtor
6 narrowed the provisions, and the Committee believes they
7 comply with the Fifth Circuit precedent, as Mr. Pomerantz ably
8 walked Your Honor through.

9 And to be clear, Your Honor, not only does the Committee
10 believe the exculpation and injunction provisions comply with
11 Fifth Circuit law, the Committee does not believe the estate
12 is harmed by such provisions, as the Committee does not
13 believe there are any cognizable claims that could or should
14 be raised that would otherwise be affected by the exculpation
15 or injunction, and, frankly, with respect to the release that
16 Mr. Pomerantz walked Your Honor through with respect to the
17 directors and the officers.

18 Regarding the gatekeeper, Your Honor, Your Honor
19 presciently approved it in her January 9th order, and the
20 developments since then only serve as further justification
21 for including it in the plan and confirmation order. Mr.
22 Dondero is a serial and vexatious litigator, and the
23 instruments put in place under the plan to maximize value for
24 the creditors and to oversee that value-maximizing process
25 must be protected, and the gatekeeper function serves that

1 protection while also, importantly, as Mr. Pomerantz pointed
2 out, providing Mr. Dondero with a forum to advance any
3 legitimate claims he and his tentacles may have.

4 In short, Your Honor, the gatekeeper provision is
5 necessary to the implementation to the plan, is fair under the
6 circumstances of the case, and is therefore within this
7 Court's authority, and it is appropriate to approve.

8 Your Honor, in sum, it has been a long road to get here
9 today, but we are finally here. And we are here, Your Honor,
10 I believe in large part as a result of the tireless efforts of
11 the individual members of my Committee, and for that I thank
12 them.

13 The Committee fully supports and unanimously supports
14 confirmation of the plan. As demonstrated by the evidence,
15 the plan meets all the requirements of the Bankruptcy Code.
16 The Committee believes the plan is in the best interests of
17 its constituencies. And therefore the Committee, along with
18 two classes of creditors and the overwhelming amount of
19 creditors in terms of dollars, urge you to confirm the plan.

20 That's all I have, Your Honor, but I'm happy to answer any
21 questions you may have for me.

22 THE COURT: Okay. Not at this time.

23 Nate, how much time --

24 (Clerk advises.)

25 THE COURT: Twenty-five minutes remaining? All

1 right. Just so you know, you've got a collective Debtor's
2 counsel/Committee's counsel 25 minutes remaining for any
3 rebuttal, if you choose to make it.

4 Let's take a five-minute break, and then we'll hear the
5 Objectors' closing arguments. Okay.

6 THE CLERK: All rise.

7 (A recess ensued from 2:00 p.m. until 2:06 p.m.)

8 THE COURT: All right. Please be seated. We're
9 going back on the record in Highland. We're ready to hear the
10 Objectors' closing arguments. Who wants to go first?

11 MR. DRAPER: Your Honor, this -- this is Douglas
12 Draper. I get the joy of going first.

13 THE COURT: Okay.

14 CLOSING ARGUMENT ON BEHALF OF THE GET GOOD AND DUGABOY TRUSTS

15 MR. DRAPER: We've heard a great deal of testimony
16 about the Debtor's belief that the circumstances in this case
17 warrant an exception to existing Fifth Circuit case law, the
18 Bankruptcy Code, and Court's post-confirmation jurisdiction.

19 I would not be standing here today objecting to the plan
20 if the Debtor didn't attempt to extend, move past and beyond
21 the Barton Doctrine, move beyond 1141, move beyond *Pacific*
22 *Lumber*. In fact, I think I heard an argument that *Pacific*
23 *Lumber* is not applicable and this Court should disregard Fifth
24 Circuit case law.

25 Let's start with the exculpation provision. And the focus

1 of this case has been, and what we've heard over the last few
2 days, is about the independent directors. I understand there
3 was an order entered earlier, the order stands, and the order
4 is applicable in this case. It cuts off, however, when we
5 have a Reorganized Debtor, because these independent directors
6 are no longer independent directors. It cuts off when we have
7 a new general partner.

8 And so the protections that were afforded by that order do
9 not need to be afforded to the new officers and new directors
10 of the new general partner. And in fact, the protections that
11 they're entitled to are completely different than the
12 protections that were entitled -- that are covered by the
13 order that the Court has looked at.

14 Let's first focus on, however, the exculpation provision.
15 And I wanted to ask the Court to look at the exculpated
16 parties. Have to be very careful and very interest -- and
17 focus solely on the independent directors. But if you look at
18 the parties covered by exculpation provision, it includes the
19 professionals retained by the Debtor. My reading of *Pacific*
20 *Lumber* is that neither the Creditors' Committee counsel nor
21 the Debtor can be covered by an exculpation provision. This
22 in and of itself makes the plan non-confirmable. This
23 exculpation provision is unwarranted and unnecessary.

24 Two, --

25 THE COURT: Well, let's drill down on that.

1 MR. DRAPER: -- we have --

2 THE COURT: Let's drill down on that. Mr. Pomerantz
3 says that this wasn't what they considered one way or another
4 by *Pacific Lumber*. Debtor, debtor professionals. Okay? Do
5 you disagree with that?

6 MR. DRAPER: I disagree with that. *Pacific Lumber*
7 said you could only have releases and exculpations for the
8 Creditors' Committee members. And the rationale behind that
9 was that those people volunteered to be part and parcel of the
10 bankruptcy process, that those parties did not get paid.

11 Here, we have two professionals who both volunteered and are
12 being paid, and are not entitled to an exculpation under
13 *Pacific Lumber*. They're not entitled to a --

14 THE COURT: Okay. So you say *Pacific* --

15 MR. DRAPER: -- release. Now, ultimately, they --

16 THE COURT: -- *Pacific Lumber* categorically rejected
17 all exculpations except to Creditors' Committee and its
18 members. That's your --

19 MR. DRAPER: I agree. That's --

20 THE COURT: -- interpretation of *Pacific Lumber*?

21 MR. DRAPER: Yes.

22 THE COURT: Okay. All right. So you just absolutely
23 disagree, one by one, with every one of the arguments, that it
24 was really -- the only thing before the Fifth Circuit was plan
25 sponsors, okay? A plan proponent that I think was like a

1 competitor previously of the debtor, and I think a large
2 creditor or secured creditor. I think those were the two plan
3 proponents.

4 So you disagree -- I'm going to, obviously, go back and
5 line-by-line pour through *Pacific Lumber*, but you disagree
6 with Mr. Pomerantz's notion that, look, it was really a page
7 and a half or two of a multipage opinion where the Fifth
8 Circuit said, no, I don't think 524(e) is authority to give
9 exculpation from postpetition liability for negligence as to
10 these two plan sponsors. And I guess it was also -- I don't
11 know. They say, Pachulski's briefing says it was really only
12 looking at these two plan sponsors and the Committee and its
13 members on appeal, you know, going through the briefing, and
14 in such, you can see that these were all that was presented
15 and addressed by the Fifth Circuit. You disagree with that?

16 MR. DRAPER: Look, I know the facts of *Pacific Lumber*
17 and they -- I know what the posture of the case was. However,
18 the literal language by the opinion in it, it transcends just
19 a dispute in the case. And I think the U.S. Trustee's
20 position that this exculpation provision is correct as a
21 matter of law support -- is further evidence of the fact that
22 the U.S. Trustee, as watchdog of this process, and *Pacific*
23 *Lumber* say this cannot be done, period, end of story.

24 THE COURT: Okay. So you, at bottom, just totally
25 disagree with Mr. Pomerantz? You say *Pacific Lumber* is

1 actually a very broad holding, and I guess, if such, there's a
2 conflict among the Circuits, right?

3 MR. DRAPER: Well, that's okay.

4 THE COURT: So, --

5 MR. DRAPER: I mean, quite frankly, *Pacific Lumber* is
6 binding on you.

7 THE COURT: Understood.

8 MR. DRAPER: There may be a conflict in the Circuits,
9 and ultimately the Supreme Court may make a decision and
10 decide who's right and who's wrong.

11 But for purposes of today and for purposes of this
12 exculpation provision and for purposes of this confirmation,
13 *Pacific Lumber* is the applicable law.

14 THE COURT: Okay. Well, again, this is a hugely
15 important issue, although in many ways I don't understand why
16 it is, because we're just talking about postpetition acts and
17 negligence, okay? You know, many might say it's much ado
18 about nothing, but it's front and center of your objection.
19 So I guess I'm just thinking through, if the Fifth Circuit was
20 presented these exact facts and was presented with the
21 argument, you know, the *Blixseth* case says 524(e) has nothing
22 to do with exculpation because exculpation is a postpetition
23 concept, and it's just talking about standard liability --
24 these people aren't going to be liable for negligence; they
25 can be liable for anything and everything else -- if presented

1 with that *Blixseth* case, you know, there are several arguments
2 that Mr. Pomerantz has made why, if you accept that 524(e)
3 might not apply here, let's look at the reasoning, the little
4 bit of reasoning we had of *Pacific Lumber*, that it was really
5 a policy rationale, right? These independent fiduciaries,
6 strangers to the company and case, they'd never want to do
7 this if they knew they were vulnerable for getting sued for
8 negligence. Mr. Pomerantz's argument is that these
9 independent board members are exactly analogous to a
10 Committee, more than prepetition officers and directors. What
11 do you have to say about that policy argument?

12 MR. DRAPER: Well, I think there's a huge distinction
13 between the members of a Creditors' Committee who are
14 volunteers and are not paid versus a paid independent
15 director. And more importantly, I think there's a huge
16 difference between a member of a Creditors' Committee who's
17 not paid and counsel for a Debtor and counsel for a Creditors'
18 Committee.

19 THE COURT: Okay.

20 MR. DRAPER: Look, you have -- you've --

21 THE COURT: So, at bottom, it was all about
22 compensation to the Fifth Circuit?

23 MR. DRAPER: Well, no. The Fifth Circuit policy
24 decision was we want to protect a party who wants to serve and
25 do their civic duty to serve on a Creditors' Committee for no

1 compensation. I agree with that. I think it's a laudable
2 policy decision. I think it makes sense.

3 However, the Fifth Circuit in its language basically said,
4 nobody else gets it. It didn't say, look, you know, if there
5 are circumstances that are different, we may look at it
6 differently. The language is absolute in the opinion. And
7 that's what I think is binding and I think that's what the
8 case stands for.

9 And look, just so the Court is very clear, when Pachulski
10 files its fee application and the Court grants the fee
11 application, any claim against them is res judicata. So, in
12 fact, they do have -- they do have protection. They do have
13 the ability to get out from under. The Court -- they're just
14 not -- they just can't get out from under through an
15 exculpation provision. And the same goes for Mr. Clemente and
16 his firm.

17 THE COURT: Which, --

18 MR. DRAPER: And the same goes for DSI.

19 THE COURT: Which, by the way, that's one reason I
20 think sometimes this is much ado about nothing. It goes both
21 ways. The Debtor professionals, the Committee professionals,
22 estate professionals, they're going to get cleared on the day
23 any fee app is approved, right? I mean, there's Fifth Circuit
24 law that says --

25 MR. DRAPER: I -- I --

1 THE COURT: -- says that's res judicata as to any
2 future claims.

3 But I guess I'm really trying to understand, you know, at
4 bottom, I feel like the Fifth Circuit was making a holding
5 based on policy more than any directly applicable Code
6 provision.

7 I mean, it's been said, for example, that Committee
8 members, they're entitled to exculpation because of, what,
9 1103, some people argue, 1103, which subsection, (c)? That's
10 been quoted as giving, quote, qualified immunity to
11 Committees. But it doesn't really say that, right? It's just
12 something you infer.

13 MR. DRAPER: No. Look, what I think, if you really
14 want to put the two concepts together, I think what the Fifth
15 Circuit, when they told lawyers and professionals that you
16 can't get an exculpation, was very mindful of the fact that
17 you can get released once your fee app is approved. So, as a
18 policy, they didn't need to do it in a exculpation provision.
19 There was another methodology in which it could be done.

20 THE COURT: Uh-huh.

21 MR. DRAPER: And so that's -- you have to look at it
22 as holistic and not just focus on the exculpation provision.
23 Because, in fact, they recognize and they -- I'm sure they
24 knew their existing case law on res judicata, and that's why
25 they read it out.

1 So, honestly, there's no reason for Pachulski to be in
2 here. There's no reason for Mr. Clemente to be in here.
3 There's no reason for the professionals employed by the Debtor
4 to be in here. They have an exit not by virtue of the plan.

5 THE COURT: But so then it boils down to the
6 independent directors and Strand post January 9th?

7 MR. DRAPER: It boils down somewhat to them, but
8 quite frankly, there are two parts to this. One is you have
9 an order that's in place. I am not asking the Court to
10 overturn the order. And quite frankly, this provision could
11 have been written to the effect that the order that was in
12 place on -- that's been presented to the Court is applicable
13 and applied.

14 However, let's parse that down. Let's look at Mr. Seery.
15 The order that's in place solely protects the independent
16 directors acting in their capacities as independent directors.
17 If somebody's acting as -- and if you want to liken it to a
18 trustee, their protection is afforded by the Barton Doctrine,
19 and that's how the protection arises.

20 What's going on here is they're extending the provisions,
21 first of all, of the Court's order, and number two, of the
22 Barton Doctrine, which are -- which cannot be -- which should
23 not be extended. The law limits what protections you have and
24 what protections you don't have. And we, as lawyers -- look,
25 I'll give you the best example. Think of all the times you

1 had somebody write in the concept of superpriority in a cash
2 collateral order. And how many times have you had a lawyer
3 rewrite the concept of the issue as to diminution in value?
4 The Code says diminution in value, and quite frankly, a cash
5 collateral order should just say if, to the extent there's
6 diminution in value, just apply the Code section. It's
7 written there. Smart people put it in, and Congress approved
8 it. And once you start getting beyond that, those things
9 should be limited.

10 And what we have are lawyers trying to extend out by
11 definitions things that the Code limits by its reach. That
12 goes for post-confirmation jurisdiction. That goes for the
13 injunction. That goes for the so-called gatekeeper provision.

14 And so, again, I would not be here if, in fact, they had
15 said, we have an injunction to the full extent allowed by the
16 Bankruptcy Code and *Pacific Lumber*. We have an exculpation
17 provision that's allowed by virtue of the Court's order. We
18 have the full extent and full reach of the Barton Doctrine.
19 Those are legitimate. Once you start expanding upon that,
20 you're reaching into matters that are not authorized and not
21 allowed.

22 And then you get into 105 territory, which is always very
23 dangerous. And that's really what's going on here. And
24 that's the tenor of my argument and what I'm trying to say.
25 The Code gives protections. It is not for us to extend the

1 protections. It's not for us to enlarge them, even under a,
2 gee, the other party's litigious.

3 And so that's -- let's take *Craig's Store*. Attempted to
4 limit its reach. *Craig's Store* says once you have a confirmed
5 plan, any dispute between the parties, for -- let's take an
6 executory contract. If there's a breach of the executory
7 contract, that's a matter to be handled aft... by another
8 court. It's not a matter to be handled by this Court. This
9 Court lets the parties out.

10 And in this case, it's even worse, because you basically
11 have a new general partner coming in, you have an assumption
12 of various executory contracts, and you have a -- Strand is no
13 longer present.

14 If you adopted Mr. Seery's argument, anybody who appeals a
15 decision, questions what he does or how he does it, is a
16 vexatious litigator. That's not the case. And the fact that
17 we are appealing a decision is a right that we have. It
18 shouldn't be limited, and it shouldn't be held against us.
19 Courts can rule against us. That's fine.

20 And so that's really what the focus is here and that's why
21 I gave the opening that I had. We are willing to be bound by
22 applicable law. And quite frankly, the concept that the
23 exigencies of a case allow a court to change what applicable
24 law is is problematic. I gave the criminal example as a
25 reason. And the reason was that, in certain instances, the

1 application of law may allow a criminal to go free. It's a
2 problem with our system and how we work, but that's what the
3 law does, and it is absolute in its application.

4 Let me address the so-called gatekeeper provision. The
5 gatekeeper provision, in a certain sense, is recognized in the
6 Barton Doctrine. It's jurisdictional, and it says, to the
7 extent you're going to litigate with somebody who served
8 during the bankruptcy, who was a trustee, then you have to
9 come to the bankruptcy court and pass through a gate. It
10 doesn't say you have to pass through a gate for a reorganized
11 debtor who does something after a plan is confirmed and going
12 forward. And so that's -- there's a distinction.

13 And if you look at Judge Summerhays' decision, which I
14 will be happy to send to the Court, in *WRT* involving -- it's
15 kind of (indecipherable) and Mr. Pauker, where, in that case,
16 the trustee, the litigation trustee, spent more litigating
17 than it had in recoveries, and Baker Hughes filed suit. Judge
18 Summerhays said, look, the Barton Doctrine only applies to a
19 certain extent. It is limited once you get into post-
20 confirmation matters and related-to jurisdiction.

21 And so, again, the Barton Doctrine is what it stands for.
22 We agree with it, we recognize it, and it should be applied.
23 The Barton Doctrine, however, should not be extended, should
24 not go past its reach, and should not go past the grant of
25 jurisdiction for this Court.

1 And so you have in here, though they have -- they have
2 tried to hide it in a limited fashion, this gatekeeper
3 provision. The gatekeeper provision, as currently written,
4 covers post-confirmation claims that somebody has to come
5 before this Court to the extent there's a breach of a
6 contract. That's not proper, and it's not covered by your
7 post-confirmation jurisdiction. To the extent there's an
8 interpretation of an existing contract and an interpretation
9 of the order, you do have authority, and I don't question
10 that.

11 THE COURT: But address Mr. Pomerantz's statement
12 that there's a difference between saying you have to go to the
13 bankruptcy court and make an argument, we have a colorable
14 claim that we would like to pursue, and having that
15 jurisdictional step required. There's a difference between
16 that and the bankruptcy court adjudicating the claim.

17 MR. DRAPER: Well, there are two parts to that.
18 Number one is there's an injunction in place from an action
19 taken post-confirmation against property of the estate. We
20 all agree at that, correct? And we believe that the
21 injunction applies to post-confirmation action against
22 property of the pre-confirmation estate. We all agree to
23 that.

24 However, if in fact there's a breach of a contract
25 postpetition that the parties have a dispute about, that

1 contract is now no longer under your purview once the contract
2 has been assumed. And so they shouldn't have to make a
3 colorable claim to you that a breach of the contract has
4 occurred. That should be the determining factor for another
5 court.

6 That's, in essence, what *Craig's Store* says. Your
7 jurisdiction and the jurisdiction of a bankruptcy court is
8 limited. It's limited by *Stern vs. Marshall*. It's limited by
9 your ability to render findings of fact and conclusions of law
10 versus render a final decision. That decision has been made
11 not by us, it's been made by Congress and it's been made by
12 the United States Constitution.

13 THE COURT: All right. And I think we all agree with
14 you regarding the holding of *Craig's Stores* and some of the
15 other post-confirmation bankruptcy subject matter jurisdiction
16 holdings. But Mr. Pomerantz is arguing that this gatekeeping
17 function is warranted by, among other things, you know, there
18 was a district court holding, *Baum v. Blue Moon*, or a Fifth
19 Circuit case, that upheld a district court having the ability
20 to impose pre-filing injunctions in the context of a vexatious
21 litigator. So, you know, that's a strong analogy he makes to
22 what's sought here. What is your response to that?

23 MR. DRAPER: My response to that is a district court
24 can do that. A district court has jurisdiction to make that
25 decision. And quite frankly, a district court can sanction a

1 vexatious litigator under Rule 11.

2 So, in fact -- again, you have to bifurcate your power
3 versus the power that a district court has. And that
4 gatekeeper provision is allowed by a district court because
5 they had authority over the case. You may not have authority
6 over being the gatekeeper for a post-confirmation matter that
7 you had no jurisdiction over to start with.

8 THE COURT: Okay.

9 MR. DRAPER: That, that's the distinction between
10 here. That's -- what's going on here is they are -- they are
11 mashing together a whole load of concepts under the vexatious
12 litigator and the anti-Dondero function that fundamentally
13 abrogate the distinction between what your jurisdiction is
14 pre-confirmation versus your jurisdiction post-confirmation.
15 And that --

16 THE COURT: Do you think --

17 MR. DRAPER: -- is sacrosanct.

18 THE COURT: Do you think Judge Lynn got it wrong in
19 *Pilgrim's Pride*? Do you think Judge Houser got it wrong in
20 *CHC*? Or do you think this situation is different?

21 MR. DRAPER: There are two parts to that. I have
22 told Judge Lynn, since I have been working with him, that I
23 think *Pilgrim's Pride* is wrongfully decided. However, having
24 said that, *Pilgrim's Pride* and those cases dealt with claims
25 against the -- the channeling injunction affected actions

1 during the bankruptcy. It did not serve as a post-
2 jurisdictional grant of jurisdiction to the bankruptcy court.
3 It did not pose as an ability -- as a limitation on a post-
4 confirmation litigator or a post-effective date litigator to
5 address a wrong done to them by an independent director of a
6 general partner.

7 In a sense, Judge Lynn's determination, and Judge Houser,
8 is consistent somewhat with the Barton Doctrine. Now, do I
9 agree that they're right? No. But I understand the decision
10 and I understand the context in which it was rendered and I
11 don't have a huge problem with it.

12 So, again, let's parse what we're trying to do here.
13 Number one, we are -- we have to bifurcate post-confirmation
14 jurisdiction or post-effective date jurisdiction and what you
15 can do as a post-effective date arbiter versus what you could
16 do pre-effective date and pre-effective date claims. And
17 again, that's the problem with what's written here. It is
18 designed one hundred percent to expand your post-effective
19 date jurisdiction through both the gatekeeper provision and
20 the jurisdictional grant that's here from your pre-effective
21 date capability, your pre-effective date jurisdiction, and
22 your pre-effective date ability to either curb a claim or not
23 to curb a claim. And that, that's the issue.

24 And again, let's start talking about the independent
25 directors. I recognize, again, that there's an order there.

1 But if Mr. Seery -- let's take Mr. Seery -- is acting as a
2 director of Strand but is also an accountant for the Debtor
3 and makes a mistake, he would be sued in his capacity as the
4 accountant for the Debtor, not as an independent director of
5 Strand. That distinction needs to be made.

6 What we are doing here under this plan, and what's been
7 argued by Mr. Pomerantz, is too broad a brush. It needs to be
8 cut back. The Court needs to take a very hard look at what's
9 being presented here.

10 And again, the Court's order is very clear. And this is
11 binding. I recognize that. But the protection they got was
12 serving as an independent director. The protection they
13 didn't get was -- let's take Mr. Seery, if Mr. Seery was
14 serving as an accountant and blew a tax return. Those are
15 distinctions that warrant analysis and warrant looking at
16 here. And again, it is too broad a brush that's touted here,
17 and that is why this plan on its face is not confirmable with
18 respect to both the post-confirmation jurisdiction, the
19 gatekeeper provision, the exculpation provisions.

20 And so let me address a few other things, just to address
21 them. Number one, the argument has been made with respect to
22 the creditors and the resolicitation issue and that creditors
23 could have come in looking, seen, followed the case, and
24 basically calculated and made the same calculation that the
25 Debtor made when they filed this and put forth the new plan

1 analysis versus liquidation analysis. And then they've also
2 made the argument, well, nobody came and complained. Well,
3 two parts to that.

4 Number one, as you know, a disclosure statement needs to
5 be on its face and should not require a creditor to go back in
6 and monitor the record -- and quite frankly, in this record,
7 there are thousands of pages -- and do the calculation
8 himself. This was incumbent upon the Debtor to possibly
9 resolicit when these material changes took place.

10 Number two, the recalculation has not been subject to the
11 entire creditor body seeing it. And anybody who wanted to
12 call them would have had to have seen the document they filed
13 on February 1st and made a telephone call basically
14 contemporaneous with seeing it.

15 Those are two things. The argument that they didn't call
16 me is just nonsensical. There's nobody -- you, you are
17 sitting here -- and I've had a number of battles over the
18 years with Judge (indecipherable), who was -- who -- and her
19 view was, I'm here to protect the little guy who's not --
20 didn't hire counsel, who's not represented by Mr. Clemente and
21 his huge clients who have voted in favor of the plan. It's
22 the little person, *i.e.*, the employees who would vote against
23 a plan that they so -- so desperately tried to get out from
24 under.

25 THE COURT: Well, --

1 MR. DRAPER: It's really a function --

2 THE COURT: -- Mr. Pomerantz argues it's not as
3 though there was a materially adverse change in treatment; it
4 was the disbursement estimate. And doesn't every Chapter 11
5 plan -- most Chapter 11 plans, not every -- they make an
6 estimate. I mean, and it's, frankly, it's very often a big
7 range of recovery, right, a big range of recovery, because we
8 don't know what the allowed claims are going to compute to at
9 the end of the day. There's obviously liquidation of assets.
10 We don't know. Isn't this sort of like every -- not, again,
11 not every other plan, but most other plans -- where there's a
12 big range of possible estimated distributions? I mean, this
13 wasn't a change in treatment, right?

14 MR. DRAPER: Well, let me address that. There are
15 two parts to that. Most plans I see that contain some sort of
16 analysis have a range. This one doesn't have a range. What
17 they've done is they've buried in a footnote or assumption
18 that these numbers may change. So had they said, look, your
19 recovery can go from 60 cents to 85 cents, God bless, they
20 probably would have been right.

21 Number two, which is more problematic to me, to be honest
22 with you, is the fact that, number one, the operating expenses
23 have increased over a hundred percent. And number two, the
24 Debtor has made a determination post-disclosure statement and
25 pre-hearing that they're going to change their model of

1 business.

2 The original disclosure statement said we're not going to
3 get into the managing CLO part of the business and we're going
4 to let these contracts go. However, at some point along the
5 way, they made a change. I don't know to this day, because I
6 was never furnished the backup to the expense side. I
7 understand what they said why they didn't give me the asset
8 side, but the expense side, they should have given me, and I
9 did ask for.

10 But, you know, what we have now is a more fundamental
11 problem with the execution of the plan and the expectation
12 that creditors -- what they're going to get, because, in fact,
13 the expense items have doubled.

14 I think creditors were entitled to know that, rather than
15 it having been sprung upon everybody, when I got it the day
16 before a deposition. And so those are things that I think
17 warranted a change in solicitation. Now, the result may have
18 been the same. I don't know. More people may have voted
19 against the plan. More people may have opted in from Class 8
20 to Class 7, I mean, based upon that information. That
21 information was not provided to them.

22 And so I look at two -- three things. One is a range
23 could have been given, and they probably would have been a
24 whole lot better off. Two, you have a material change in
25 expenses. And three, you have a material change in business

1 model. Three things that occurred between November and this
2 confirmation hearing. Three things that were not known by the
3 creditor body and not told to them.

4 THE COURT: Mr. Draper, I --

5 MR. DRAPER: Now, it may have been told --

6 THE COURT: I don't want to belabor this any more
7 than I think we need to, but I've got a Creditors' Committee
8 with very sophisticated professionals, very sophisticated
9 members. They're fiduciaries to this constituency. You know,
10 you mentioned the little guy. I'm not quite sure who is the
11 little guy in this case. I think it's a case of all big guys.
12 But, I mean, they're fine with what's happened here.
13 Meanwhile, you -- I mean, clarify your standing here for
14 Dugaboy and Get Good. I mean, --

15 MR. DRAPER: I have --

16 THE COURT: -- I know you have standing. Mr.
17 Pomerantz did not say you don't have standing. But in
18 pointing out the economic interests here, I think he said your
19 clients only have asserted a postpetition administrative
20 expense. Is that correct?

21 MR. DRAPER: No. I have a post -- I have an -- I
22 have a claim that's been objected to. I don't think my
23 economic --

24 THE COURT: A claim of what amount?

25 MR. DRAPER: I think it's \$10 million. But Mr.

1 Pomerantz is right, it requires a looking through the --
2 through the entity that I had a loan relationship with.

3 I recognize all of those things. I don't think that's
4 relevant to whether my argument is correct or incorrect. I
5 have standing to do it. I don't think whether my claim is 50
6 cents or \$50 million should change the Court's view of whether
7 the claim is good or bad.

8 THE COURT: Well, I do want to understand, though.
9 Okay. So you have not asserted an administrative expense,
10 correct?

11 MR. DRAPER: No. There's been an administrative
12 expense that's been asserted, --

13 THE COURT: For what?

14 MR. DRAPER: -- but that --

15 THE COURT: For what?

16 MR. DRAPER: I don't have the number in front of me,
17 Your Honor. I don't -- I don't have those numbers --

18 THE COURT: Okay. Well, then, --

19 MR. DRAPER: -- in front of me. I have asserted --

20 THE COURT: -- what is the concept? What is the
21 basis for it?

22 MR. DRAPER: It deals with -- Mr. Pomerantz is
23 absolutely right as to how he's articulated it.

24 THE COURT: I can't remember what he said.

25 MR. DRAPER: It deals with -- it deals with a

1 transaction that's unrelated to the Debtor that deals with
2 Multi-Strat. I agree with that.

3 THE COURT: Okay. So I remember him saying piercing
4 the corporate veil. Your trusts -- both of them, one of them,
5 I don't know -- engaged in a transaction with Multi-Strat that
6 you say --

7 MR. DRAPER: No, that --

8 THE COURT: -- gave -- okay. Well, you say Multi-
9 Strat is liable and the Debtor is also liable?

10 MR. DRAPER: No. Let me make two things. The
11 administrative claim deals with a Multi-Strat transaction that
12 took place during the bankruptcy. My unsecured claim deals
13 with a transaction that took place prior to the bankruptcy,
14 where we lent money to another entity that then funneled money
15 out into the Debtor. We're -- our contention is that the
16 Debtor is liable for that loan.

17 THE COURT: All right. So both the administrative
18 expense as well as the prepetition claim require veil-piercing
19 to establish liability of the Debtor?

20 MR. DRAPER: Or single business enterprise. I don't
21 necessarily have to veil-pierce.

22 THE COURT: Okay. I'm not even sure that single
23 business enterprise is completely available anymore in Texas,
24 by the Texas legislature doing different things, assuming
25 Texas law applies. I don't know, maybe Delaware does. But I

1 -- sorry. Just let me let that sink in a little bit. You're
2 -- okay. Okay. Let me let it --

3 MR. DRAPER: Your Honor, I --

4 THE COURT: -- sink in a little bit.

5 MR. DRAPER: Okay.

6 THE COURT: These trusts -- of which Mr. Dondero is
7 the beneficiary ultimately, right?

8 MR. DRAPER: Yes. Well, and to --

9 THE COURT: So, your --

10 MR. DRAPER: Again, I have not gone up --

11 THE COURT: The beneficiary of your client --

12 MR. DRAPER: Mr. Dondero is --

13 THE COURT: The beneficiary of your client is
14 ultimately hoping to succeed on the administrative expense and
15 the claim on the basis that you should disregard the
16 separateness of Highland and these other entities?

17 MR. DRAPER: Well, let's take the --

18 THE COURT: When he's resisted that --

19 MR. DRAPER: -- unsecured claim. The --

20 THE COURT: -- in multiple pieces of litigation?

21 Right? I'm sorry. I'm just trying to let this sink in.

22 Okay. If you could elaborate. I'm sorry. I'm talking too
23 much. You answer me.

24 MR. DRAPER: Okay. What we are saying is that, in
25 essence, the party we lent the money to was a conduit for the

1 Debtor.

2 THE COURT: Okay. And who was that entity that
3 either --

4 MR. DRAPER: Highland Select.

5 THE COURT: -- Dugaboy or Get Good lent money to?

6 MR. DRAPER: The Get Good claim is completely
7 different. The Get Good claim is written as a tax claim.
8 Honestly, I haven't taken a hard look at it. I will, once we
9 get through this, and it may be withdrawn. The Dugaboy claim
10 is a claim that arises through a conduit loan.

11 THE COURT: Okay. But to which entity?

12 MR. DRAPER: Highland Select.

13 THE COURT: Okay. All right. Well, continue with
14 your argument. I'll get my flow chart out and --

15 MR. DRAPER: Well, let me -- again, I think I've made
16 the points that I needed to make. I think I've done it in a
17 sense that you -- what I think the Court needs to do is take a
18 very hard look at the jurisdictional extension that's being
19 granted here. I think the exculpation provision, in and of
20 itself, just by the mere inclusion of Pachulski and the
21 Debtor's professionals and the Committee professionals, is
22 just unconfirmable. It has to be stricken.

23 And I think the injunction and the juris... the gatekeeper
24 provision are not allowed by applicable law. If this plan
25 merely said, we will enforce the Barton Doctrine, we will

1 abide -- and this order the Court has entered stands, the
2 injunction that's provided and the rights that we have under
3 1141 stand, nobody would be objecting. That's why the U.S.
4 Trustee has objected, because of the expansive nature of what
5 the -- what's been done in this plan.

6 And with that, I'll turn it over to Mr. Taylor or Davor.

7 THE COURT: All right. Who's next?

8 MR. RUKAVINA: Your Honor, Davor Rukavina. Can you
9 hear me?

10 THE COURT: I can.

11 CLOSING ARGUMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

12 MR. RUKAVINA: Your Honor, thank you. I'll try not
13 to repeat the arguments from Mr. Draper, but I do want to
14 point out a couple bigger-picture issues, I think.

15 One, the issue today is not Mr. Dondero, what he has been
16 alleged to have done, what he is alleged to do in the future.
17 The Debtor has gone out of its way to create the impression
18 that we're all tentacles, we're vexatious litigants, we're
19 frivolous litigants. The issue today is whether this plan is
20 confirmable under 1129(a) and 1129(b). And I think that that
21 has to be the focus.

22 Nor is the issue, I think, today any motivation behind my
23 objection or Mr. Draper's or anything else.

24 And I do take issue that my motivation or my client's
25 motivation has some ulterior motive for a competing plan or

1 burning down the house or anything like that. It's very, very
2 simple. My clients do not want \$140 million of their money
3 and their investors' money, to whom they owe fiduciary duties,
4 to be managed by a liquidating debtor under new management
5 without proper staffing and with an obvious conflict of
6 interest in the form of Mr. Seery wearing two hats.

7 I respect very much that Mr. Seery wants to monetize
8 estate assets for the benefit of the estate creditors. That's
9 his job. That's incompatible with his job under the Advisers
10 Act and, as he said, to maximize value to my clients and over
11 a billion dollars of investments in these CLOs.

12 That should not be, Your Honor, a controversial
13 proposition. I should not be described as a tentacle or
14 vexatious because my clients don't want their money managed by
15 someone that they, in effect, did not contract with. I may be
16 -- I may lose that argument. The CLOs have obviously
17 consented to the assumption. But my argument should not be
18 controversial. It should not be painted with a broad brush of
19 somehow being done in bad faith by Mr. Dondero.

20 And in fact, Mr. Seery has admitted that the Debtor and he
21 are fiduciaries to us. The fact that today they call us
22 things like tentacles and serial litigants and vexatious
23 litigants -- we all know what a vexatious litigant is. We've
24 all dealt with those. The fact that our fiduciary would call
25 us that just reconfirms that it should have no business

1 managing our or other people's money.

2 And then for what? Mr. Seery has basically said that the
3 Debtor will make some \$8.5 million in revenue from these
4 contracts, net out \$4 million of expenses. That's net profit
5 of \$4.5 million. But then they have to pay \$3.5 million for
6 D&O insurance and \$525,000 in cure claims. But it's the
7 Debtor's business decision, not ours.

8 Your Honor, the second issue is the cram-down of Class 8.
9 There are two problems here: the disparate treatment between
10 Class 7 and Class 8, which also raises classification, and
11 then the absolute priority rule. Class 7 is a convenience
12 class claim -- is a convenience claim, Your Honor, with a \$1
13 million threshold. Objectively, that is not for
14 administrative convenience, as the Code allows. And the only
15 evidence as to how that million dollars was arrived at was,
16 oh, it was a negotiation of the Committee.

17 There is no evidence justifying administrative
18 convenience. Therefore, there is no evidence justifying
19 separate classification. And on cram-down, the treatment has
20 to be fair and equitable, which *per se* it is not if there is
21 unfair discrimination. And there is unfair discrimination,
22 because Class 8 will be paid less.

23 On the absolute priority rule, Your Honor, I think that
24 it's very simple. I think that the Code is very clear that
25 equity cannot retain anything -- I'm sorry, equity cannot

1 retain any property or be given any property. Property is the
2 key word in 1129(b), not value. It doesn't matter that this
3 property may not have any value, although Mr. Seery said that
4 it might. What matters is whether these unvested contingent
5 interests in the trust are property. And Your Honor, they are
6 property. They have to be property. They are trust
7 interests.

8 So the absolute priority rule is violated on its face.
9 There is no evidence that unsecured creditors in Class 8 will
10 receive hundred-cent dollars. The only evidence is that
11 they'll receive 71 cents. Mr. Seery said there's a potential
12 upside from litigation. He never quantified that upside. And
13 there is zero evidence that Class 8 creditors are likely to be
14 paid hundred-cent dollars. So, again, you have the absolute
15 priority rule issue.

16 And this construct where, okay, well, equity won't be in
17 the money unless everyone higher above is paid in full, that
18 is just a way to try to get around the dictate of the absolute
19 priority rule. If that logic flies, then the next time I have
20 a hotel client or a Chapter 11 debtor-in-possession client
21 where my equity wants to retain ownership, I'll just create
22 something like, well, here's a trust, creditors own the trust,
23 I won't distribute any money to equity, and equity can just
24 stay in control.

25 The point again is that this is property and it's being

1 received on account of prepetition equity.

2 And there's also the control issue. The absolute priority
3 rule, the Supreme Court is clear that control of the post-
4 confirmation equity is also subject to the absolute priority
5 rule. Here you have the same prepetition management
6 postpetition controlling the Debtor and the assets.

7 Your Honor, the Rule 2015.3 issue, someone's going to say
8 that it's trivial. Someone's going to accuse me of pulling
9 out nothing to make something. Your Honor, it's not trivial.
10 That's part of the problem in this case, that this Debtor owns
11 other entities that own assets, and there's been precious
12 little window given into that during the case, during this
13 confirmation hearing, and in the disclosure statement.

14 Rule 2015.3 is mandatory. It's a shall. I respect very
15 much Mr. Seery's explanation that there was a lot going on
16 with the COVID and with everything and that it just fell
17 through the cracks. That's an honest explanation. But the
18 Rule has not been complied with. And 1107(a) requires that
19 the debtor-in-possession comply with a trustee's duties under
20 704(a)(8). Those duties include filing reports required by
21 the Rules.

22 So we have an 1129(a)(3) problem, Your Honor, because this
23 plan proponent has not complied with Chapter 11 and Title 11.
24 I'll leave it at that, because I suspect, again, someone will
25 accuse me of being trivial on that. It is not trivial. It is

1 a very important rule.

2 On the releases and exculpations, Your Honor, I'm not
3 going to try -- I'm not going to hopefully repeat Mr. Draper.
4 But there's a couple of huge things here with this exculpation
5 that takes it outside of any possible universe of *Pacific*
6 *Lumber*.

7 First, you have a nondebtor entity that is being
8 exculpated. I understand the proposition that, during a
9 bankruptcy case, the professionals of a bankruptcy case might
10 be afforded some protection. I understand that proposition.
11 But here you have Strand and its board that's a nondebtor.

12 The other thing you have that takes this outside of any
13 plausible case law is that the Debtor is exculpated from
14 business decisions, including post-confirmation. I understand
15 that professionals in a case make decisions, and
16 professionals, at the end of the case, especially if the Court
17 is making findings about a plan's good faith, that
18 professionals making decisions on how to administer an estate
19 ought to have some protection.

20 That does not hold true for whether a debtor and its
21 professionals should have protection for how they manage their
22 business. GM cannot be exculpated for having manufactured a
23 defective product and sold it during its bankruptcy case.

24 Here, I asked Mr. Seery whether this language in these
25 provisions, talking about whether the administration of the

1 estate and the implementation of the plan includes the
2 Debtor's management of those contracts and funds. He said
3 yes. He said yes. So if you look at the exculpation
4 provision, it is not limited in time. It affects, Your Honor,
5 I'm quoting, it affects the implementation of the plan.
6 That's going forward.

7 So you are exculpating the Debtor and its professionals
8 from business decisions, including post-confirmation, from
9 negligence. Well, isn't negligence the number one protection
10 that people that have invested a billion dollars with the
11 Debtor have? It's cold comfort to hear, well, you can come
12 after us for gross negligence or theft. I get that. What
13 about negligence? Isn't that what professionals do? Isn't
14 that why professionals have insurance, liability insurance?
15 It's called professional negligence for malpractice.

16 So this exculpation, let there be no mistake -- I heard
17 Your Honor's view and discussion -- this is a different
18 universe, both in space and in time.

19 And we don't have to worry about *Pacific Lumber* too much
20 because we have the *Dropbox* opinion in *Thru, Inc.* We have
21 that opinion. Whether it's sound law or not, I don't wear the
22 robe. But the exculpation provision in that case was
23 virtually identical. And Your Honor, that's a 2018 U.S. Dist.
24 LEXIS 179769. In that opinion, Judge Fish -- I don't think
25 anyone could say that Judge Fish was not a very experienced

1 district court judge -- Judge Fish found that the exculpation
2 violated Fifth Circuit precedent. That exculpation covered
3 the debtor's attorneys, the debtor, the very people that Mr.
4 Pomerantz is now saying, well, maybe the Fifth Circuit would
5 allow an exculpation for.

6 THE COURT: Well, I think he is relying heavily on
7 the analogy of independent directors to Creditors' Committee
8 members, saying that's a different animal, if you will, than
9 prepetition officers and directors. And he thinks, given the
10 little bit of policy analysis put out there by the Fifth
11 Circuit, they might agree that that's analogous and worthy of
12 an exculpation.

13 MR. RUKAVINA: And they might. And they might. And
14 again, I usually do debtor cases. You know that. I'd love to
15 be exculpated.

16 THE COURT: But --

17 MR. RUKAVINA: And I think, again, I do -- I do --

18 THE COURT: -- I really want people to give me their
19 best argument of why, you know, that's just flat wrong. And
20 Mr. Draper just said it's, you know, there's a categorical --

21 MR. RUKAVINA: Yeah.

22 THE COURT: -- rejection of exculpations except for
23 Committee members and Committee in *Pacific Lumber*. And I'm
24 scratching my head on that one. And partly the reason I am,
25 while 524(e) was thrown out there, the fact is there's nothing

1 explicitly in the Bankruptcy Code, right, that explicitly
2 permits exculpation to a Committee or Committee members.
3 There's just sort of this notion, you know, allegedly embodied
4 in 1103(c), or maybe there are cases you want to cite to me,
5 that they're fiduciaries, they're voluntary fiduciaries, they
6 ought to have qualified immunity.

7 And again, I see it as more of a policy rationale the
8 Fifth Circuit gave than pointing to a certain statute. So if
9 it's really a policy rationale, then I think the analogy given
10 here to a newly-appointed independent board is pretty darn
11 good.

12 So tell me why I'm all wrong, why Mr. Pomerantz is all
13 wrong.

14 MR. RUKAVINA: I am not going to tell you that you're
15 all wrong. I'm not going to tell Mr. Pomerantz that he's all
16 wrong. Although I am, I guess, a Dondero tentacle, I am not a
17 Mr. Draper tentacle, and I happen to disagree with him.
18 That's my right. I respect the man very much. I thought he
19 did a very honorable and ethical job explaining his position
20 to Your Honor. I believe that the Fifth Circuit would approve
21 exculpations for postpetition pre-confirmation matters taken
22 by estate fiduciaries. I do believe that they would. And I
23 do believe that that should be the case.

24 But again, I'm telling you that this one is different.
25 It's -- Mr. Pomerantz is misdirecting you. The estate

1 professionals manage the estate. The Debtor manages its
2 business. It goes out into the world and it manages business.
3 And as Your Honor knows, under that 1969 Supreme Court case,
4 of course I blanked, and under 28 U.S. 959, a debtor must
5 comply, when it's out there, with all applicable law.

6 So if the Debtor -- and I'm making this up, okay? I am
7 making this up. I'm not alleging anything. But if the
8 Debtor, through actionable neglect, lost \$500 million of its
9 clients' or its investor clients' money, I'm telling you that
10 under no theory can that be exculpated, and I'm telling you
11 that that's what this provision does.

12 The estate and the Debtor can release their claims. It
13 happens all the time. Whatever -- whatever claims the estate
14 may have against professionals, those can be released. It's a
15 9019. I'm not complaining about that. Although I do think
16 that it's premature in this case, because we don't know
17 whether there's any liability for the \$100 million that Mr.
18 Seery told you Mr. Dondero lost. But in no event can business
19 -- business --

20 THE COURT: I don't understand what you just said.

21 MR. RUKAVINA: Your Honor, I --

22 THE COURT: Mr. Dondero is not released --

23 MR. RUKAVINA: -- went through Mr. Seery's --

24 THE COURT: -- by the estate.

25 MR. RUKAVINA: I understand. I understand. But we

1 all have to also understand that a board of directors and
2 officers can be liable, breaches of fiduciary duty by not
3 properly managing an employee. So I'm not suggesting -- I
4 mean, I know that there's been an examiner motion filed. I'm
5 not suggesting that we have a mini-trial. I'm not suggesting
6 there's actionable conduct. What I'm telling you is that the
7 evidence shows that there's a large postpetition loss. And
8 it's premature to prevent third parties that might have claims
9 from bringing those.

10 And then I think -- I'm not sure that Your Honor
11 understood my point. Let me try to make it again. This
12 exculpation is not limited in time. This exculpation is
13 expressly not limited in time and applies to the
14 administration of the plan post-confirmation. I don't think
15 under any theory would the Fifth Circuit or any court at the
16 appellate level allow an exculpation for purely post-
17 reorganization post-bankruptcy matters. I have nothing more
18 to tell Your Honor on exculpation.

19 THE COURT: Well, again, I -- perhaps I go down some
20 roads I really don't need to go down here, but I'm not sure I
21 read it the way you did. I thought we were just talking about
22 pre -- postpetition, pre-confirmation. Or pre-effective date.

23 MR. RUKAVINA: Your Honor, Page --

24 THE COURT: The --

25 MR. RUKAVINA: Page 48 of the plan, Section C,

1 Exculpation. Romanette (iv). The implementation of the plan.
2 And I -- and that's -- that's part of why I asked Mr. Seery
3 that yesterday. Does the implementation of the plan, in his
4 understanding, include the Reorganized Debtor's management and
5 wind-down of the Funds, and he said yes.

6 THE COURT: Okay.

7 MR. RUKAVINA: So that's right there in black and
8 white.

9 It also includes the administration of the Chapter 11
10 case. If that is defined broadly, as Mr. Seery wants it to
11 be, to define business decisions, then that also exceeds any
12 permissible exculpation.

13 So, again, I'm telling Your Honor, with due respect to you
14 and to Mr. Pomerantz, that the focus of Your Honor's
15 questioning is wrong. The focus of Your Honor's questioning
16 should be on exculpation from what? From business -- i.e., GM
17 manufacturing and selling the car -- or from management of the
18 bankruptcy case? Management of the bankruptcy case? Okay.
19 Postpetition pre-confirmation managing business, never okay.

20 Your Honor, on the channeling -- and let me add, I think
21 it's very clear, there is no Barton Doctrine here. This is
22 not a Chapter 11 trustee. The Barton Doctrine does not
23 extend to debtors-in-possession. And I can cite you to a
24 recent case, *In re Zaman*, 2020 Bankr. LEXIS 2361, that
25 confirms that the Barton Doctrine does not apply to a debtor-

1 in-possession.

2 I want to --

3 THE COURT: Remind me of that --

4 MR. RUKAVINA: -- discuss, Your Honor, the --

5 THE COURT: Remind me of the facts of that case. I
6 feel like I read it, but -- or saw it in the advance sheets,
7 maybe.

8 MR. RUKAVINA: I honestly do not recall. I read it a
9 few days ago, and since then, I hope Your Honor can
10 appreciate, I've been up very late trying to negotiate
11 something good in this case.

12 THE COURT: I'd like to know --

13 MR. RUKAVINA: So, I mean, I have the case in front
14 of me.

15 THE COURT: I'd like to know about a holding that
16 says Barton Doctrine can't be applied in a Chapter 11 post-
17 confirmation context, if that's --

18 MR. RUKAVINA: Well, I have it --

19 THE COURT: -- indeed the holding.

20 MR. RUKAVINA: I have it right in front of me here,
21 Your Honor, and I can certainly -- all I know is that this
22 case held that -- it rejected the notion that the Barton
23 Doctrine applies to a debtor-in-possession.

24 THE COURT: Okay.

25 MR. RUKAVINA: And maybe --

1 THE COURT: That --

2 MR. RUKAVINA: There it is, right there.

3 THE COURT: What judge?

4 MR. RUKAVINA: Your Honor, it is the Southern
5 District of Florida, and it is the Honorable -- Your Honor, it
6 is the Honorable Mindy Mora.

7 THE COURT: Okay.

8 MR. RUKAVINA: M-O-R-A.

9 THE COURT: Okay.

10 MR. RUKAVINA: I have not had the pleasure of being
11 in front of that judge.

12 Your Honor, let me discuss the channeling injunction.
13 This is the big one for me. This is the big one. And I think
14 we have to begin -- and it's the big one, as I'll get to,
15 because Your Honor knows that the CLO management agreements
16 give my clients certain rights, and this injunction would
17 prevent those rights from being exercised post-confirmation.
18 It's not dissimilar from the PI hearing that we're in the
19 middle of in an adversary.

20 But I begin my analysis, again, with 28 U.S.C. 959. Your
21 Honor, that -- the first sentence of that statute makes it
22 very clear that when it comes to carrying on a business, a
23 debtor-in-possession may be sued without leave of the court
24 appointing them.

25 So the first thing that this channel -- gatekeeper,

1 channeling, I don't mean to miscall it -- the first thing that
2 this gatekeeping injunction does is it stands directly
3 opposite to 28 U.S.C. 959.

4 28 U.S.C. 959 also says that jury rights must be
5 preserved. As I'll argue in a moment, this injunction also
6 affects those rights.

7 In addition to 959, we have the fundamental issue of post-
8 confirmation jurisdiction. As Mr. Draper said, here, this
9 channeling injunction applies to post-confirmation matters.
10 Similar to my answer to you on exculpation, I can see there
11 being a place for a channeling injunction during the pendency
12 of a case or for claims that might have arisen during the
13 pendency of a case. I cannot see that, and I don't know of
14 any court that, at least at a circuit level, that would agree
15 that this can apply post-confirmation.

16 It is, again, the equivalent of GM manufacturing a car
17 post-confirmation and having to go to bankruptcy court because
18 someone's wanting to sue it for product negligence or
19 liability. It's unthinkable. The reason why a debtor exits
20 bankruptcy is to go back out into the community. It's no
21 longer under the protection of the bankruptcy court. That's
22 what the media calls Chapter 11, it calls it the protection of
23 the court. There's no such protection post-reorganization.
24 So, --

25 THE COURT: Is that really analogous, Mr. Rukavina?

1 Let's get real. Is this really analogous --

2 MR. RUKAVINA: It is.

3 THE COURT: -- to GM --

4 MR. RUKAVINA: It is.

5 THE COURT: -- manufacturing thousands of cars?

6 MR. RUKAVINA: It absolutely is analogous. Because
7 this Debtor is going to assume these contracts and it is going
8 to go out there and it is going to make daily decisions
9 affecting a billion dollars of other people's money. Each of
10 those decisions hopefully will be done correctly and make
11 everyone a lot of money, but each of those decisions is the
12 potential for claims and causes of action.

13 So it is analogous, Your Honor. They want my clients and
14 others to come to you for purely post-confirmation matters.
15 The Court will not have that jurisdiction. There will be no
16 bankruptcy estate, nor can the Court's limited jurisdiction to
17 ensure the implementation of the plan go to and affect a post-
18 confirmation business decision.

19 That's the distinction. The Debtor's post-confirmation
20 business is not the implementation of a plan. As Mr. Draper
21 said, there's a new entity. There's a new general partner.
22 There's a new structure. Go out there and do business,
23 Debtor. That's what they're telling you. They're telling you
24 this is not a liquidation because they're going to be in
25 business. Okay. Well, the consequence of that is that

1 there's no post-confirmation jurisdiction.

2 Now, Mr. Pomerantz says, and I think you asked Mr. Draper,
3 well, the jurisdiction to adjudicate whether something is
4 colorable is different from the jurisdiction to adjudicate the
5 underlying matter. Your Honor, I don't understand that
6 argument, and I don't see a distinction. If the Court has no
7 jurisdiction to decide the underlying matter, then how can the
8 Court have any jurisdiction to pass on any aspect of that
9 underlying matter?

10 And whether something is colorable is a fundamental issue
11 in every matter. That's the thing that courts look at in a
12 12(b)(6), in a Rule 11 issue, in a 1927 issue. So they're
13 going to come -- or someone is going to have to come to Your
14 Honor and present evidence and law that something is
15 colorable. Let's say that we've said there's a breach of
16 contract. Aren't we going to have to show you, here's the
17 contract, here's the language, here's the facts giving rise to
18 the breach, here's the elements? And Your Honor is going to
19 have to pass on that. And if Your Honor decides that
20 something is not colorable, then there ain't no step two.

21 And if Your Honor decides that something is colorable,
22 then isn't that going to be binding on the future proceeding?
23 And if it's going to be binding on the future proceeding, then
24 of course you're exercising jurisdiction to adjudicate an
25 aspect of that lawsuit.

1 I don't think that that -- I don't know I can be clearer
2 than that, Your Honor, unless the Debtor has some other
3 understanding of what a colorable claim or cause of action is
4 that I'm misunderstanding.

5 And Your Honor, I would ask, when Your Honor is in
6 chambers, to look at one of these CLO management agreements.
7 I'm sure Your Honor has already. I just pulled one out of the
8 Debtor's exhibits, Exhibit J as in Jason. And Section 14, 14
9 talks about termination for cause. Most of these contracts
10 are for cause. So, Your Honor, cause includes willfully
11 breaching the agreement or violating the law, cause includes
12 fraud, cause includes a criminal matter, such as indictment.

13 So let's imagine, Your Honor, that I come to you a year
14 from now and I say, I would like to terminate this agreement
15 because I don't want the Debtor managing my \$140 million
16 because of one of these causes. What am I going to argue to
17 Your Honor? I'm going to argue to Your Honor that those
18 causes exist. And Your Honor is going to have to pass on
19 that.

20 And if Your Honor says they don't exist, again, I'm done.
21 I just got an effective final ruling from a federal judge that
22 my claim is without merit. I'm done. Your Honor has decided
23 the matter effectively, legally, and finally.

24 That's why, when Mr. Pomerantz says that the jurisdiction
25 to adjudicate the colorableness of a claim is different from

1 adjudicating that claim, it's not correct. They're part of
2 the same thing, Your Honor.

3 We strenuously object to that injunction, we think it's
4 unprecedented, and we strenuously object to that injunction
5 because we are not Mr. Dondero.

6 I understand the January 9th order. I'll let Mr.
7 Dondero's counsel talk about why that was never intended to be
8 a perpetual order. I'll let Mr. Dondero's counsel argue as to
9 why the extension of that order *ad infinitum* in the plan is
10 illegal.

11 But even if Mr. Dondero is enjoined in perpetuity from
12 causing the related parties to terminate these agreements,
13 Your Honor, the related parties themselves are not subject to
14 that injunction. That's why you have the preliminary
15 injunction proceeding impending in front of you on ridiculous
16 allegations of tortious interference.

17 So whether the Court enjoins Mr. Dondero or not in
18 perpetuity is a separate matter. The question is, as you've
19 heard, at least my retail clients, they have boards. Those
20 boards are the final decision-makers. Mr. Dondero is not on
21 those boards.

22 In other words, it is wrong to conclude *a priori* that
23 anything that my clients do has to be at the direction of Mr.
24 Dondero. There is no evidence of that. The evidence is to
25 the contrary.

1 Yes, a couple of my clients, the Advisors are controlled
2 by Mr. Dondero. Mr. Norris testified to that. You'll not
3 find Mr. Norris anywhere testifying in that transcript that
4 Your Honor allowed into evidence that the funds, my retail
5 fund clients are controlled by Mr. Dondero. You won't find
6 that evidence. There was no evidence yesterday or today that
7 Mr. Dondero controls those retail funds. The only evidence is
8 that they have independent boards.

9 So I ask the Court to see that it's a little bit of a
10 sleight of hand by the Debtor. If I am to be enjoined or if I
11 am to have to come to Your Honor in the future as a vexatious
12 litigant or a tentacle or a frivolous litigant, whatever else
13 I've been called today, then let it be because of something
14 that I've done or failed to do, something that my client has
15 done to warrant such a serious remedy, not something that Mr.
16 Dondero is alleged to have done.

17 And what have my clients done, Your Honor? What have we
18 done to be called vexatious litigants and serial litigants?
19 We've done nothing in this case, pretty much, until December
20 16th, when we filed a motion that was a poor motion,
21 unfortunately, the Court found it to be frivolous, and the
22 Court read us the riot act.

23 We refused, on December 22nd, we, my clients' employees,
24 to execute two trades that Mr. Dondero wanted us to execute.
25 We had no obligation to execute them. We knew nothing about

1 them. And Mr. Seery -- I'm sorry. Not Mr. Dondero, that Mr.
2 Seery wanted to execute. And Mr. Seery closed those
3 transactions that same day. And then a professional lawyer at
4 K&L Gates, a seasoned bankruptcy lawyer, sent three letters to
5 a seasoned professional lawyer at Pachulski, and the letters
6 were basically ignored.

7 Okay. Those are the things that we've done. Other than
8 that, we've defended ourselves against a TRO, we've defended
9 ourselves against a preliminary injunction, we will continue
10 to defend ourselves against a preliminary injunction, and we
11 defend ourselves against this plan because it takes away our
12 rights. Is that vexatious litigation? Is that, other than
13 the frivolous motion, is that frivolous litigation?

14 And we heard you loud and clear when you read us the riot
15 act on December 16th. And I will challenge any of these
16 colleagues here today to point me to something that we have
17 filed since then that is in any way, shape, or form arguably
18 meritless.

19 So where is the evidence that my retail funds are
20 tentacles or vexatious litigants or anything else? There is
21 no evidence, Your Honor, and the Debtor is doing its best to
22 give you smoke and mirrors to just make that mental jump from
23 Mr. Dondero to my clients, effectively an alter ego, without a
24 trial on alter ego.

25 Once these contracts are assumed, the Debtor must live

1 with their consequences. It's as simple as that. Your Honor
2 has so held. Your Honor has so held forcefully in the *Texas*
3 *Ballpark* case. And the Court, I submit respectfully, cannot
4 excise by an injunction a provision of a contract.

5 Also, this injunction will -- is a permanent injunction.
6 We know from *Zale* and other cases the Fifth Circuit does
7 permit certain limited plan injunctions that are temporary in
8 hundred-cent plans. This is a permanent one. It doesn't even
9 pretend to be a temporary one.

10 It's also a permanent one because the Debtor knows and I
11 think the Debtor is banking on me being unable to get relief
12 in the Fifth Circuit before Mr. Seery is finished liquidating
13 these CLOs.

14 So what we are talking about today is effectively excising
15 valuable and important negotiated provisions of these
16 contracts, provisions that, although my clients are not
17 counterparties to these contracts, you've heard from at least
18 three of them we do control the requisite vote, the voting
19 percentages, to cause a termination, to remove the Debtor, or
20 to seek to enforce the Debtor's obligations under those
21 contracts.

22 And again, Your Honor, it's very simple. Where those
23 contracts require cause, there either is cause or is not
24 cause. If there is not cause, the Debtor has its remedies.
25 If there is cause, I'll have my remedies. But it's not for

1 this Court post-confirmation to be making that determination.
2 That's not my decision. That's Congress's decision.

3 So, Your Honor, for those reasons, we object, and we
4 continue to object, and we'd ask that the Court not confirm
5 this plan because it is patently unconfirmable. Or if the
6 Court does confirm the plan, that it excise those provisions
7 of the releases, exculpations, and injunction that I just
8 mentioned as being not in line with the Fifth Circuit or
9 Supreme Court precedent.

10 Thank you.

11 THE COURT: All right. Can I -- I meant to ask Mr.
12 Draper this. Can we all agree that we do not have third-party
13 releases *per se* in this plan? Can we all agree on that?

14 MR. DRAPER: I don't know. I have to look at that.
15 I think what you have are exculpations and channeling
16 injunctions for third parties who have not paid for those
17 channeling injunctions or those exculpations.

18 THE COURT: All right.

19 MR. RUKAVINA: Your Honor, was that question -- was
20 that question solely to Mr. Draper?

21 THE COURT: Well, no, it was to all of you. I
22 thought we could all agree that we don't have third party
23 releases *per se*. Okay. There was --

24 MR. RUKAVINA: Your Honor, we --

25 THE COURT: -- a little bit of glossing over that in

1 some of the briefing, I can't remember whose. But we have
2 Debtor releases, we have --

3 MR. RUKAVINA: Yes.

4 THE COURT: -- exculpations that deal with
5 postpetition negligence only, we have injunctions, which I
6 guess the Debtor would say merely serve to implement the plan
7 provisions and are commonplace, but Mr. Draper would say maybe
8 are tantamount to third-party releases. Is that --

9 MR. RUKAVINA: Your Honor, I don't think --

10 THE COURT: -- where we are?

11 MR. RUKAVINA: -- there's any question -- I don't
12 think there's any question that the exculpation is a third-
13 party release, and that that's also what Judge Fish held in
14 the *Dropbox* case. It says that none of the exculpated parties
15 shall have any liability on any claim. So, --

16 THE COURT: All right.

17 MR. RUKAVINA: -- that necessarily --

18 THE COURT: I get what you're saying, but I just
19 think, in common bankruptcy lingo, most people regard a third-
20 party release as when third parties are releasing -- third
21 parties meaning, for example, creditors, interest holders --
22 are releasing officers and directors and other third parties
23 for anything and everything.

24 Exculpation, I get it, it's worded in a passive voice, but
25 it is third parties releasing third parties, but for a narrow

1 thing, postpetition conduct that is negligent. Okay. So I
2 think -- while there's technically something like a third-
3 party release there, it's not in bankruptcy lingo what we call
4 a third-party release. It's an exculpation means no liability
5 of the exculpated parties for postpetition conduct that's
6 negligent. So I -- anyway, I think we all agree that, I mean,
7 can we all agree there aren't any *per se* third-party releases
8 as that term is typically used in bankruptcy parlance?

9 MR. RUKAVINA: I apologize, Your Honor, and I'm not
10 trying to try your patience, but I cannot agree to that.
11 Whatever claims my client, a nondebtor, has against Strand, a
12 nondebtor, are gone. Whether it's a release or exculpations,
13 they're gone. So I apologize, I cannot agree to that, Your
14 Honor.

15 MR. DRAPER: Your Honor, this is Douglas Draper. I
16 can't agree, either. I think it's definitional. And quite
17 frankly, I think I'm looking at the functional effect of
18 what's here, and they appear to be third-party releases.

19 THE COURT: Okay. All right. Who is making the
20 argument for Mr. Dondero?

21 MR. TAYLOR: Your Honor, Clay Taylor appearing on
22 behalf of Mr. Dondero.

23 THE COURT: Okay.

24 CLOSING ARGUMENT ON BEHALF OF JAMES D. DONDERO

25 MR. TAYLOR: Your Honor, first of all, as this Court

1 is well aware, this Court sits, as a bankruptcy court, as a
2 court of equity. It has many different tools available to it.
3 One of those, of course, is denying confirmation of this plan
4 because of the laws that we have discussed today and that we
5 believe the evidence has shown, and I won't go into those. Of
6 course, of course, Your Honor could confirm that plan. Yet
7 another tool available to this Court is it can take it under
8 advisement.

9 To the extent that this Court decides to confirm this plan
10 and decides to confirm it today, it certainly takes a lot of
11 options off the table for all parties. There are ongoing
12 discussions, I'm not going to go into any of the particulars
13 of those discussions, but a ruling on confirmation today would
14 effectively end that, because, absent, then, an order vacating
15 confirmation, there's a lot of eggs that can't become
16 unscrambled after a confirmation order is entered.

17 So we would respectively ask that, to the extent that the
18 Court is even considering confirmation, we don't believe it to
19 be appropriate, but at least take it under advisement for 30
20 days, or at least, in the very alternative, that it announce
21 some date which it is going to give a ruling, so that we kind
22 of know when that is going to come down, to see if any
23 positive ongoing discussions can result in more of a global
24 resolution that all parties can agree upon.

25 Addressing more the merits of the case, Your Honor, Mr.

1 Dondero does indeed object to the nondebtor releases, the
2 exculpations, the injunction. I believe those have been
3 covered rather extensively in the prior argument, so I wasn't
4 going to go into those here because they've been addressed.
5 Of course, I will endeavor to answer any questions that Your
6 Honor may have on those.

7 I will say I think Your Honor asked for everybody's best
8 shot as to why this is different for a Committee member versus
9 the independent trustees here. I will say my best shot is,
10 first of all, *Pacific Lumber* says what it says. I believe Mr.
11 Pomerantz has indicated their position that that language is
12 dicta and therefore not binding upon this Court. I
13 respectfully disagree with that. But to the extent, more
14 directly answering Your Honor's question, to me, the
15 difference is clear. Chapter 7 trustees are a creature of
16 statute. So are Chapter 11 trustees. And -- as are members
17 of a Committee that are seated pursuant to the Bankruptcy
18 Code. Those are all creatures of statute. And the
19 independent board of trustees, while there are certainly --
20 there are some analogies that can be made, undoubtedly, but
21 they are not a creature of statute. There is no provision for
22 them under the Bankruptcy Code. And therefore I don't believe
23 that they should and can receive the same protections under
24 *Pacific Lumber*.

25 And so hopefully that -- that is my best shot at

1 answering, directly answering the question that Your Honor
2 posed.

3 THE COURT: Okay.

4 MR. DRAPER: Mr. Dondero also has issue with the
5 overbroad continuing jurisdiction of this Court. I believe
6 Mr. Rukavina has stated that rather succinctly, too. Merely
7 ruling upon whatever claim is colorable or not certainly has
8 definite impacts. If this Court has jurisdiction to do that
9 when it otherwise wouldn't have jurisdiction, it enacts an
10 expansion, a potentially impermissible expansion of this
11 Court's jurisdiction. And for that reason, the plan should --
12 confirmation should be denied.

13 Getting into the particulars of 1129, Your Honor, there is
14 problems under 1129(a)(2). Those are the solicitation
15 problems. Let's just kind of look at what the evidence
16 showed. On November 28th, there was a disclosure statement,
17 it was published to all creditors, and it said, under this
18 plan, you're going to get 87 cents. It wasn't a range. Now,
19 there was some assumptions that went in there, but they said,
20 under a liquidation of all these assets, you're going to get
21 62 cents.

22 The Debtors came back approximately two months later, on
23 January 28th, and said, oh, wait, we missed the boat here, and
24 actually, under the plan, you're going to get 61 cents. And
25 under a liquidation, though, you'd only get 48.

1 Well, the problem is, already, two months later, they've
2 already told you they missed the boat on what the liquidation
3 analysis was just two months ago. And two months ago, they
4 told you under a liquidation you'd get 62 cents, and now we're
5 telling you you're going to get less. That's at least some
6 very good evidence that the best interests of the creditors
7 isn't being met, and potentially a liquidation is much better.

8 They then came back, potentially maybe realizing that
9 problem, also because some new information came in with the
10 employees, and also with UBS, which adjusted the overall
11 general unsecured claims pool, and said, well, under the plan
12 you're going to get 71 cents, and under a liquidation you're
13 going to get 55 cents.

14 In between those iterations from November to February,
15 they found \$67 million more in assets. So Mr. Seery testified
16 he believed some of that's as to market increases in values,
17 and some (garbling) investment, market -- securities. And
18 some were just in these private equity investments.

19 There are indeed some rollups behind all of these numbers.
20 I do understand why they wouldn't want to make some of these
21 numbers public, because they might not be able to get --
22 create the upside for any particular asset class that they're
23 seeking to monetize.

24 However, we and others, including Mr. Draper, asked for
25 those rollups to be provided, and we certainly could have

1 taken those under seal or a confidentiality agreement, could
2 have also put those before this Court under seal and the
3 Debtor could have put those rollups before this Court under
4 seal. It elected not to do so.

5 So, rather, what you have is the naked assumptions of this
6 is what we think we can monetize the assets, or we're not
7 going to tell you what it is, but trust me, Creditors, and
8 cool, we found \$67 million worth of value in the past two
9 months, so therefore we're going to beat the liquidation
10 analysis that we previously told you just two months ago.

11 They also acknowledge that, in those two months, that
12 there was going to be about \$26 million in increased costs
13 from their November analysis to their February analysis. And
14 they included that in their projections.

15 Finally, they acknowledged, in those two months, that we
16 had previously estimated -- and they even have it in their
17 assumptions in November liquidation and plan analysis -- that
18 UBS, HarbourVest, and I believe it was Acis, were all going to
19 be valued at zero dollars, and that's what the claims were
20 going to be. Well, they kind of missed the boat on those, and
21 they missed it by a lot. They -- it increased all the claims
22 in the pool from \$195 million to \$273 million, or sorry, I
23 don't -- look at that again, but it was an increase of \$95
24 million. I'm sorry, 190 -- the claims pool increased from
25 \$194 million to -- I'm sorry, Your Honor, I have too many

1 papers in front of me -- on November, the claims pool was 176
2 and it increased by February 1st to 273. Therefore,
3 approximately \$95, almost \$100 million worth of claims that
4 they weren't anticipating that actually came in.

5 That tells you about the quality of the assumptions that
6 went into the analysis to begin with. They missed it by 50
7 percent on what the overall claims pool was going to be.
8 That's significant. It's material.

9 There is a lot of other assumptions that could go into
10 this document, and one of those assumptions are how much are
11 we going to be able to monetize these assets for? One other
12 assumption is, well, how much is it going to cost during the
13 two-year life of this wind-down? Another assumption is going
14 to be, are we actually going to be able to wind down in two
15 years? Because if we're not, well, guess what, all those
16 costs are going to go up. Another assumption is, well, how
17 much are those fee claims going to be over the two-year
18 period? Again, if it goes over two years, they're going to be
19 significantly higher. Moreover, you might have just missed
20 what the burn rate is.

21 So I think it's rather telling that the assumptions made
22 of -- all the way back of over two -- of only two months ago
23 were off by \$100 million, and therefore it skewed all of the
24 plan-versus-liquidation analysis all over the board.

25 That's the only evidence that the Debtor has put forth as

1 to why it's in the best interest of the creditors. And quite
2 frankly, we don't believe they have met their burden. And it
3 is their burden to prove to Your Honor that the plan is better
4 than what a Chapter 7 trustee will -- can do.

5 What the evidence does show, as far as what the plan would
6 do as compared to a hypothetical Chapter 7 trustee, is that we
7 know for sure that the Claimant Trust base fee, just over the
8 two years, is going to be \$3.6 million.

9 (Interruption.)

10 MR. TAYLOR: I'm sorry.

11 THE COURT: Someone needs to put their device on
12 mute. I don't know who that was.

13 MR. TAYLOR: Oh, I'm sorry. I thought you said
14 something, Your Honor.

15 THE COURT: No.

16 MR. TAYLOR: So what we do know is the Claimant
17 Trustee base fee is going to be \$3.6 million. What we don't
18 know and what was not put into evidence because they are still
19 negotiating it is there's going to be a bonus fee on top of
20 that that's going to be paid to Mr. Seery. Is that \$2
21 million? Is that \$4 million? Is that \$10 million? Well, we
22 don't know. We can't perform that analysis as compared to
23 what a hypothetical Chapter 7 trustee could be. Nor can Your
24 Honor, based upon the evidence presented.

25 And quite frankly, I don't see how one could ever conclude

1 -- and there are some other unknowns that we're about to go
2 over, including the Litigation Trust base fee and there are
3 collection fees, contingency fees. Those are also to be
4 negotiated. To be negotiated and unknown. You can't perform
5 the analysis. The Debtor couldn't perform the analysis
6 because those are to be negotiated, so you can't tell whether
7 a Chapter -- hypothetical Chapter 7 trustee might come out
8 better because he's not going to incur all these costs. We
9 know that they're going to incur D&O costs.

10 THE COURT: Let me interject right now.

11 MR. TAYLOR: Sure.

12 THE COURT: Again, I'm going to go back to
13 understanding who your client is arguing for. Okay? Again,
14 as we've said before, Mr. Pomerantz did not technically say no
15 standing, but he thought it was important to point out the
16 economic interests that our Objectors either have or don't
17 have. Okay?

18 So I'm looking through my notes to see exactly what the
19 Dondero economic interest is. I have something written in my
20 notes, but I'm going to let you tell me. Tell me what his
21 economic interests are with regard to this Debtor, this
22 reorganization.

23 MR. TAYLOR: Your Honor, I believe he has been placed
24 into Class 9, Subordinated Claims. So to the extent that
25 there is recovery available to Class 9, he can recover on

1 those claims.

2 THE COURT: But what proof of claim --

3 MR. TAYLOR: We also have --

4 THE COURT: What proof of claim does he have pending
5 at this juncture?

6 MR. TAYLOR: Your Honor, I would have to go back and
7 look. I don't have the proofs of claim register in front of
8 me. And I'm sorry, if I tried to speculate, I would be doing
9 a disservice to my client and this Court by trying to
10 speculate. I did not prepare those proofs of claim. People
11 in my firm did. But I would be merely speculating if I tried
12 to give you an answer off the spot. And I apologize. I'm
13 happy to submit a post-confirmation hearing letter --

14 THE COURT: No, no, no.

15 MR. TAYLOR: -- as to that.

16 THE COURT: I'm not going to allow one more piece of
17 paper in connection with confirmation. I thought you would be
18 able to answer that.

19 MR. TAYLOR: I'm sorry. I just don't want to lie to
20 Your Honor.

21 THE COURT: What about his -- what would be an
22 indirect equity interest?

23 MR. TAYLOR: Well, again, there are a lot of people
24 that know this org chart a lot better than me. This is me
25 going on hearsay myself. But I understand he also owns a lot

1 of indirect interests in subsidiaries, some of which are
2 majority, some of which are minority, and some of which he
3 owns maybe directly, some of which through other entities. So
4 the way in which these assets could be monetized at the sub-
5 debtor level could certainly impact his economic rights and
6 could impact him greatly. For instance, if the --

7 THE COURT: I really wanted an exact answer.

8 MR. TAYLOR: Mr. Seery --

9 THE COURT: I really wanted an exact answer, not just
10 he has an indirect interest in, you know, some of the 2,000 --
11 I'm not going to say tentacles, but --

12 I'm going to interrupt briefly, because I really want to
13 nail down the answer as best I can. Mr. Pomerantz, can you
14 just remind me of what your answer was or statement was
15 regarding Mr. Dondero, individually, his economic stake in all
16 this?

17 MR. POMERANTZ: He has an indemnification claim
18 that's been objected to, --

19 THE COURT: That's the one and only --

20 MR. POMERANTZ: -- although it's not before --

21 THE COURT: That's the one and only pending proof of
22 claim, right?

23 MR. POMERANTZ: That's my understanding. And while
24 it's not before the Court, we could all imagine whether Mr.
25 Dondero's going to be entitled to indemnification.

1 He has an interest in Strand, which is the general
2 partner.

3 THE COURT: Right.

4 MR. POMERANTZ: And Strand owns a quarter-percent --
5 a quarter of one percent of the equity. I believe that is all
6 of Mr. Dondero's economic interest in the Debtor.

7 THE COURT: Okay. So, again, I'm just trying to, you
8 know, understand who he's looking out for, for lack of a
9 better way of saying it, Mr. Taylor, in making these
10 arguments.

11 MR. TAYLOR: So, there is also, and this is -- I'm
12 not involved in what are these going to be filed collection
13 suits, or some of which have been filed, some of which have
14 not been filed, none of which I believe the answer date has
15 been -- has passed or come to be yet.

16 But he is also a defendant in collection suits on these
17 notes, as you are undoubtedly aware.

18 THE COURT: Okay. He's a defendant in adversary
19 proceedings. Okay? That makes him a party in interest to --
20 well, I keep -- that makes him have standing to make an
21 1129(a)(7) argument? That's why I'm going down this trail.
22 Because you've spent the last five minutes talking about, you
23 know, creditors could do better in a Chapter 7 liquidation.
24 I'm not sure he has standing to make that argument, so I'm
25 wanting you to address that squarely.

1 MR. TAYLOR: Your Honor, I believe he has economic
2 interests up and down the capital structure. And I cannot
3 describe to you, without wildly speculating and potentially
4 lying to this Court, which I'm not going to do, without some
5 time to have looked at that, because I was -- I was not
6 involved in the proofs of claim and I am not his accountant.
7 So I could not do that without wildly speculating, so I just
8 -- I would like to more directly answer your question, Your
9 Honor. I am not trying to avoid the question. But I can't
10 honestly answer your question with true facts as we sit here
11 right now.

12 THE COURT: All right. But do you agree or disagree
13 with me that only parties -- the only parties that really can
14 make an 1129(a)(7) argument are holders of claims or interests
15 in impaired classes?

16 MR. TAYLOR: Your Honor, I believe that Mr. Dondero
17 has standing to do so by virtue of claims for indemnification
18 --

19 THE COURT: Okay.

20 MR. TAYLOR: -- if these -- if these -- if this
21 Debtor (indecipherable) able to meet its obligations to
22 indemnify him. And some of those are significant claims that
23 are being brought against him that could total millions, if
24 not tens of millions of dollars, just in defense costs alone,
25 that I do believe give some standing.

1 THE COURT: Okay. So, assuming you're right, you
2 think the evidence does not show this is better than a Chapter
3 7 liquidation where we would have a stranger trustee come in
4 and just, yeah, I guess, cold-turkey liquidate it all.

5 MR. TAYLOR: Your Honor, I do believe that the
6 evidence shows that the Debtor hasn't met its burden as to
7 this. A Chapter 7 trustee doesn't necessarily have to
8 liquidate immediately. It can run these -- these assets. I
9 mean, Mr. Seery is going to do it with ten people. At one
10 time, just two months ago, he said he was going to do it with
11 three people. A Chapter 7 trustee could certainly have a
12 limited runway, or even an extended runway, if it so asked for
13 it, to liquate these Debtors.

14 Moreover, there would be at least the requirements that
15 the Chapter 7 trustee would request the sale, tell creditors
16 about it. And, as many courts have said, the competitive
17 bidding process is the best way to make sure that you ensure
18 the highest and best offer that you can get.

19 Mr. Seery has not committed to providing notice of sales
20 to creditors and other parties in interest, potentially
21 bringing them in as bidders. They -- he could name a stalking
22 horse, but he has not indicated any desire to do so. A
23 Chapter 7 trustee would endeavor to do so.

24 So I do believe that there are some advantages. And
25 you've heard no testimony that they've performed any analysis

1 or conducted any interviews with any Chapter 7 trustees as to
2 whether or not this was possible or not. They just made the
3 naked assumption that they would do work based upon what they
4 said was their experience. And Mr. Seery's deposition, when
5 it was taken and noticed as a 30(b)(6) deposition, and I
6 believe it has been entered into evidence here, he said the
7 last time he dealt with a Chapter 7 trustee was 11 or 13 years
8 ago, and it was the *Lehman* case, and that was the -- a SIPC
9 trustee. So --

10 THE COURT: Well, --

11 MR. TAYLOR: -- that's the last time he had any
12 experience with it.

13 THE COURT: -- again, I don't mean to belabor this
14 point, just like I didn't mean to belabor a few others. But,
15 you know, there is a mechanism, yes, in Chapter 7, Section
16 704, for a trustee to seek court authority to operate a
17 business. But it's not a statute that contemplates long-term
18 operation. Okay? It's just, oh, we've got a little bit of --
19 you know, we have some assets here that really require a
20 short-term operation here.

21 If it's long-term, then you convert to Chapter 11. Okay?
22 It's just a temporary tool, Section 704. Right? Would you
23 agree with me?

24 MR. TAYLOR: That's typically how it has been used.

25 THE COURT: Okay.

1 MR. TAYLOR: But that's not to say that it's limited
2 in time by the statute itself. It doesn't say that it can't
3 go for one year or two years. That can be a short wind-down
4 period.

5 THE COURT: But hasn't your client's argument been
6 this past several weeks that Mr. Seery is moving too fast,
7 he's wanting to sell things and he needs to hold them longer?
8 I mean, these two argument seem inconsistent to me.

9 MR. TAYLOR: So, just because a Chapter 7 trustee has
10 been appointed doesn't mean that he has to sell them any
11 faster than Mr. Seery.

12 I think what the -- the problem with the process that has
13 been going on with Mr. Seery, my client's problem with it, is
14 not necessarily the timing but the process that Mr. Seery is
15 going through with these sales. Provide notice, allow more
16 bidders to come in, make sure that he's getting the highest
17 and best price. And if that happens to be Mr. Dondero who
18 offers the highest and best price, great. And if Mr. Dondero
19 gets outbid by somebody, well, that's all the more better for
20 the estate.

21 THE COURT: Okay. Continue your argument.

22 MR. TAYLOR: I believe we covered a lot of it, Your
23 Honor, and the plan analysis is all based upon their
24 assumptions that there's \$257 million worth of value. Again,
25 there's no rollup provided as to how that asset allocation is

1 broken out, but they consist of a couple of items.

2 First, there's the notes; and second, there's the assets.
3 The notes are either long-term or demand notes. Those long-
4 term notes, Mr. Seery will tell you some have been validly
5 accelerated and therefore are now due and payable. I think
6 there's arguments to the contrary. But those long-term notes
7 probably have some both time value of money and collection
8 costs. And then, of course, you have to discount them by
9 collectability issues, too.

10 I don't believe any analysis went into it, or at least the
11 Court was not provided any data or analysis as to what
12 discounts were applied to those notes. And, therefore, I
13 don't think that this Court can make any determination that
14 the best interests of the creditors have been met.

15 As far as the assets that are to be monetized, again,
16 there's two sub-buckets of those assets. There's securities
17 that are to be sold. Some of those are semi-public securities
18 that have markets. Those are somewhat more readily
19 ascertained. The others are holdings in private equity
20 companies, and sometimes holdings in companies that own other
21 companies.

22 There's no evidence of the value -- empirical evidence of
23 the value of those companies, nor of the assumptions that went
24 into as to when they should be sold, how much they'd be sold
25 for.

1 Again, I do realize the sensitive nature of such
2 information, but that could have been placed under seal. And
3 without that information, I don't believe that the Court can
4 conduct the due diligence it's necessary to say the best
5 interest of the creditors have been met.

6 To sum up, Your Honor -- oh, I'm sorry. One other point
7 that I did want to talk about before I summed up is, you know,
8 Mr. Pomerantz and I were listening to a different record or I
9 was totally confused as to the testimony that was put forth
10 regarding the directors and officers. I believe the testimony
11 in the record is extremely clear that the Debtor made no
12 effort to go out and find out if it could obtain directors and
13 officers insurance without a gatekeeping injunction or a
14 channeling injunction, whatever you want to call it. I
15 believe that his testimony was extremely clear. He didn't
16 shop it. He doesn't know. And that's what the record is
17 before this Court.

18 To the extent that the Debtor wants to rely upon we can't
19 get Debtor -- or, directors and officers insurance because
20 without this gatekeeping function we just can't get it, I
21 believe the record just wholly does not support that. The
22 testimony was at least extremely clear, as how I heard it.
23 Your Honor will have to review the record herself, but I don't
24 believe that there was much argument about it.

25 I'm sure -- as I stated in the beginning, Your Honor, this

1 is a court of equity. It could deny confirmation, as I
2 believe Your Honor should, based upon the flaws in the plan.

3 If Your Honor finds that the plan as written is
4 impermissible because of any of the exculpation or the
5 gatekeeping functions that they're asking, the testimony is
6 equally clear that the independent directors would not serve
7 in -- as officers of the Reorganized Debtor. Any plan that is
8 put forth by the Debtor has to tell the people who are going
9 to be officers going forward. And with that naked testimony
10 before the Court, that it's simply not feasible, and I don't
11 think it is one of the possible -- where the Court can come
12 back and say, well, I can't confirm this plan as written, but
13 if you change it and rewrite it to get rid of the certain
14 offensive parts of the exculpation or the gatekeeping
15 functions, then we can confirm this plan. And I think the
16 evidence before this Court is it's not feasible because none
17 of the directors will serve in that capacity, and therefore
18 this plan should be dead on arrival if Your Honor agrees the
19 proposed provisions do not meet *Pacific Lumber*.

20 We would ask the Court to deny confirmation, but in the
21 alternative, to at least take this under advisement. Give us
22 a time frame -- we'd ask for 30 days -- but give us a time
23 frame of when the Court is going to rule, to allow the
24 positive conversations to move forward.

25 To that end, Your Honor, there is, indeed, a hearing on

1 the extension of a temporary injunction and contempt that is
2 scheduled for Friday. I understand that the parties, at least
3 the joint parties, will not -- will agree to, I'm sorry, will
4 agree to the extension of the temporary injunction until such
5 time as the Court can rule on confirmation. I do see that
6 there could be a lot of harm done at the Friday hearing. We
7 would ask that the Court additionally continue that hearing on
8 that motion and on the injunction, and contempt, until such
9 time as confirmation has been ruled upon. It will be both
10 efficient and allow discussions to continue regarding
11 potential global resolution.

12 And so that is the end of my argument, Your Honor.

13 THE COURT: All right. Thank you. All right. Mr.
14 Pomerantz, do you have any rebuttal?

15 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

16 MR. POMERANTZ: Yes, I do, Your Honor. I want to
17 address a couple of comments that Mr. Taylor made towards the
18 end. First of all -- and, actually, the beginning.

19 We think Your Honor should rule on confirmation. Ruling
20 on confirmation and having an entered confirmation order are
21 two separate things. We understand that a new offer was made.
22 Whether that's acceptable to the Committee -- I actually think
23 it will enhance the ability of the parties to see if they
24 could reach a deal if there's (audio gap) that Your Honor is
25 going to confirm the plan.

1 Again, doesn't mean a confirmation order has to be
2 entered, but I think, based upon my personal experience in
3 negotiating with Mr. Dondero, that your clear communication to
4 the parties that, unless something happens, you will enter a
5 confirmation order, I think will change things. Okay?
6 Without getting into settlement discussions, things have
7 changed over the last several days, and we wish you would have
8 -- wish things would have happened sooner. But we totally
9 disagree that Your Honor should hold your ruling for 30 days
10 or any other period of time.

11 Part of the reason I think they are making that argument
12 is because they have an examiner motion and they recognize
13 that, upon confirmation, the examiner motion is moot. So I
14 think there's strategic reasons as well.

15 We don't think there should be a continuance of the TRO
16 hearing and of the contempt hearing. As Your Honor recalls,
17 the contempt motion was specifically set for this time to give
18 Mr. Dondero enough time to prepare. Your Honor was sensitive
19 to his due process concerns. We set the TRO, the preliminary
20 injunction hearing against the Advisors and the Funds, we set
21 that, again, knowing that it would be after confirmation.

22 So we do not agree that either should be continued.
23 Again, we think the more direct, unequivocal answers Your
24 Honor can give to the parties, the better off we'll be.

25 I guess -- Mr. Taylor and I do agree that the record was

1 clear. I guess we just disagree on the clarity of it. I
2 heard Mr. Tauber testify that when he went out to people, to
3 insurance carriers, after he and Aon were engaged, they all
4 talked about a Dondero exclusion. Okay? They weren't
5 convinced into a gatekeeper provision because it was provided
6 as part of the normal materials you would provide in a
7 bankruptcy court and trying to get D&O liability in the
8 context of a bankruptcy case. Mr. Tauber's testimony was
9 pretty clear, that carriers wanted to have a Dondero
10 exclusion. And, in fact, the only reason we were able to get
11 any coverage was because of the gatekeeper.

12 So, yes, the record was clear. We just disagree.

13 I'd like to go back to Mr. Draper's comments going -- and
14 a couple of things, obviously, overlap. I guess one of the
15 things here, it's great that everyone is coming in here as
16 different interests and different parties or whatnot. But as
17 I mentioned, Your Honor, at the outset, and I've repeated a
18 few times, these are all -- the only people we have not been
19 able to resolve issues with are the Dondero parties and the
20 related parties. And I recall the tentacles. Mr. Davor
21 questioned that. Mr. Clemente, his comments. But the fact of
22 the matter is, Your Honor, Your Honor has heard testimony.
23 Your Honor has had hearings. Mr. Rukavina represents the
24 Advisors and the Funds. Your Honor has never seen the
25 independent board member testify in this case to demonstrate

1 how these entities are really different. So while Mr.
2 Rukavina does -- you know, tries his best, and I think he has
3 limited stuff to work with, but I give him credit for doing
4 the best he can, these are all Dondero-related entities and
5 Your Honor has seen that.

6 So, Your Honor, going to the resolicitation argument, it
7 actually has taken up a lot more time than the argument is
8 worth, for one very simple reason. As I said in my argument,
9 and as Mr. Taylor and Mr. Draper totally ignored, there were
10 17 creditors who voted yes, 17 creditors who were apparently
11 misled, that Mr. Draper is looking out for the little guy and
12 Mr. Taylor is fumbling over his reason for why that's
13 important to Dondero. And of those 17 creditors that voted
14 yes, Your Honor, they were either the employees related to
15 HarbourVest, UBS, Redeemer, or Acis, except for two. And you
16 know the other two? One was Contrarian, a claim buyer, who,
17 yeah, elected to be in Class 7, and the other was an employee
18 with a dollar claim.

19 So the whole argument that there should be a
20 resolicitation is preposterous, Your Honor. But to go to some
21 of the specifics in what they argued, we didn't require
22 creditors to monitor recovery. The footnote -- as I
23 indicated, the UBS 3018 was in the disclosure statement that
24 went out. It didn't make it to the projections. It was
25 clearly -- and they characterize it, I think Mr. Draper

1 characterized it as buried in the document. There is a
2 section that every disclosure statement is required to have
3 called Risk Factors. This disclosure statement had that. And
4 in the disclosure statement, it talked about the amount of
5 claims being a risk factor.

6 Mr. Draper also said that the Debtor totally changed its
7 business model from the first to the second analysis. That is
8 incorrect. The Debtor was always going to manage funds. Yes,
9 did they add the CLOs? But before, they were going to manage
10 Multi-Strat, they were going to manage Restoration Capital,
11 they were going to oversee Korea, they were going to be doing
12 the management of the funds. So there wasn't a big change in
13 the business model, Your Honor.

14 Mr. Taylor, on the solicitation issue, says we found \$67
15 million in assets. You know, that's a disingenuous statement.
16 I think over \$20 million was found because his client and
17 related entities didn't make a payment on notes and they got
18 accelerated. So while before we would have had to wait over
19 time if they were paid, it's not surprising that Mr. Dondero
20 and his related entities just failed to basically pay the
21 notes.

22 So that was, I think, over \$20 million. And then there
23 was the HCLOF asset. That was acquired in the HarbourVest
24 settlement. And then there was basically an increase in some
25 value to some assets.

1 So there wasn't anything mysterious here. There wasn't
2 anything that the Debtor was trying to hide. There weren't
3 any found assets. It was based upon different circumstances.

4 Mr. Taylor complains about the lack of rollup of assets,
5 the lack of evidence on the best interests of creditors test.
6 Your Honor, you've had extensive testimony from Mr. Seery
7 about what would happen in a Chapter 7 and what would happen
8 in a Chapter 11. And you know why we didn't provide the
9 information to Mr. Taylor and his client on what the rollup of
10 the assets would be, and do you know why he wants them? He
11 wants to know what the assets are so he can try to bid.

12 And there also was the allegation that the failure to
13 allow them to bid means we're going to get less in a Chapter
14 11 than a 7. Two comments to that, Your Honor. Number one,
15 if that was the case, a debtor would never be able to satisfy
16 the best interests of creditors test. If the existence of a
17 public process *de facto* meant you would get more value than
18 outside, you would never be able to satisfy that. And, quite
19 honestly, that's just not the law, Your Honor.

20 You have an Oversight Committee with over \$200 million of
21 creditors who are going to watch Mr. Seery like a hawk, like
22 they have watched him during the case. And the concern that
23 somehow, because these assets are not put into full view to
24 sell, that they will get less value, it's just not -- it's not
25 supported by the evidence at all, Your Honor. And Mr. Seery

1 will make the determination. If it makes sense to notice up
2 and provide Mr. Dondero with notice, he will. If he doesn't,
3 he won't.

4 Your Honor, going -- oh, and then the last comment on the
5 -- that I'll make on the resolicitation and the liquidation
6 analysis is Mr. Taylor chides us and we've been criticized for
7 not disclosing more about the HarbourVest and the UBS
8 settlements and that we were off substantially. Your Honor,
9 you've heard testimony that we were in pending litigation with
10 HarbourVest and UBS at the time. What kind of litigant would
11 we be if we came in and said, you know, Your Honor, you know,
12 Creditors, we think the UBS claim is going to be allowed at
13 \$60 million and we think the HarbourVest claim is going to be
14 allowed at \$30 million? Would that really have benefited
15 creditors and this estate, to basically, after we took the
16 position, hard negotiations and hard pleadings that we
17 prepared, and in some cases filed, that we didn't have any
18 liability? It would have made no sense, and it would have
19 been a dereliction of our duty to actually come out and say
20 what the claims -- the claims were, or what we thought they
21 could be settled for.

22 Your Honor, going back to Mr. Draper's comments. He
23 started with the exculpation. First he made a comment that I
24 don't think he intended what he said, but he said that the
25 exculpation order, the January 9th order, cuts off when the

1 independent directors go away. I think what he meant to say
2 is that since the three people are not going to be independent
3 directors anymore, that basically any actions going forward by
4 any of those three are not covered. But let's be clear. The
5 January 9th order is in effect, and if at some point in the
6 future somebody has a claim against those three gentleman, or
7 their agents, for what they did as independent directors or
8 their agents, that order will apply.

9 Your Honor, we next had a discussion, or Mr. Draper and
10 you had a discussion on professionals. I'm aware of the Fifth
11 Circuit law that says *res judicata*, fee applications. I think
12 that only applies to claims that the Debtor and estate would
13 have. It doesn't really apply to an exculpation. But there's
14 Texas state law that I identified in our brief and we cited to
15 that limits third parties' ability to go after professionals.

16 But the bottom line is the Fifth Circuit, in *Pacific*
17 *Lumber*, didn't deal with professionals. Your Honor was
18 correct in pushing both Mr. Taylor and Mr. Rukavina. What
19 really that was was a policy case. And professionals have
20 nothing to do with 524(e). So the *Palco* and the *Pacific*
21 *Lumber* reference and explanation of 524(e) doesn't have
22 anything to do with professionals. And we would submit, Your
23 Honor, that an exculpation, especially in a case like this, is
24 important for professionals.

25 I understand Your Honor's comments that maybe it's much

1 ado about nothing, but I'm not really sure it's much ado about
2 nothing when we have Mr. Dondero and his affiliates who,
3 notwithstanding their efforts to just claim that all they are
4 doing is trying to get a fair shake, Your Honor knows better.
5 Your Honor knows better from the years you've been litigating
6 with them, and we know better and the Debtor knows better from
7 what the independent directors have been dealing with.

8 THE COURT: Let me ask you this, though. I came into
9 the hearing with the impression we were just talking about
10 postpetition pre-confirmation, or pre-effective date maybe I
11 should say, was the expanse of time covered by exculpation.
12 And Mr. Rukavina said no, no, no, go back, look at, I don't
13 know, Subsection 4 of something. It is a post-confirmation
14 concept. What is your response to that?

15 MR. POMERANTZ: I believe it's implementation. And,
16 again, --

17 THE COURT: Implementation? Yes.

18 MR. POMERANTZ: -- I think Mr. Rukavina -- right. I
19 think Mr. Rukavina and Mr. Taylor and Mr. Draper have done a
20 great job trying to muddy the issues. They talk about our
21 sleight of hand and how we're trying to do things that are way
22 beyond the bankruptcy court's jurisdiction. We are not. I
23 think they are trying -- what they have done throughout the
24 case is throw up enough mud. And here's, here's the answer to
25 that question, Your Honor. Implementation. Okay? We know

1 what implementation means. The plan says implementation is
2 cancelation of the equity interests, creation of new general
3 partners, restatement of the limited partners, establishment
4 of the Claimant Trust and Litigation Sub-Trust. That's the
5 implementation.

6 We are not trying to get exculpation for post-confirmation
7 activity. Actually, my partner, Mr. Kharasch, in specifically
8 addressing Mr. Rukavina's concern, said, look, if you have a
9 problem with cause, if you have a problem, want to exercise
10 your rights, we're only asking you to come back to the Court.
11 We are not stopping you.

12 So the whole argument that the exculpation is really broad
13 and is not really -- does not really cover just the plan, the
14 approved plan, I think is a red herring. Implementation is
15 implementation in the context of the plan.

16 And also Mr. Rukavina tries to argue that, well, it's
17 administration, it's not really you acting any operation of
18 business. I just don't think there's any support in the case
19 law. Your Honor has overseen this case, overseen this
20 Debtor's activities, overseen the independent directors'
21 activities, overseen Strand's activities, overseen the
22 employees' activities. And those activities have been
23 (indecipherable) administration of the case. And his attempt
24 to create a different category for, well, it's not
25 administration, it's operation and so it doesn't apply, I just

1 think is wrong.

2 Your Honor made a couple of comments about what was
3 *Pacific Lumber* doing. It was a policy decision. If there was
4 a bright-line rule, then nobody would be entitled to
5 exculpation. The very fact that the Fifth Circuit said that
6 Committee members are different made -- makes it clear it was
7 -- it was policy.

8 And Mr. Taylor's comments that, well, their creation of
9 statute, Chapter 11 trustees and Committee members, that's not
10 what basically the case said. If you look at the citation to
11 touters in the case, it was we want people to volunteer and
12 who are needed for the process. Committee members are needed
13 for the process. We don't want to discourage them from coming
14 in. And the only testimony you have on the independent
15 directors is from Mr. Dubel, and he testified the importance
16 of independent directors to modern-day Chapter 11 practice,
17 the importance of exculpation, indemnification, and D&O
18 insurance. And his testimony: uncontroverted. The Objectors
19 could have brought in someone to say something different, but
20 the only testimony before Your Honor is, if Your Honor does
21 not approve exculpations in cases like this, you will not get
22 independent directors and it will have an adverse effect on
23 the Chapter 11 process.

24 So, while I appreciate all the Objectors trying to say
25 bright line, trying to say *Pacific Lumber*, that is the gut

1 reaction, right? That's -- it's easy to say. But Your Honor
2 will know better, from reading the cases, that's not what
3 *Pacific Lumber* says. And for the several reasons I gave, it's
4 the reason why *Pacific Lumber* does not govern the decision in
5 this case.

6 Your Honor, Mr. Draper then started to talk about *Craig*.
7 And everyone cites *Craig* as this, you know, limiting
8 jurisdiction. Now, we acknowledge that *Craig* and the Fifth
9 Circuit has a more limited post-confirmation jurisdiction
10 approach than the other Circuits, but it's not nonexistent.
11 And just because the Debtor is going out post-confirmation and
12 acting does not mean that the conduct that they are engaging
13 in is not -- and disputes that arise, doesn't come within the
14 Court's jurisdiction. If that was the case, and I think Your
15 Honor recognized this, in your case it was the *TXMS* case,
16 while it's limited, more limited after confirmation, and I
17 think you even, in the case -- or, in one case of yours, said
18 that even after the case is closed there could be
19 jurisdiction. So their just trying to argue *Craig* is just --
20 is just too much.

21 Going out of the gatekeeper, Mr. Draper tried to say we
22 are *Barton*, and that's it, and *Barton* has its limitations, et
23 cetera. First of all, with respect to *Barton*, it is not
24 limited and doesn't include debtors-in-possession. We have
25 cited cases in our materials where it has been applied to

1 debtors-in-possession.

2 So, you know, look, maybe this is a provision -- this is a
3 proposition like many in bankruptcy, you could find a
4 bankruptcy court to agree with a proposition, but there's
5 cases all over the place on that. There's cases applying to
6 post-confirmation. The trend has been to expand *Barton*. But
7 the beauty of it is, Your Honor, you don't have to rely on
8 *Barton*. *Barton* was one of our arguments. We gave *Barton* as,
9 you know, somewhat of an analogy but somehow applying because
10 in the -- because the independent directors were like the
11 trustees.

12 But we recognize it may be going farther than *Barton* has
13 previously gone. But the case law is clear, it is being
14 extended. But we -- I gave you several provisions of the
15 Bankruptcy Code that authorized you to enter a gatekeeper
16 order. None of the Objectors objected on any of those
17 grounds. They didn't say the statutes that I cited. And it
18 wasn't only 105, I know bankruptcy practitioners love to cite
19 105, but there were three or four others that I mentioned, and
20 they're in our brief. There's no case that they cited that
21 said that there is no authority on the gatekeeper.

22 But what was the argument that was raised? And I think
23 Mr. Rukavina raised it, saying, you know, look, I don't
24 understand the argument of no jurisdiction, of jurisdiction
25 for a gatekeeper but no jurisdiction for underlying cause of

1 action. Well, Mr. Rukavina should read and Your Honor should
2 read, when you're considering the plan, the case, the *Villegas*
3 case in the Fifth Circuit as it dealt with *Stern*. That was
4 particularly a case. Does *Barton* -- is *Barton* impacted from
5 *Stern*? By *Stern*? And *Stern*, we know, limits the bankruptcy
6 court's jurisdiction. But, no, the Fifth Circuit said, in
7 that case, no. Even though the bankruptcy court's
8 jurisdiction is limited to hear the claim, there is nothing
9 inconsistent with that and allowing the bankruptcy court to
10 act as a gatekeeper.

11 So Mr. Rukavina's argument that, well, he'll present to
12 you that there's cause and you'll find there's no cause and
13 then he will be without a remedy by someone that had
14 jurisdiction, that really sounds good but it just doesn't
15 withstand analytic scrutiny. There is a distinction. They
16 are glossing over the distinction. They don't like the
17 distinction.

18 And why is that distinction -- and why is it important in
19 this case? Again, we're not talking about garden-variety
20 people who are just involved with a debtor and will get caught
21 up in a bankruptcy. We narrowly tailored the gatekeeper to
22 enjoined parties. Enjoined parties are the people before Your
23 Honor, some of the people that have made the Debtor's life
24 miserable over the last few months.

25 We have every interest and desire, as does the Committee,

1 to go out post-confirmation and monetize these assets. But we
2 see the clouds on the horizon. We see all the pleadings that
3 have been filed by the Objectors saying how, if there's no
4 deal, there will be an unending amount of costs and appeals.
5 It's, you know, the point, not too subtle. It wasn't lost on
6 us.

7 Your Honor, going to Mr. Rukavina's arguments on Class 8
8 cram down, again, it's really a hard argument to understand,
9 but first I want to make a point. He sort of mentioned -- and
10 I'm not sure if he intends to preserve this on appeal, but it
11 was not objected to and I'll ask for a ruling on it, Your
12 Honor -- he said that there was inappropriate separate
13 classification. That was not raised in any of the objections.
14 We don't think it was properly before the Court. We
15 understand there's a component of that in unfair
16 discrimination in connection with a cram down, but there is no
17 objection, there was no filed objection, to the separate
18 classification of the deficiency claims and the Class 8
19 unsecured claims.

20 And if you look at the voting, you realize it wasn't done
21 for gerrymandering, because if you put both claims together,
22 both classes together, you would have had one class that voted
23 yes.

24 So I don't believe the separate classification under the
25 1129 standards is appropriate for Your Honor to consider,

1 other than in connection with the cram down.

2 Now, Mr. Rukavina complains that the only way the
3 convenience class was decided was by way of negotiation. Your
4 Honor, how else do provisions like that get decided? And who
5 was the negotiation between? It was between the Committee.
6 And one of the benefits of a Committee process, and I
7 represent a lot of Committees, you put people in a Committee
8 that have diverse interests and they can come up with an
9 appropriate result. And here you have that. You had one
10 creditor who was a convenience creditor. You have three other
11 creditors who would lose liquidity if convenience payments are
12 made.

13 Do you think that UBS, Acis and Redeemer, do you think
14 they had a desire just to pay people off? No. It was part of
15 a collaborative process. So to say that there was no basis
16 and no testimony on the appropriateness to have -- and how the
17 convenience class was put together just would be wrong.

18 And with respect to the absolute priority rule, Your
19 Honor, again, there's a missing link here, okay? These are
20 contingent interests. They are property. No doubt they are
21 property. But if I did not allow those creditors or those
22 equity to have a contingent interest, the argument would have
23 been made that the plan violates the absolute priority rule.
24 And I said that in my argument. And why would it have
25 violated the absolute priority rule? Because there's a

1 potential that creditors could get over a hundred cents on the
2 dollar, plus interest. So it's a game of gotcha, right?

3 And why do they really care? Mr. Dugaboy said in his --
4 Mr. Draper said in his brief that Dugaboy cares because they
5 may have wanted to buy the interest. Well, I'm sure they can
6 go to Hunter Mountain, you know, Mr. Dondero's left hand can
7 go to his right hand, and I'm sure he'd be happy to sell the
8 contingent interests.

9 And with respect to the argument that Mr. Rukavina made
10 about control, equity be in control, yeah, control is a right.
11 No doubt. You've got -- if you're giving control to the post-
12 confirmation Debtor, that could be a right and implicate the
13 absolute priority rule. But what is the control here? Equity
14 is not given any rights. Your Honor heard how the post-
15 confirmation entity is structured. It's going to be Mr.
16 Seery, overseen by an Oversight Board. So I really don't
17 understand the concept of control. There just is no violation
18 of the absolute priority rule.

19 Your Honor, Mr. Rukavina then took us to task for 2000 --
20 or, for not filing the 2015.3 statement. And if you take his
21 argument to the logical conclusion -- well, we didn't file it,
22 we didn't comply with that Rule, so we're not in compliance
23 with the Bankruptcy Code, so we can never basically get our
24 plan confirmed, right, because it's a violation and we didn't
25 file and seek an extension.

1 That's just a preposterous argument, Your Honor. Mr.
2 Seery poignantly told the Court, in the rush of things that
3 were going on, it wasn't filed. Did Mr. Rukavina, before
4 yesterday, having Mr. Dubel on the stand, did he ever ask
5 where is our 2015.3 report? He probably didn't ask it because
6 the answer -- when I told him the reason why it wasn't filed
7 before January 9 was because I don't think Mr. Dondero wanted
8 it filed, and I think that's why, as Mr. Seery testified, we
9 were having a challenging time getting that information from
10 the in-house -- in-house.

11 But, yes, should it have been filed? Yes. But if that is
12 all they could point to through the course of the case that
13 Mr. Seery or Mr. -- or the rest of the board did wrong, you
14 know, I think that just demonstrates they did a fine job.

15 THE COURT: All right.

16 MR. POMERANTZ: Your Honor?

17 THE COURT: You've got four minutes left.

18 MR. POMERANTZ: Oh. Okay. Your Honor, going to Mr.
19 Rukavina and the Strand argument that it's a nondebtor entity,
20 as I explained in my argument, the Strand -- Strand needs to
21 get exculpation or else that's a backdoor way to the Debtor.
22 Forget about the independent directors, it's a backdoor way to
23 the Debtor. Because Mr. Dondero will be in control. If
24 Strand is sued for post-January 9th activities, he will assert
25 an administrative claim. And one thing from *Pacific Lumber* is

1 clear, the Debtor is entitled to an exculpation as part of the
2 injunction and the -- and the discharge.

3 Your Honor, Mr. Kharasch adequately addressed Mr.
4 Rukavina's comments with the gatekeeper and the gatekeeper
5 problem. We are not seeking to stop his clients, however
6 related they may be, from exercising their rights. We are
7 seeking a process that will not embroil the Debtor in
8 litigation going forward. There is no problem with Your Honor
9 acting as the gatekeeper to do so. And to the extent that
10 they are bound by the January 9th order is not really an issue
11 for today. That'll be an issue at the temporary -- the
12 temporary -- at the preliminary injunction hearing.

13 I -- just one minute, Your Honor.

14 (Pause.)

15 MR. POMERANTZ: Your Honor, I think I covered a lot.
16 If there's anything that any of the Objectors have mentioned
17 that I failed to respond to, I'd be happy to answer questions
18 Your Honor has.

19 THE COURT: All right. I guess there's, what, about
20 two minutes left, if Mr. Clemente had anything.

21 Mr. Clemente, have you drifted off? I doubt it. But
22 anything else from you, Mr. Clemente?

23 MR. TAYLOR: Your Honor, I show him talking -- this
24 is Clay Taylor -- but no one's hearing him.

25 THE COURT: Okay. Mr. Clemente, we are not hearing

1 you, or I'm not seeing you. Make sure you're not on mute.

2 THE CLERK: He's not on mute, Judge.

3 THE COURT: He's not on mute? So we must have a
4 bandwidth issue or something else.

5 All right. Mr. Clemente, still not hearing or seeing you.
6 We'll give him another 30 seconds.

7 THE CLERK: He's coming up.

8 THE COURT: He's coming up? Ah, I see his name now.

9 MR. CLEMENTE: Your Honor, can you hear me?

10 THE COURT: I can hear you now.

11 MR. CLEMENTE: Okay, Your Honor. I don't know what
12 happened. I just switched another camera, so you may not be
13 able to see me, but can you hear me? I'll be very quick.

14 THE COURT: Okay. I can hear you.

15 MR. CLEMENTE: Can you hear me?

16 THE COURT: Yes.

17 MR. CLEMENTE: Okay. Thank you, Your Honor.

18 CLOSING ARGUMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

19 MR. CLEMENTE: Two things I want to say. First, just
20 on Class 8, I think what's important, as my comments
21 emphasized earlier, the structure of Class 8. We must
22 remember what it is. It's really designed so that Class 8
23 holders receive their pro rata share of what's left after
24 prior claims are paid. That's really what Class 8 creditors
25 voted on. That's what the disclosure provided. They did not

1 vote on receiving a specific dollar or a specific recovery
2 percentage.

3 And regarding the projections and estimates, Your Honor,
4 we're talking about large litigation claims that were asserted
5 and then settled. And given the nature of these assets, the
6 values fluctuate. It's perfectly expected, Your Honor, and
7 indeed disclosed, that there could be wide swings in the
8 amount of claims. That does not lead to the conclusion that
9 the plan needs to be resolicited.

10 And then, finally, Your Honor, again, Mr. Pomerantz
11 adequately addressed all the points, as he did with his
12 earlier presentation, so I'm not going to touch on them, but I
13 did want to respond to one thing that Mr. Taylor said. And I,
14 of course, agree with Mr. Pomerantz. The Committee believes
15 there's no reason for you to delay a ruling and would in fact
16 urge you to rule as soon as Your Honor is ready to rule.
17 Confirmation of the plan, to the extent that there are
18 conversations occurring, is not going to prevent those
19 conversations from taking place, and they can continue after
20 the plan is confirmed. There's simply nothing inherent in
21 Your Honor confirming the plan that would prevent those
22 conversations from occurring or would ultimately prevent
23 parties from pivoting to a deal on the off-chance that one
24 should be reached.

25 So I just wanted to emphasize, Your Honor, again, Your

1 Honor is going to rule when Your Honor rules, but the
2 Committee would urge you to rule, and certainly the idea that
3 there may or may not be discussions with Mr. Dondero should
4 not at all in any way lead you to the conclusion that you
5 shouldn't rule or that those conversations cannot continue
6 after plan confirmation.

7 Thank you, Your Honor. Unless you have questions for me.
8 And my apologies with the technology.

9 THE COURT: No problem. All right. Here's what I'm
10 going to do. We can see you now, Mr. Clemente.

11 MR. CLEMENTE: Oh. I'm sorry, Your Honor. I
12 switched to another camera again because it wasn't working.
13 So, I apologize.

14 THE COURT: All right. I am going to call you back
15 Monday. What day of the week will that be? Is that -- I
16 mean, Monday, what date, I should say. That'll be the 8th,
17 right? I am going to call you back Monday, this coming
18 Monday, February 8th, at 9:30 Central time, and I am going to
19 give you my ruling. It will be a detailed oral bench ruling.
20 And I'm not going to leave you hanging on the edge of your
21 seat over the next few days. I will tell you I'm inclined to
22 confirm this plan. I think it meets all of the requirements
23 of 1129 and 1123 and 1122.

24 The thing that I am going to spend some time thinking
25 about between now and Monday morning is, no surprise, the

1 propriety of the exculpations, the propriety of the plan
2 injunctions, the propriety of the gatekeeper provisions. I
3 certainly am duty-bound to go back and reread *Pacific Lumber*,
4 to go back and read *Thru, Inc.*, and to really think hard about
5 what is happening here.

6 So, I'm pretty much down, I think, to just those three
7 issues here. I'll talk to my law clerk. He may remind me of
8 something else that I'm not articulating right now. But I
9 think I'm just down to those issues. Okay? So it's not going
10 to be a mystery very long. We will come back Monday, 9:30.
11 My courtroom deputy will post on the docket the WebEx
12 connection instructions as usual, and we'll go from there.

13 Now, --

14 MR. POMERANTZ: Your Honor? Your Honor, this is Jeff
15 Pomerantz. I have a question, and it's going to sound odd
16 coming from someone on the West Coast, but I was wondering if
17 you could do it earlier. And the only reason I say that is,
18 the night before, I have to call in to see if I'm on jury duty
19 on Monday, and it would be helpful to me -- I assume your
20 reading the ruling would be within a half hour, 45 minutes.
21 That if you started at 9:00, if that was possible, I could
22 then get in a car, and if I'm actually called to jury duty, I
23 can get there. Of course, I don't know if I will be called,
24 but I'd hate to miss it.

25 THE COURT: Okay. Well, I don't want to make you

1 miss jury duty. Okay. We will do 9:00 o'clock.

2 MR. POMERANTZ: Thank you, Your Honor.

3 THE COURT: Hopefully no one will be, you know, hung
4 over from watching the Super Bowl. Personally, I don't like
5 Tom Brady, so I may be boycotting the Super Bowl. But maybe
6 I'll watch it. Maybe I'll -- I'll watch it. So we'll do it
7 9:00 o'clock. So 9:00 o'clock next Monday.

8 Now, let's talk about next the currently-set hearing this
9 Friday, February 5th, on the injunction and contempt of court
10 motion as to Mr. Dondero and the other entities. I want to
11 continue that, and here is what I am struggling with. The
12 only day I have next week is Friday, the 12th, and I would
13 rather not use that date because I'm pretty jam-packed Monday
14 through Thursday, unless stuff has been settled that I haven't
15 become aware of. So let me ask two things. First, when is
16 the examiner motion set? I'm just wondering if there's a
17 block of time we have coming up that --

18 MR. POMERANTZ: I believe that's March 2nd, Your
19 Honor, so that's not for another month.

20 THE COURT: Oh, that's not for another month? All
21 right.

22 Traci, are you on the line? I want to ask you --

23 THE CLERK: Yes, I am.

24 THE COURT: What about the following week? I know
25 Monday, the 15th, is a federal holiday, but do we have

1 availability for -- I fear a full day is going to be needed
2 for continuing this Friday setting.

3 THE CLERK: Wednesday, February 17th, is available.

4 THE COURT: We've got all day on Wednesday, February
5 17th?

6 THE CLERK: Yes.

7 THE COURT: All right. What about that? I think I
8 heard Mr. Rukavina, I think he's the one who threw it out
9 there -- or maybe it was Mr. Taylor; I'm getting mixed up --
10 the possibility that they would agree to a continuation of the
11 preliminary injunction through -- well, I think you said
12 through confirmation. Until the Court enters a confirmation
13 order. And if I were to rule and approve confirmation Monday,
14 then we're talking about an order that might be entered sooner
15 than the 17th. So, do you all have any --

16 MR. RUKAVINA: Your Honor?

17 THE COURT: -- mutually-agreeable suggestions? If
18 not, I'm just going to set it the 12th and I'll, you know, I'm
19 killing myself, but I'll --

20 MR. TAYLOR: Your Honor?

21 MR. RUKAVINA: No, Your Honor. I think Your Honor is
22 wise to do what's she's proposing. The agreed TRO against my
23 clients expires on the 15th of February.

24 THE COURT: Uh-huh.

25 MR. RUKAVINA: We can easily move that back a week or

1 a sufficient amount of time so that there's no prejudice by
2 going on the 17th, if that would be acceptable to the Debtor,
3 and then we can just pick a date that's sufficiently after the
4 PI hearing so that there's protection for everyone.

5 THE COURT: All right. Mr. Taylor, do you agree?

6 MR. TAYLOR: Yes, Your Honor. That is acceptable to
7 Mr. Dondero.

8 THE COURT: Okay.

9 MR. TAYLOR: We can also push it back. Can you hear
10 me?

11 THE COURT: Yes, I can. Uh-huh.

12 MR. TAYLOR: Okay.

13 THE COURT: All right.

14 MR. POMERANTZ: I just want to make -- I just want to
15 make sure Mr. Morris, John Morris, is on, since he's taking
16 the lead in those matters. I don't see his picture.

17 MR. MORRIS: I am, Jeff, and I appreciate that. I'm
18 available, Your Honor. We were supposed to take the
19 depositions of Mr. Leventon and Mr. Ellington tomorrow. I
20 don't know if their counsel is on the phone. But given Your
21 Honor's decision to adjourn the hearing from Friday, I would
22 respectfully request at this time that counsel for those two
23 individuals work with me to find a date next week in order to
24 take those depositions.

25 THE COURT: All right. That's --

1 MS. DANDENEAU: Debra Dandeneau from --

2 THE COURT: Go ahead.

3 MS. DANDENEAU: This is Debra Dandeneau from Baker
4 McKenzie. We agree, and we're happy to work with you on a
5 rescheduled time.

6 MR. MORRIS: Thank you very much.

7 THE COURT: All right. All right. So, someone had
8 filed a motion to continue Friday's hearing. I think it was
9 your firm, Mr. Taylor. I already had a motion pending for a
10 few days now. So I'm going to direct you to upload an order,
11 Mr. Taylor, or someone at your firm, continuing the hearing to
12 the 17th at 9:30, with language in there that your -- the
13 injunction is continuing at least through that date. And,
14 again, it's a continuance of the motion for contempt as well
15 as the setting on the preliminary injunction. And, of course,
16 run that by Mr. Morris and Mr. Rukavina.

17 MR. TAYLOR: Sure. Your Honor, this is -- I'm not
18 handling the injunction hearing, or at least I don't think I
19 am. But just so that I'm clear, should maybe the injunction
20 continue through the next day or something, so depending on
21 how Your Honor rules, there's not a rush to try and get an
22 order to you?

23 MR. RUKAVINA: Your Honor, I think that Mr. Morris
24 and I can work this out. Mr. Taylor is not involved in that
25 adversary, that's true, but Mr. Morris and I will be able to

1 very quickly enter a proposed agreed order that extends that
2 TRO for some period of time.

3 THE COURT: Okay.

4 MR. RUKAVINA: I'm not going to be difficult.

5 THE COURT: Okay. So we'll shift to you and Mr.
6 Morris to be the scriveners. I just -- I suggested that
7 because I thought there was a motion to link the order to that
8 had been filed by Bonds Ellis. I may be --

9 MR. MORRIS: There was, Your Honor. There was an
10 emergency motion to continue. We filed an opposition, and
11 Your Honor has not yet ruled on that motion. You're exactly
12 right.

13 THE COURT: Okay. All right.

14 MR. TAYLOR: Your Honor, this is Clay Taylor. I will
15 make sure the right people confer with Davor and John, and
16 we'll get -- we'll link it to that motion, because that makes
17 sense, to have something to link it to.

18 THE COURT: Okay. Yes. And it can be a two-
19 paragraph order, I would think.

20 All right. And then so I'm going to see you Monday at
21 9:00 o'clock Central time with the ruling.

22 Please, don't anyone file anymore paper. I threw that out
23 earlier today. I've got all the paper I need. And I will see
24 you Monday at 9:00 o'clock. Okay? We're adjourned.

25 MR. POMERANTZ: Thank you, Your Honor.

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THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 4:34 p.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling

02/05/2021

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 5

Pro Tunc (the “Order of Reference”) and referring this case to the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). In support of its Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules).

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Defendant Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for an Order to Enforce the Order of Reference* (the “Memorandum of Law”), filed contemporaneously with this Motion, the Debtor requests that the Court: (a) enforce the Order of Reference and refer this case to the Bankruptcy Court, and (b) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, and (b) the *Declaration of Gregory V. Demo Submitted in Support of the Debtor’s Motion for an Order to Enforce the Order of Reference* (the “Demo Declaration”) together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Demo Declaration and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

[Remainder of Page Intentionally Blank]

Dated: May 19, 2021

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Robert J. Feinstein (NY Bar No. 1767805)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Judith Elkin (TX Bar No. 06522200)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
rfeinstein@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jelkin@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

language of the Order of Reference; (d) the Bankruptcy Court retains jurisdiction over all disputes relating to this Complaint; (e) the Bankruptcy Court retains jurisdiction to interpret and enforce its own orders; (f) there is no basis for a mandatory withdrawal of reference of this Complaint; and (g) the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. This proceeding is hereby referred to the Bankruptcy Court.

It is so ordered this _____ day of _____, 2021.

The Honorable Jane J. Boyle
United States District Judge

EXHIBIT 6

**DAF/CLO Holdco
Structure Chart**

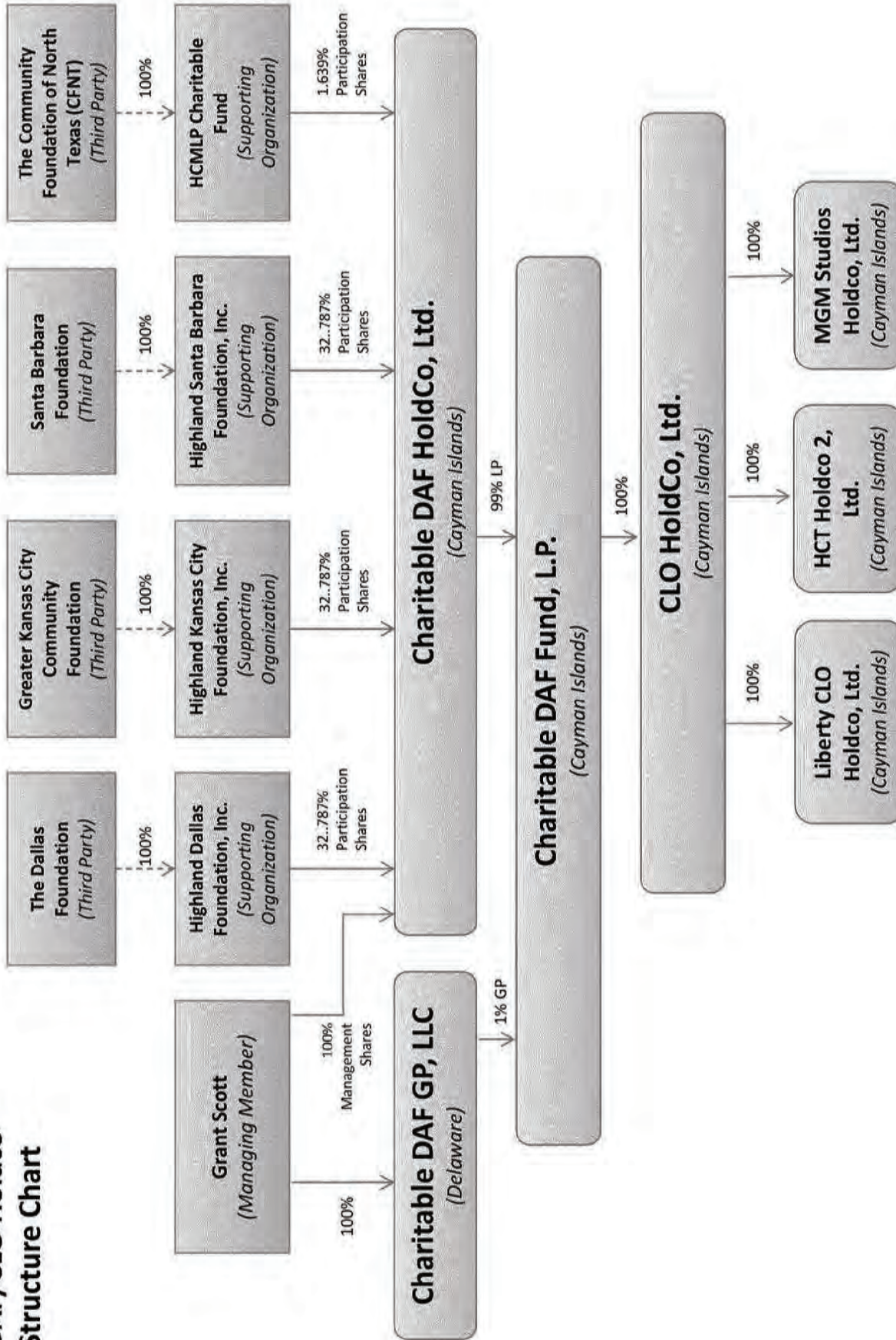


EXHIBIT 7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

Chapter 11

Case No. 19-12239 (CSS)

NOTICE OF APPEARANCE AND REQUEST FOR COPIES

Please take notice that John J. Kane, and the law firm of Kane Russell Coleman Logan PC hereby enter an appearance as counsel of record in the above-captioned case for CLO Holdco, Ltd. (the "**Creditor**"). The Creditor hereby request that all notices given or required to be given, and all papers served or required to be served in the case, be given to and served upon:

John J. Kane
KANE RUSSELL COLEMAN LOGAN PC
901 Main Street, Suite 5200
Dallas, TX 75202
E-mail: jkane@krcl.com

This request encompasses all notices, copies and pleadings referred to or contemplated in the Bankruptcy Code and Bankruptcy Rules, including without limitation, notices of any orders, motions, demands, complaints, plans, disclosure statements, petitions, pleadings, requests, applications and any other documents brought before the Court in this case, and any hearings, trials or proceedings related thereto, which affect or otherwise relate to the above case or Creditor.

Please take notice that the undersigned intends that neither this appearance and request for copies nor any later appearance, pleading, claim, or suit shall waive: (i) the right to have final orders in non-core matters entered only after *de novo* review by a district judge; (ii) the right to trial by jury in any proceeding so triable in this case, controversy, or proceeding related to this case; (iii) the right to have the district court withdraw the reference in any matter subject to mandatory or discretionary

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

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 9**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

EXHIBIT 8

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

In re:)
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹)
) Case No. 19-34054 (SGJ)
)
Debtor.)
)
)

CERTIFICATE OF SERVICE

I, Alyssa Kim-Whittle, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On December 27, 2019, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Joint Motion for Entry of an Order Approving the Agreed Protective Order Between Highland Capital Management, L.P., and the Official Committee of Unsecured Creditors** [Docket No. 280]

Furthermore, on December 27, 2019, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit C** and via Overnight Mail upon the service list attached hereto as **Exhibit D**:

- **Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course** [Docket No. 281]
- **Motion for Setting and Request for Expedited Hearing** [Docket No. 283]

Furthermore, on December 27, 2019, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit C** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

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

- **Supplement to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date** [Docket No. 282]

Dated: January 2, 2020

/s/ Alyssa Kim-Whittle
Alyssa Kim-Whittle
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A
 Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	wbowden@asbygeddes.com; mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jbilioni@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esquire	lisa.l.lambert@usdoj.gov

Exhibit A
 Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaug@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to the Intertrust Entities	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarollo@winstead.com
Proposed Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit B

Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq. Melissa S. Hayward, Zachery Z. Annable	3161 Michelson Drive 10501 N. Central Expy., Ste. 106			Irvine	CA	92612
Proposed Counsel for the Debtor	Hayward & Associates PLLC					Dallas	TX	75231
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC Centralized Insolvency Operation	John Honis	87 Railroad Place Ste 403		Saratoga Springs	NY	12866
IRS	Internal Revenue Service		PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services		New York	NY	10022
Counsel to CLO Holdco, Ltd.	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Secured Creditor	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent as Agent	225 Franklin Street, 18 th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association		127 Public Square			Cleveland	OH	44114
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attanwala	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201

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Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arst & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC Bank	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue			New York	NY	10022
Counsel to California Public Employees' Retirement System ("CalPERS")	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201
SEC Headquarters	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
Texas Attorney General	Office of General Counsel	Securities & Exchange Commission	100 F St NE			Washington	DC	20554
Attorney General of the United States	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
US Attorneys Office for Northern District of TX	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Trustee for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esquire	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
Counsel to City of Garland, Garland ISD, Wylie ISD	Office of the United States Trustee	Lisa L. Lambert, Esquire	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Delaware counsel to Alvarez & Marsal CRF Management LLC	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Secured Creditor	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Counsel to Patrick Daugherty	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue			New York	NY	10022
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Pronks & Kathman, P.C.	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093
SEC Regional Office	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street		Wilmington	DE	19801
Proposed Counsel to Official Committee of Unsecured Creditors	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	520	1617 JFK Boulevard	Philadelphia	PA	19103
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Jefferies	Sidley Austin LLP	Jessica Boelter	787 Seventh Avenue			New York	NY	10019
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Lee S. Attanasio, Esq.	787 Seventh Avenue			New York	NY	10019
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Penny P. Reid, Paige Holden	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
DE Secretary of State	State of Delaware	Revenue Accounting Division- Bankruptcy Section	P.O. Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
TX AG Office	Texas Attorney General's Office	Bankruptcy-Collections Division	300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Dugaboy Investment Trust		P.O. Box 12548			Austin	TX	78711-2548
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court			Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court			Dallas	TX	75201

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Exhibit B

Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
U.S. Department of the Treasury	U.S. Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire	950 Pennsylvania Avenue, NW,	Room 4400	Washington	DC	20530-0001
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

Exhibit C

Exhibit C
 Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	wbowden@asbygeddes.com; mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jbibili@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor IRS	Hayward & Associates PLLC Internal Revenue Service	Melissa S. Hayward, Zachery Z. Annable Attn Susanne Larson	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esquire	lisa.l.lambert@usdoj.gov

Exhibit C

Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rjf.com; silveira@rjf.com
Counsel to the Intertrust Entities	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	Lattanasio@Sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Proposed Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit D

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Exhibit D

Core/2002 List
Served via Overnight Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500	Dallas	TX	75206
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road		Oklahoma City	OK	73129
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis	87 Railroad Place Ste 403	Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St		Philadelphia	PA	19104
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services	New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services	New York	NY	10022
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18 th Floor		Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square		Cleveland	OH	44114
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700	Dallas	TX	75201
Bank	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100	Dallas	TX	75201
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street		Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.	Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esquire	1100 Commerce Street, 3rd Floor		Dallas	TX	75202
Secured Creditor	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue		New York	NY	10022
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	787 Seventh Avenue		New York	NY	10019
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division-Bankruptcy Section	P. O. Box 13258		Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
TX AG Office	Texas Attorney General's Office	Bankruptcy-Collections Division	P. O. Box 12548		Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust – Exempt Trust #1		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust – Exempt Trust #2		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	U.S. Department of the Treasury	Office of General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
U.S. Department of the Treasury	U.S. Department of the Treasury		1500 Pennsylvania Avenue, NW		Washington	DC	20220

EXHIBIT 9




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 9, 2020


United States Bankruptcy Judge

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

-----	§	
In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj 1
	§	
Debtor.	§	Related to Docket Nos. 7 & 259

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF ORDER

EXHIBIT 10

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054 (SGJ)
)
Debtor.)
_____)

CERTIFICATE OF SERVICE

I, Alyssa Kim-Whittle, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On January 9, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Order Authorizing the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019** [Docket No. 334]
- **Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors** [Docket No. 336]
- **Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Co-Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to November 8, 2019** [Docket No. 337]
- **Stipulation in Support of Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course** [Docket No. 338]

[This space intentionally left blank.]

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



- **Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel [Docket No. 340]**

Dated: January 10, 2020

/s/ Alyssa Kim-Whittle
Alyssa Kim-Whittle
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A

Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarn@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	jbain@joneswalker.com; aanderson@joneswalker.com; myoungjohn@joneswalker.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com

Exhibit A

Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfcm.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rjf.com; silveira@rjf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	Lattanasio@Sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit B

Case 1:21-cv-00001-Document 9-9 Filed 09/08/21 Entered 09/08/21 16:49:52 a

Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vlid, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC Centralized Insolvency Operation	87 Railroad Place Ste 403			Saratoga Springs	NY	12866
IRS	Internal Revenue Service		PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	811 Main Street, Suite 2900			Houston	TX	77002
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611

Case 1:23-cv-00011 Document 1-1 Filed 09/08/21 Entered 09/08/21 16:49:52 a

Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Creditor Equity Holders	Lynn Pinker Cox & Hurst, L.L.P. Mark K. Okada	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue	Ste 1100		New York	NY	10022
Bank	NexBank	John Danilowicz	2515 McKinney Ave			Dallas	TX	75201
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	100 F St NE			Washington	DC	20554
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reese	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Secured Creditor	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue			New York	NY	10022
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street		Wilmington	DE	19801
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	1617 JFK Boulevard		Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelker	787 Seventh Avenue			New York	NY	10019
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Lee S. Altanasio, Esq.	787 Seventh Avenue			New York	NY	10019
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
DE Secretary of State	State of Delaware	Revenue Accounting Division - Bankruptcy Section Division of Corporations - Franchise Tax	PO Box 13258	PO Box 898		Austin	TX	78711
			401 Federal Street			Dover	DE	19903

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Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Equity Holders	Strand Advisors, Inc.	Bankruptcy-Collections Division	300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office		PO Box 12548			Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Hanwood Street, Suite 500			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

EXHIBIT 11

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084) (admitted pro hac vice)
Gregory V. Demo (NY Bar No. 5371992) (admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
Debtor.	§	

**Response Deadline: July 10, 2020 at 5:00 p.m.
Hearing Date: July 14, 2020 at 1:30 p.m.**

**DEBTOR’S MOTION UNDER BANKRUPTCY CODE
SECTIONS 105(a) AND 363(b) FOR AUTHORIZATION TO
RETAIN JAMES P. SEERY, JR., AS CHIEF EXECUTIVE OFFICER,
CHIEF RESTRUCTURING OFFICER AND FOREIGN REPRESENTATIVE
*NUNC PRO TUNC TO MARCH 15, 2020***



The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves (the “Motion”) pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), authorizing the Debtor (a) (i) to retain James P. Seery, Jr. as the chief executive officer and chief restructuring officer of the Debtor, pursuant to the terms of the letter attached as Exhibit 1 to the Proposed Order (the “Agreement”) *nunc pro tunc* to March 15, 2020, and (ii) for Mr. Seery to replace the Debtor’s current chief restructuring officer as the Debtor’s foreign representative pursuant to 11 U.S.C. § 1505, and (b) granting related relief. In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”).
4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court. On December 4, 2019,

the Delaware Bankruptcy Court entered an order transferring venue of the Debtor's chapter 11 case to this Court [Docket No. 186].¹

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

6. On December 4, 2019, the Debtor filed in the Delaware Bankruptcy Court its *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) To Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc, as of the Petition Date* [Docket No. 74] (the "CRO Motion"). The CRO Motion sought, among other things, to appoint Bradley Sharp as the Debtor's chief restructuring officer and for DSI to provide financial advisory services to the Debtor in support of Mr. Sharp.

7. On December 27, 2019, the Debtor filed the *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). The Settlement Motion sought approval of the settlement between the Debtor and the Committee and provided for, among other things, the creation of a new independent board of directors of Strand Advisors, Inc.² (the "New Board") consisting of

¹ All docket numbers refer to the docket maintained by this Court.

² Strand Advisors, Inc. ("Strand") is the general partner of the Debtor.

James P. Seery, Jr., John S. Dubel, and Russell Nelms (collectively, the “Independent Directors”).

8. The order granting the Settlement Motion authorized the Debtor to guarantee Strand’s obligations to indemnify each Independent Director pursuant to the terms of any indemnification agreements entered into by Strand with each of the Independent Directors (the “Indemnification Agreements”).

9. The Court entered orders approving the Settlement Motion on January 9, 2020³ and the DSI Approval Order on January 10, 2020.

10. The Settlement Order approved, among other things, a term sheet setting forth the agreement between the Debtor and the Committee. The final term sheet was attached to the *Notice of Final Term Sheet* filed in the Court on January 14, 2020 [Docket No. 354] (the “Final Term Sheet”). The Settlement Order also provided that no entity could commence or pursue a claim or cause of action against any Independent Director and/or his respective advisors and agents relating in any way to his role as an independent director of Strand unless authorized by this Court pursuant to the criteria set forth in the Settlement Order.⁴

11. The Settlement Motion and Final Term each provided that “[a]s soon as practicable after their appointments, the Independent Directors shall, in consultation with the

³ See *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and the Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “Settlement Order”).

⁴ Specifically, paragraph 10 of the Settlement Order provides:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Committee, determine whether a CEO should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as possible, which may be one of the Independent Directors.” Final Term Sheet, page 3; Settlement Motion, ¶ 13.

12. On February 18, 2020, the Court entered its *Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief* [Docket No. 461] (the “Foreign Representative Order”). The Foreign Representative Order authorized Mr. Sharp, as chief restructuring officer, to act as the Debtor’s foreign representative pursuant to section 1515 of the Bankruptcy Code (the “Foreign Representative”). The Foreign Representative specifically appointed Mr. Sharp to act as the Debtor’s foreign insolvency officeholder to seek appropriate relief in Bermuda pursuant to Bermudian common law (the “Bermuda Foreign Representative”) and the Cayman Islands pursuant to Section 241(1) of the Companies Law (2019 Revision) with respect to that British overseas territory (the “Cayman Foreign Representative”).

13. Since the appointment of the Independent Directors, it was apparent that it would be more efficient to have a traditional corporate management structure oversee the Debtor – i.e., a fully engaged chief executive officer supervised by the New Board – as contemplated by the Final Term Sheet. This need was driven by the complexity of the Debtor’s organization and business operations and the need for daily management and oversight of the Debtor’s personnel. The search for a chief executive officer, however, was delayed while the Independent Directors made initial efforts to learn the Debtor’s business and its day-to-day operations. It was further delayed with the onset of the COVID-19 global pandemic, which both had a serious impact on

the Debtor's operations and assets and limited the Independent Directors' ability to search for an appropriate chief executive officer.

14. During this time, however, Mr. Seery integrated himself into the daily operations of the Debtor and became essential in stabilizing the Debtor's assets and trading accounts during the economic distress caused by COVID-19. While Mr. Dubel and Mr. Nelms were each spending on average approximately 140 hours a month addressing the operational issues facing the Debtor and certain of its fund entities, Mr. Seery's workload was at least 180 hours a month.

15. As such, it was readily apparent to the Independent Directors who would be the best fit for the role: Mr. Seery. Mr. Seery had the appropriate skill set, extensive relevant background, and was already carrying the responsibility of the role. Mr. Seery had been functionally operating as the Debtor's de facto chief executive officer since at least early March and was already overseeing the Debtor's ordinary course operations, including managing the Debtor's personnel and the daily interactions with the Debtor's bankruptcy professionals

16. The Independent Directors subsequently appointed a compensation committee consisting of Messrs. Dubel and Nelms (the "Compensation Committee") to negotiate the terms and conditions of the Agreement on behalf of the Debtor. And, on June 23, 2020, the Compensation Committee approved the appointment of Mr. Seery to serve as both the Debtor's chief executive officer and chief restructuring officer concurrently with his role as one of the Independent Directors pursuant to the terms of the Agreement. Because Mr. Seery has been fulfilling the role since March 2020, the Compensation Committee determined that it was appropriate to make Mr. Seery's appointment as the Debtor's chief executive officer and chief

restructuring officer effective as of March 15, 2020.⁵ The Independent Directors also authorized the Debtor to file this Motion.

A. The Chief Executive Officer and Chief Restructuring Officer Positions

17. Mr. Seery has agreed to, among other things, provide daily leadership and direction to the Debtor's employees on business and restructuring matters relating to the Debtor's chapter 11 case. In that capacity, he will direct the Debtor's day-to-day ordinary course operations, oversee the Debtor's personnel, make management decisions with respect to the Debtor's trading operations, direct the Debtor's reorganization efforts, monetize the Debtor's assets, oversee the claims objection and resolution process, and lead the process toward the hopeful consensual confirmation of a plan in this chapter 11 case in the capacities as chief executive officer and chief restructuring officer positions. Mr. Seery would report directly to the New Board and would continue to serve as an Independent Director, as provided under the Settlement Order.

18. Mr. Seery has extensive management and restructuring experience. Mr. Seery recently served as a Senior Managing Director at Guggenheim Securities, LLC, where he was responsible for helping direct the development of a credit business. Prior to joining Guggenheim, Mr. Seery was the President and a senior investing partner of River Birch Capital, LLC, where he was responsible for originating, executing, and managing stressed and distressed credit investments. Mr. Seery is also a long-time attorney licensed to practice in New York who

⁵ The Committee has also agreed to Mr. Seery's appointment as chief executive officer and chief restructuring officer and to the amount of Mr. Seery's Base Compensation (as defined below). The Committee has not agreed, however, as to the amount and timing of the payment of the Restructuring Fee (defined below) and are continuing to discuss payment of the Restructuring Fee with the Compensation Committee.

has run corporate reorganization groups and numerous restructuring matters. He also served as a Commissioner of the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. Mr. Seery was also a Managing Director and the Global Head of Lehman Brothers' Fixed Income Loan business where he was responsible for managing the firm's investment grade and high yield loans business, including underwriting commitments, distribution, hedging, trading and sales (including CLO manager relationships), portfolio management and restructuring. From 2000 to 2004, Mr. Seery ran Lehman Brothers' restructuring and workout businesses with responsibility for the management of distressed corporate debt investments and was a key member of the small team that successfully sold Lehman Brothers to Barclays in 2008.

The Agreement

19. The Compensation Committee negotiated the Agreement with Mr. Seery at arm's length. The additional material economic terms of the Agreement are as follows:⁶

(a) Term: Commencing retroactively to March 15, 2020.

(b) Roles: Mr. Seery shall serve as the chief executive officer and chief restructuring officer of the Debtor and shall be responsible for the overall management of the business of the Debtor during its chapter 11 case, including: directing the Debtor's day-to-day ordinary course operations, overseeing the Debtor's personnel, making management decisions with respect to the Debtor's trading operations, directing the reorganization and restructuring of the Debtor, the monetization of the Debtor's assets, resolution of claims, the development and negotiation of a plan of reorganization or liquidation, and the implementation of such plan. Mr. Seery shall remain a full member of the New Board and shall be entitled to vote on matters other than on those in which he is conflicted. Mr. Seery shall devote as much time to the engagement as he determines is required to execute his responsibilities as chief executive officer and chief restructuring officer. Mr. Seery will have no specific on-site requirements in Dallas, Texas, but shall be

⁶ What follows is by way of summary only and is qualified in its entirety by reference to the Agreement, which controls. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

on site as much as he determines is necessary to execute his responsibilities as chief executive officer and chief restructuring officer, consistent with applicable COVID-19 orders, protocols and advice.

(c) Compensation for Services: Mr. Seery's compensation under the Agreement shall consist of the following:

(1) Base Compensation: \$150,000 per month, which shall be due and payable at the start of each calendar month; plus

(2) Bonus Compensation; Restructuring Fee:

Subject to separate Bankruptcy Court approval, the Compensation Committee and Mr. Seery have reached agreement on the payment of a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").⁷ The Committee has not yet agreed to the amount, composition, and timing of the Restructuring Fee. The Compensation Committee and Mr. Seery have agreed to defer Court consideration of the Restructuring Fee until further development in the Case. The Restructuring Fee agreed to by Mr. Seery and the Compensation Committee is as follows:

Case Resolution Restructuring Plan

On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):

\$1,000,000 on confirmation of the Case Resolution Plan;

\$500,000 on the effective date of the Case Resolution Plan; and

⁷ Although the Compensation Committee and Mr. Seery have agreed on the amount and timing of the Restructuring Fee, both the Compensation Committee and Mr. Seery understand that the Restructuring Fee is payable only upon order of this Court. The Compensation Committee is reserving the right to seek approval of the Restructuring Fee from this Court in connection with the confirmation hearing on a plan or as otherwise appropriate.

\$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

Debtor/Creditor Monetization Vehicle Restructuring Fee:

On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):

\$500,000 on confirmation of the Monetization Vehicle Plan;

\$250,000 on the effective date of the Monetization Vehicle Plan; and

A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

(e) Participation in Employee Benefit Plans: Mr. Seery shall act as an independent professional contractor and shall not be an employee of the Debtor. Mr. Seery will pay for his own benefits and will not participate under the Debtor's existing employee benefit plans.

(f) Expenses: Reimbursement of actual and reasonable out-of-pocket expenses in connection with the services provided under the Agreement. Expenses will be generally consistent with expenses incurred to date as a member of the New Board.

(g) Conflicts and Other Engagements. Mr. Seery is not aware of any potential conflicts of interest based on his understanding of the various parties involved in the Debtor's chapter 11 case to date. Mr. Seery shall not be precluded from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Debtor under the Agreement. Mr. Seery shall not undertake any engagements directly adverse to the Debtor during the term of his engagement.

(h) Termination. The Agreement may be terminated at any time by either the Debtor or by Mr. Seery upon two weeks advance written notice given to the other party. The termination of the Agreement shall not affect Mr. Seery's right to receive, and the Debtor's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of any termination notice; *provided however*, that (1) if the Agreement is terminated by Mr. Seery, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and Mr. Seery will return any Base Compensation received in excess of such amount, and (2) if the Agreement is terminated by the Debtor, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by Mr. Seery immediately upon his termination by the Debtor; *provided however*, Mr. Seery shall not be entitled to Bonus Compensation if: (A) the Debtor's chapter 11 case is converted to chapter 7 or dismissed; (B) a chapter 11 trustee is appointed in the Debtor's chapter 11 case; (C) Mr. Seery is terminated by the Debtor for Cause;⁸ or (D) Mr. Seery resigns prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section of the Agreement.

(j) Conditional Requirement to Seek Further Court Approval of Agreement. The Committee may, upon two weeks advance written notice to the Debtor, require the Debtor to file a motion with the Bankruptcy Court on normal notice seeking a continuation of the Agreement and if such motion is not filed, the Agreement will terminate at the expiration of such two week period. If the Debtor files such motion, Mr. Seery will be entitled to the Base Compensation through and including the date on which a final order is entered on such motion by this Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Debtor until a date which is more than ninety days following the date this Court enters an order approving the Agreement.

(j) Indemnification. the Debtor agrees (i) to indemnify and hold harmless Mr. Seery and any of his affiliates (the "Indemnified Party"), to the fullest extent lawful, from and against any and all

⁸ For purposes of the Agreement, "Cause" means any of the following grounds for termination of Mr. Seery's engagement, in each case as reasonably determined by the New Board within 60 days of the New Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on the part of Mr. Seery; (B) conviction of or the entry of a plea of *nolo contendere* by Mr. Seery for any felony; (C) the willful breach by Mr. Seery of any material term of the Agreement; or (D) the willful failure or refusal by Mr. Seery to perform his duties to the Debtor, which, if capable of being cured, is not cured on or before fifteen (15) days after Mr. Seery's receipt of written notice from the Debtor.

losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to the Agreement, Mr. Seery's engagement under the Agreement, or any actions taken or omitted to be taken by Mr. Seery or the Debtor in connection with the Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to the Agreement, or such engagement, or actions. However, the Debtor shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The Debtor has agreed to extend the indemnification and insurance currently covering Mr. Seery's role as a director to fully cover Mr. Seery in his roles as chief executive officer and chief restructuring officer. The Debtor is currently working to extend such coverage.

Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor.

Relief Requested

20. By this Motion, the Debtor seeks the entry of the Proposed Order authorizing the Debtor to retain Mr. Seery pursuant to the terms of the Agreement, *nunc pro tunc* to March 15, 2020. The Motion also seeks to amend the Foreign Representative Order to appoint Mr. Seery as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative in the stead of Mr. Sharp.

21. The Debtor believes that the Debtor's retention of a chief executive officer and chief restructuring officer constitutes an act in the ordinary course of business, and

consequently, is permissible under Bankruptcy Code section 363(c) without Court approval. However, out of an abundance of caution, the Debtor seeks this Court's approval of the Agreement under Bankruptcy Code section 363(b).

Basis For Relief

B. The Debtor's Entry Into the Agreement is a Valid Exercise of the Debtor's Business Judgment and the Proposed Compensation is Appropriate Under the Circumstances and Within the Range of Similar Market Transactions

22. The Compensation Committee's decision for the Debtor to retain Mr. Seery pursuant to the terms of the Agreement should be approved pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In addition, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

23. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code section 363(b) if it is supported by sound business justification. *See In re Montgomery Ward*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions"). Although established in the context of a proposed sale, the "business judgment" standard has been applied in non-sale situations. *See, e.g., Inst. Creditors of Cont'l Air Lines v. Cont'l Air Lines (In re Cont'l Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying the "business judgment" standard in context of proposed

“use” of estate property). Moreover, pursuant to section 105, this Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of a debtor’s assets. 11 U.S.C. § 105(a).

24. It is well established that courts are unwilling to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to “any rational business purpose.” *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) (citing *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971)). Whether or not there are sufficient business reasons to justify the use of assets of the estate depends upon the facts and circumstances of each case. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). In this case, the Debtor has ample justification to retain Mr. Seery as the Debtor’s chief executive officer and chief restructuring officer pursuant to the Agreement. The Final Term Sheet expressly contemplated that the New Board could appoint a chief executive officer and that the chief executive officer could also be one of the Independent Directors. Because Mr. Seery will also be serving as chief restructuring officer, it is not necessary to have two separate ranking chief restructuring officers, especially considering that Mr. Sharp (the current chief restructuring officer) and his firm has agreed to continue to provide financial advisory services on behalf of the Debtor.⁹ Mr. Seery is well- qualified to serve as the Debtor’s chief executive officer and chief restructuring officer.

⁹ See Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, *Nunc Pro Tunc*, to March 15, 2020 filed concurrently herewith

25. The Compensation Committee negotiated the Agreement in good faith and at arm's length. The Compensation Committee also worked with the Debtor's compensation consultant, Mercer (US) Inc., to determine the appropriate compensation for Mr. Seery as chief executive officer and chief restructuring officer. The Compensation Committee, therefore, believes that the terms of the Agreement are reasonable, are consistent with the market within the Debtor's industry, and are entirely appropriate given the scope of Mr. Seery's duties. Accordingly, entry into the Agreement is a sound exercise of the Debtor's business judgment.

26. Finally, the Debtor requests that the Court apply the same criteria by which parties in interest must first petition the Court prior to asserting claims against the Independent Director approved in the Settlement Order be extended to Mr. Seery in his capacity as chief executive officer and chief restructuring officer contemplated by this Motion. *See* Settlement Order, ¶ 10. The rationale for the Court to first determine whether or not a colorable claim or cause of action can be maintained against the Mr. Seery, as one of the Independent Directors, is equally applicable to Mr. Seery in his capacity as chief executive officer and chief restructuring officer, will further aid in the implementation of the Settlement Order, and discourage frivolous litigation. As was true in the Settlement Order with respect to the Independent Directors, no parties will be prejudiced by having to first apply to this Court to determine the propriety of any hypothetical claim that may be asserted against Mr. Seery in his officer capacities of the Debtor.

C. The Debtor Has Satisfied Bankruptcy Code Section 503(c)(3)

27. Bankruptcy Code section 503(c)(3) provides that "transfers or obligations that are outside the ordinary course of business . . . including transfers made to . . . consultants

hired after the date of the filing of the petition” are not allowed if they are “not justified by the facts and circumstances of the case.” 11 U.S.C. § 503(c)(3). Courts generally use a form of the “business judgment” and the “facts and circumstances” standard. *See In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 236-37 (Bankr. N.D. Tex. 2009) (citing *In re Dura Auto Sys., Inc.*, Case No. 06-11202 (Bankr. D. Del. June 29, 2007) and *In re Supplements LT, Inc.*, Case No. 08-10446 (KJC) (Bankr. D. Del. Apr. 14, 2008)). Specifically, the court examines first, whether the transaction meets the Debtor’s business judgment standard, and second, whether the facts and circumstances justify the transaction. *See In re Pilgrim’s Pride Corp.*, 401 B.R. at 237 (Bankr. N.D. Tex. 2009).

28. The Debtor submits that the proposed transaction is within the ordinary course of its business and thus that Bankruptcy Code section 503(c)(3) does not apply to the Agreement. Nevertheless, for the reasons stated above — the benefits from Mr. Seery’s leadership skills and industry experience — even if this were outside the ordinary course of business, entry into the Agreement is well within the Debtor’s business judgment as applied to the facts and circumstances of the Debtor. Further, the facts and circumstances of this case support entry into the relationship under the Agreement where the Debtor will benefit from the ability to retain Mr. Seery at a critical juncture to ongoing restructuring efforts.

29. For the reasons set forth above, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

D. The Proposed Chief Executive Officer and Chief Restructuring Officer Should Also Serve as the Debtor's Foreign Representative

30. Bankruptcy Code section 1505 provides that:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505.

31. The Debtor respectfully submits that Mr. Seery is qualified and capable of representing the Debtor's estate as the Foreign Representative. The Debtor believes it is appropriate for Mr. Seery, as an officer of the Debtor, to replace Mr. Sharp as Foreign Representative inasmuch as Mr. Sharp will no longer be an officer of the Debtor if the Motion is granted. In order to avoid any possible confusion or doubt regarding this authority and to comply with the requirements of Part XVII of the Cayman Law, the Debtor seeks entry of an order, pursuant to section 1505 of the Bankruptcy Code, explicitly substituting Mr. Seery in the place of Mr. Sharp as the Debtor's Foreign Representative, including specifically to serve as the Bermuda Foreign Representative and Cayman Foreign Representative.

32. For the reasons set forth in the Foreign Representative Motion, authorizing Mr. Seery to act as the Foreign Representative on behalf of the Debtor's estate in Bermuda, the Cayman Islands or any other foreign proceeding will allow coordination of this chapter 11 case and each of the foreign proceedings and provide an effective mechanism to protect and maximize the value of the Debtor's assets and estate. Courts have routinely granted relief similar to that requested herein in other large chapter 11 cases where a debtor has foreign assets or operations requiring a recognition proceeding. *See, e.g., In re CJ Holding Co.*, No. 16-33590 (Bankr. S.D.

Tex. July 21, 2016); ECF No. 59; *In re CHC Group Ltd.*, No. 16-31854 (Bankr. N.D. Tex. Sept. 20, 2016), ECF No. 884; *In re Ultra Petroleum Corp.*, No. 16-32202 (Bankr. S.D. Tex. May 3, 2016); *In re Digital Domain Media Grp., Inc.*, No. 12-12568 (BLS) (Bankr. D. Del. Sept. 12, 2012); ECF No. 82; *In re Probe Resources US Ltd.*, No. 10-40395 (Bankr. S.D. Tex. Mar. 21, 2011); ECF N. 320; *In re Bigler LP*, No. 09-38188 (Bankr. S.D. Tex. Jan. 12, 2010), ECF No. 159; *In re Horsehead Holdings Corp.*, No. 16-10287 (CSS) (Bankr. D. Del. Feb. 4, 2016); *In re Colt Holding Co. LLC*, No. 15-11296 (LSS) (Bankr. D. Del. June 16, 2015). The Debtor believes it is appropriate for one of its officers to serve as the Foreign Representative. In several jurisdictions, an officer or someone acting in a similar capacity is a prerequisite to serve as a Foreign Representative.¹⁰ As more fully explained in the Foreign Representative Motion, the Debtor has assets in jurisdictions other than the United States, including in Bermuda and the Cayman Islands. To the extent any disputes with respect to such assets arise, it is critical that the Foreign Representative be permitted to appear on behalf of the Debtor and its estate in any court in which a foreign proceeding may be pending.

Notice

33. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) the Debtor's principal secured

¹⁰ See e.g. Part XVII, Section 240 of the Companies Law (2018 Revision) of the Cayman Islands requiring that the foreign representative be "a trustee, liquidator or other official in respect of a debtor for the purposes of a foreign bankruptcy proceeding." In addition, and as more fully explained in the Foreign Representative Motion, Bermuda common law and conflict of laws principles will recognize the authority of a foreign insolvency officer appointed in proceedings in the jurisdiction of incorporation of a company (or, in the instant case, the jurisdiction of the establishment of a limited partnership) to act on behalf of and in the name of the company (or partnership) in Bermuda.

parties; (d)counsel to the Committee; and (e)parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
(admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084)
(admitted pro hac vice)
Gregory V. Demo (NY Bar No. 5371992)
(admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Zachery Z. Annable

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

**ORDER APPROVING DEBTOR’S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b)* for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020 (the “Motion”),¹ and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as Exhibit 1 and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

8. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

END OF ORDER

EXHIBIT A-1

Engagement Agreement

795 Columbus Ave., 12A
New York, New York 10025
631-804-2049
jpseeryjr@gmail.com

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
 - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
 - ii. Case Resolution Restructuring Plan
 1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
 - a. \$1,000,000 on confirmation of the Case Resolution Plan;
 - b. \$500,000 on the effective date of the Case Resolution Plan; and
 - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
 - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
 - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
 - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.
2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,


James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

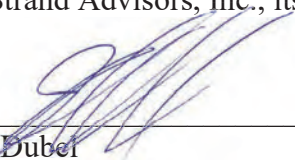
Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner



John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

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This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

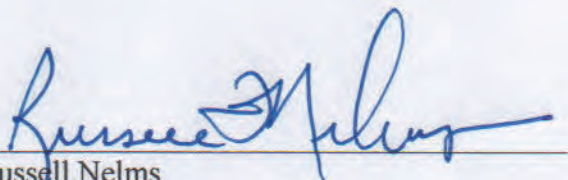
James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.

EXHIBIT 12

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054 (SGJ)
)
Debtor.)
_____)

CERTIFICATE OF SERVICE

I, Hugo Alexander Maida, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On June 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC** [Docket No. 771]
- **Notice of Hearing Regarding Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC; to be Held on August 6, 2020 at 9:30 a.m. (Central Time)** [Docket No. 772]
- **Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020** [Docket No. 774]
- **Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services, Nunc Pro Tunc to March 15, 2020** [Docket No. 775]
- **Notice of Hearing Regarding Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020; Hearing to be Held on July 14, 2020 at 1:30 p.m.** [Docket No. 776]

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

- **Notice of Hearing Regarding Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services, Nunc Pro Tunc to March 15, 2020; Hearing to be Held on July 14, 2020 at 1:30 p.m.** [Docket No. 777]

Furthermore, on June 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit C**: and via First Class Mail upon the service list attached hereto as **Exhibit D**:

- **Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC** [Docket No. 771]
- **Notice of Hearing Regarding Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC; to be Held on August 6, 2020 at 9:30 a.m. (Central Time)** [Docket No. 772]

Furthermore, on June 23, 2020, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit E**: and via First Class Mail upon the service list attached hereto as **Exhibit F**:

- **Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020** [Docket No. 773]

Dated: June 24, 2020

/s/ Hugo Alexander Maida
Hugo Alexander Maida
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A
 Core/2002
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbilioni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq. Attn: Martin A. Sosland and Candice M. Carson	schristianson@buchalter.com martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel for UBS Securities	Butler Snow LLP	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.		
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliott@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fibtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	jbain@joneswalker.com; aanderson@joneswalker.com; myoungjohn@joneswalker.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com

Exhibit A
 Core/2002
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltime Allinson LLC	William A. Hazeltime, Esq.	whazeltime@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

Exhibit B

Case 1:19-cv-00544-sjs Document 247-2 Filed 06/24/19 Page 16 of 16

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Exhibit B

Core/2002

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway			Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346	Suite 1500		Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

Exhibit C

Exhibit C

Objection Parties
Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Acis Capital Management L.P. and Acis Capital Management GP, LLC	josh@shorewoodmgmt.com
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	achiarello@winstead.com

Exhibit D

Case 19-34054-ssj Document 277-2 Filed 08/20/21 Entered 08/20/21 16:49:52 Page 1 of 1

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Exhibit D

Objection Parties

Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Acis Capital Management L.P. and Acis Capital Management GP, LLC	3110 Webb Ave., Suite 203			Dallas	TX	75206
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	c/o Winstead PC	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201

Exhibit E

Exhibit E
 Fee App Notice Parties
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Debtor	Highland Capital Management	Attn: Isaac Leventon	ileventon@highlandcapital.com
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	jane.m.leafy@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mcclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

Exhibit F

Exhibit F
 Fee App Notice Parties
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	787 Seventh Avenue			New York	NY	10019
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496

EXHIBIT 13




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed July 16, 2020


United States Bankruptcy Judge

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

In re:	§	
	§	
	§	Case No. 19-34054
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Re: Docket No. 774
Debtor.	§	

**ORDER APPROVING DEBTOR'S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),¹ and the

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.



Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is **GRANTED**.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

###END OF ORDER###

EXHIBIT 1

Engagement Agreement

[REDACTED]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
 - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
 - ii. Case Resolution Restructuring Plan
 1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
 - a. \$1,000,000 on confirmation of the Case Resolution Plan;
 - b. \$500,000 on the effective date of the Case Resolution Plan; and
 - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
 - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
 - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
 - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,


James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

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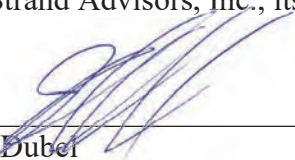
Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner



John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

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Very truly yours,

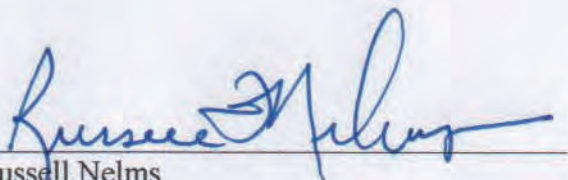
James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.

EXHIBIT 14

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME,
GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "Acis" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "Administrative Expense Claim" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "Administrative Expense Claims Bar Date" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "Administrative Expense Claims Objection Deadline" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "Affiliate" ~~means of any Person means any Entity that, with respect to such Person, either (i) is~~ an "affiliate" as defined in section 101(2) of the Bankruptcy Code ~~and also includes any other Entity that, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii)~~ directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such ~~affiliate~~ Person. For the purposes of this definition, the term "control" (including, ~~without limitation~~, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction ~~in any respect~~ of the management ~~and/or~~ policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "Allowed" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

~~57. 56.~~ “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

~~58. 57.~~ “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

~~59. 58.~~ “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

~~60. 59.~~ “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

~~61. 60.~~ “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

~~62. 61.~~ “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

~~63. 62.~~ “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

~~64. 63.~~ “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

~~65. 64.~~ “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

~~66. 65.~~ “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

~~67. 66.~~ “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

~~68. 67.~~ “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. ~~68.~~ “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. ~~69.~~ “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. ~~70.~~ “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. ~~71.~~ “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. ~~72.~~ “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. ~~73.~~ “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. ~~74.~~ “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. ~~75.~~ “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. ~~76.~~ “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. ~~77.~~ “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. ~~78.~~ “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. ~~79.~~ “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

~~81. 80.~~ “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

~~82. 81.~~ “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

~~83. 82.~~ “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

~~84. 83.~~ “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

~~85. 84.~~ “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

~~86. 85.~~ “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

~~87. 86.~~ “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

~~88. 87.~~ “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

~~89. 88.~~ “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

~~90. 89.~~ “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

~~91. 90.~~ “*Petition Date*” means October 16, 2019.

~~92. 91.~~ “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93 ~~92~~.—“*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94 ~~93~~.—“*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95 ~~94~~.—“*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96 ~~95~~.—“*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97 ~~96~~.—“*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98 ~~97~~.—“*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99 ~~98~~.—“*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100 ~~99~~.—“*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. ~~100.~~ “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. ~~101.~~ “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. ~~102.~~ “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. ~~103.~~ “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. ~~104.~~ “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. ~~105.~~ “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. ~~106.~~ “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. ~~107.~~ “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be

cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. ~~108.~~ “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. ~~109.~~ “*Related Entity*” means, without duplication, (a) ~~James~~ Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including ~~any, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates,~~ including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, ~~and~~ (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. ~~110.~~ “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present ~~and, future, or~~ former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, ~~employees,~~ subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. ~~111.~~ “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. ~~112.~~ “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. ~~113.~~ “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. ~~114.~~ “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. ~~115.~~ “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. ~~116.~~ “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. ~~117.~~ “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. ~~118.~~ “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. ~~119.~~ “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. ~~120.~~ “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. ~~121.~~ “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. ~~122.~~ “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. ~~123.~~ “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. ~~124.~~ “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. ~~125.~~ “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. ~~126.~~ “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. ~~127.~~ “*Subordinated Claim*” means any Claim that ~~(i) is or may be~~ subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or ~~Final Order of order entered by~~ the Bankruptcy Court ~~or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.~~

130. ~~128.~~ “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. ~~129.~~ “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. ~~130.~~ “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. ~~131.~~ “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. ~~132.~~ “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. ~~133.~~ “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. ~~134.~~ “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. ~~135.~~ “*Voting Record Date*” means November 23, 2020.

ARTICLE II.**ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS****A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim

will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, ~~or (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code;~~ or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid,

released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests1. Class 1 – Jefferies Secured Claim

! *Classification:* Class 1 consists of the Jefferies Secured Claim.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

! *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

! *Classification:* Class 2 consists of the Frontier Secured Claim.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

! *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

! *Classification:* Class 3 consists of the Other Secured Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

! *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

! *Classification:* Class 4 consists of the Priority Non-Tax Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

! *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

! *Classification:* Class 5 consists of the Retained Employee Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

! *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

! *Classification:* Class 6 consists of the PTO Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

! *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

! *Classification:* Class 7 consists of the Convenience Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

! *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

! *Classification:* Class 8 consists of the General Unsecured Claims.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

! *Classification:* Class 9 consists of the Subordinated Claims.

~~! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim the Effective Date, Holders of Subordinated Claims shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its~~ their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee ~~shall have agreed~~ may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated

Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- ! *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- ! *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- ! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- ! *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- ! *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- ! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A

Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify; or to ~~seek to subordinate~~; any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust

Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. ~~In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.~~ The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable

expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan

will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant

Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASESA. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to ~~a Final Order of the Bankruptcy Court entered~~ this Plan on or prior to the Effective Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Effective Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff

reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect ~~thereto, which shall be litigated to Final Order~~ to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other

than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- ! This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- ! The Confirmation Order shall have ~~been entered, not subject to stay pending appeal,~~ become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as

required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- ! All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- ! All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- ! The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- ! The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or

order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

~~C. Effect of Non-Occurrence of Conditions to Effectiveness~~

~~Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.~~

C. ~~D.~~ Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of

such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee

of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- ! sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- ! has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- ! (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the

Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all ~~holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons,~~ **Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all ~~Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are~~ Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to ~~such~~ any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, ~~directly or indirectly,~~ any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, ~~whether directly or indirectly,~~ any judgment, award, decree, or order against the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (iii) creating, perfecting, or otherwise enforcing in any manner, ~~directly or indirectly,~~ any security interest, lien or encumbrance of any kind against the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (iv) asserting any right of setoff, directly or indirectly, against any obligation due ~~from~~ to the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or against property or interests in property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust;~~ the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XILD, no ~~Entity~~ Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of ~~this~~ the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such ~~Entity~~ Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided,*

however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Entities~~Employee~~ from the date of appointment of the Independent Directors through the Effective Date. ~~As set forth in ARTICLE XI, the~~The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate ~~any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted,~~the underlying colorable claim or cause of action.

G. TermDuration of Injunctions ~~or~~and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions ~~or~~and stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stayin accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H.H.—Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date~~until the dissolution of each of the Claimant Trust and the Litigation Trust.~~

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to pay taxes of the kind specified in Bankruptcy Code section 1146(a).

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ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- ! allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- ! grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- ! resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- ! make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- ! resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- ! if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- ! if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- ! resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ! ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- ! decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- ! enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- ! resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- ! issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- ! enforce the terms and conditions of this Plan and the Confirmation Order;
- ! resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- ! enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- ! resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- ! enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents

necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: ~~November 24, 2020~~ January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief
Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

DOCS_NY:40509.3640509.39 36027/002

Document comparison by Workshare 9 on Friday, January 22, 2021 4:37:01 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/40509/36
Description	DOCS_NY-#40509-v36-Highland_-_Plan_of_Reorganization
Document 2 ID	PowerDocs://DOCS_NY/40509/39
Description	DOCS_NY-#40509-v39-Highland_-_Plan_of_Reorganization
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	210
Deletions	197
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	415

EXHIBIT 15



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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (I) CONFIRMING THE FIFTH AMENDED
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court² having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed³ pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;⁴ (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

⁴ The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor’s Operational History.** The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor’s current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was “run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits.” The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor’s Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.⁵ As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,⁶ and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

⁵ This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

⁶ See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.⁷ The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

⁷ See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation**

Objections. Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.’s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States’ (IRS) Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty’s Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty’s claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the “Plan Modifications”). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure

Statement Order. Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 10**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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004874

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

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Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.⁸ Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)). All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)). The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

⁸ See *Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15th Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.⁹

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

⁹ The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots¹⁰ – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

¹⁰ As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.¹¹

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

¹¹ The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership

Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers¹² a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

¹² The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon.

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the

avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
)
Debtor.)
_____)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I. **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV. **MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring
Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

EXHIBIT 16

1 GRANT SCOTT - 1/21/2021

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

4	IN RE:)	
		)	Chapter 11
5	HIGHLAND CAPITAL MANAGEMENT,)	
	L.P.	)	Case No.
6		)	19-34054-sgj11
	Debtor.)	
7	-----)	
	HIGHLAND CAPITAL MANAGEMENT,)	
8	L.P.,)	
	Plaintiff,)	
9		)	Adversary
	vs.	)	Proceeding No.
10		)	21-03000-sgj
	HIGHLAND CAPITAL MANAGEMENT)	
11	FUND ADVISORS, L.P.; NEXPOINT)	
	ADVISORS, L.P.; HIGHLAND)	
12	INCOME FUND; NEXPOINT)	
	STRATEGIC OPPORTUNITIES FUND;)	
13	NEXPOINT CAPITAL, INC.; and)	
	CLO HoldCo, LTD.,)	
14)	
	Defendants.)	
15	-----)	

16
17 VIDEOCONFERENCE DEPOSITION OF Grant SCOTT
18 Thursday, 21st of January, 2021

19
20
21
22
23 Reported by: Lisa A. Wheeler, RPR, CRR

24 Job No: 188910

25

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1 GRANT SCOTT - 1/21/2021
2 choice.
3 Q. Okay. And do you recall who served
4 the subpoena on you? Actually, let me ask a
5 different question because I'm really not
6 interested in the -- in the details.
7 Did Mr. Dondero serve that subpoena
8 on you or did somebody else?
9 A. His counsel for his ex-wife.
10 Q. Mr. -- so -- so the lawyer acting on
11 behalf of Mr. Dondero's ex-wife served you with
12 the subpoena?
13 A. Correct.
14 Q. Okay. You're familiar with an
15 entity called CLO HoldCo Limited; is that
16 right?
17 A. Yes.
18 Q. Do you know what that entity is?
19 A. Yes.
20 Q. What -- what -- can you describe for
21 me what CLO HoldCo Limited is.
22 A. It's a holding company of assets
23 including collateralized loan obligation-type
24 assets. That's a portion of the overall
25 portfolio. It's an organization that is

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1 GRANT SCOTT - 1/21/2021
2 role of director of CLO HoldCo Limited, was
3 that entity already in existence?
4 A. I believe so. I'm not certain. I'm
5 not certain.
6 Q. What are your duties and
7 responsibilities as a director of CLO HoldCo
8 Limited?
9 A. Well, my day-to-day responsibilities
10 are to interface with -- with the manager of
11 the -- of the assets of CLO. I do have some
12 role in -- with respect to some of the entities
13 that are -- I -- I have a limited role with
14 respect to a subset of the charitable
15 foundations that receive money from the CLO
16 HoldCo structure, which is commonly referred to
17 as the DAF. There's -- sometimes those are
18 used interchangeably.
19 Q. What terms are used interchangeably?
20 A. Well, the DAF and CLO HoldCo are
21 frequently -- by -- by other people they're --
22 it's the short -- it's the -- I guess it's
23 easier to use the acronym DAF than CLO HoldCo
24 Limited, so I'm frequently having to -- there
25 is a DAF entity so -- that's above -- above CLO

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1 GRANT SCOTT - 1/21/2021
2 integrated with other entities as part of a
3 charitable -- loosely what we -- what we refer
4 to as a charitable foundation equivalent.
5 Yeah.
6 Q. All right. We'll -- we'll get into
7 some detail about the corporate structure in a
8 moment. Do you personally play any role at CLO
9 HoldCo Limited?
10 A. Yes. My technical title is
11 director, but I -- I don't necessarily know
12 specifically what that title means other than I
13 act, as I understand it, as -- as a trustee for
14 those -- for those assets.
15 Q. And where did you get that
16 understanding?
17 A. Approximately ten years ago from the
18 group that -- that set up the hierarchy.
19 Q. And which group set up the
20 hierarchy?
21 A. Employees at Jim Don- -- as I
22 understand it, employees of Highland along with
23 outside counsel, as I understand it, and also,
24 I guess, input from -- from Jim Dondero.
25 Q. At the time that you assumed the

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1 GRANT SCOTT - 1/21/2021
2 in terms of the management, and so it's
3 frequently confusing and I'm having to clarify
4 at times which entity we're talking about,
5 but -- but other parties frequently use those
6 terms interchangeably.
7 Q. Okay.
8 MR. MORRIS: Lisa, when we use the
9 phrase DAF, because you'll hear that a lot,
10 it's all caps, D-A-F.
11 BY MR. MORRIS:
12 Q. You mentioned that you interface
13 with the manager of assets of CLOs. Do I have
14 that right?
15 A. Well, of all the assets.
16 Q. Okay. Who is the manager of the
17 assets that you're referring to?
18 A. Highland Capital Management.
19 Q. Highland Capital Management manages
20 all of the assets -- withdrawn.
21 Is it your understanding that
22 Highland Capital Management manages all the
23 assets that are owned by CLO HoldCo Limited?
24 A. Yes.
25 Q. Who makes the investment decisions

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1 GRANT SCOTT - 1/21/2021
2 on behalf of CLO HoldCo Limited?
3 A. Highland -- those managers that you
4 mentioned.
5 Q. Okay. I didn't mention anybody in
6 particular.
7 A. Oh, I'm sorry. The -- the -- the
8 money manager -- could you repeat that
9 question? I'm sorry. I'm so sorry.
10 Q. Can you just -- can you just
11 identify for me the person who makes investment
12 decisions on behalf of CLO HoldCo Limited.
13 A. It's -- well, it's -- it's persons
14 as I understand it. I inter- -- interface with
15 a -- with a group, but it's -- it's Highland
16 Capital employee -- Highland Capital Management
17 employees.
18 Q. Okay. Can you just name any of
19 them, please.
20 A. Hunter Covitz, Jim Dondero. Mark
21 Okada's no longer there, but I believe he was
22 involved, and there are others that I interface
23 with.
24 Q. Can you -- can you recall the name
25 of anybody other than Mr. Okada and Mr. Dondero

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1 GRANT SCOTT - 1/21/2021
2 Q. Is it fair to say that you do not
3 make decisions, investment decisions, on behalf
4 of CLO HoldCo Limited?
5 A. Yes.
6 Q. Does CLO HoldCo Limited have any
7 employees that you know of?
8 A. No.
9 Q. Does CLO HoldCo have any --
10 withdrawn.
11 Does CLO HoldCo Limited have any
12 officers that you know of?
13 A. No.
14 Q. So am I correct that you're the only
15 representative in the world of CLO HoldCo in
16 terms of being a director, officer, or
17 employee?
18 A. Yes.
19 Q. Do you receive any compensation from
20 CLO HoldCo for your services as the director?
21 A. I do now.
22 Q. When did that begin?
23 A. I believe in the middle of 2012.
24 Q. Okay. And had you served as a
25 director prior to that time without

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1 GRANT SCOTT - 1/21/2021
2 and Mr. Covitz?
3 A. Yeah. Over the years I've worked
4 with Tim Cournoyer, Thomas Surgent, but I
5 think -- I think that's the core -- the core
6 group.
7 Q. All right. And is there anybody
8 within that core group who has the final
9 decision-making authority concerning the
10 investments in CLO HoldCo Limited?
11 A. I don't -- I don't know. I'm sorry.
12 Say that again. I just want to -- I'm sorry.
13 I'm trying to be -- I'm not trying to -- I'm
14 trying to be --
15 Q. I understand. And --
16 A. Sorry. If you could just repeat it.
17 Q. Sure. Is there any particular
18 person who has the final decision-making
19 authority for investments that are being made
20 on behalf of CLO HoldCo Limited?
21 A. Amongst that group I am -- I am not
22 sure.
23 Q. Okay. So are there any other
24 directors of CLO HoldCo besides yourself?
25 A. No.

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1 GRANT SCOTT - 1/21/2021
2 compensation?
3 A. Yes.
4 Q. And have you been the sole director
5 of CLO HoldCo Limited since the time of your
6 appointment approximately ten years ago?
7 A. Yes.
8 Q. Nobody else has served in that
9 capacity; is that right?
10 A. That is correct.
11 Q. There have been no employees or
12 officers of that entity during the time that
13 you've served as director, correct?
14 A. Yes.
15 Q. Do you know who formed CLO HoldCo
16 Limited?
17 A. I do not.
18 Q. Do you know why CLO HoldCo Limited
19 was formed?
20 A. I believe so.
21 Q. Can you explain to me why -- your
22 understanding as to why CLO HoldCo was formed.
23 A. So as I understand things, Jim
24 Dondero wanted to create a charitable
25 foundation-like entity or entities, and tax

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1 GRANT SCOTT - 1/21/2021
2 going well.
3 Q. And -- and I think you -- you
4 testified just now that there was kind of a
5 difference between prebankruptcy and
6 postbankruptcy. Do I have that right?
7 A. Yes.
8 Q. And can you tell me -- is it fair to
9 say that before the bankruptcy, you didn't
10 devote much time to CLO HoldCo, or do I have
11 that wrong?
12 A. Well, I -- just the time that --
13 that I mentioned just -- I'm sorry. The -- the
14 time I just mentioned now when you asked me,
15 that was the pre period. Excuse me. I haven't
16 talked about the postbankruptcy period.
17 Q. So are you -- are you -- are you
18 devoting more time or less time since the
19 bankruptcy?
20 A. Much more.
21 Q. Much more since the bankruptcy
22 filing?
23 A. Yes.
24 Q. And so why did the bankruptcy filing
25 cause you to spend more time as a director of

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1 GRANT SCOTT - 1/21/2021
2 A. It was various obligations that were
3 owed to -- to CLO, things that had been
4 previously donated or -- or agreements that had
5 been set up that transferred certain assets,
6 and it was basically the -- the -- the amounts
7 were derived from those sorts of transactions.
8 Q. Okay. You're a patent lawyer; is
9 that right?
10 A. I -- I'm exclusively a patent
11 attorney, yes.
12 Q. Have you been a patent lawyer on an
13 exclusive basis since the time you graduated
14 from law school?
15 A. From law school, yes.
16 Q. Can you just describe for me
17 generally your educational background.
18 A. So I'm an electrical engineer by
19 training. I graduated from the University of
20 Virginia in 1984. I then went to graduate
21 school at the University of Illinois. I
22 received my master's degree in 1986, and then I
23 immediately joined IBM Research at the Thomas
24 Watson Institute in New York where I was a --
25 my title was research scientist, but I was -- I

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1 GRANT SCOTT - 1/21/2021
2 CLO HoldCo Limited?
3 A. Well, initially, and this would
4 be -- this would be late 2019, it was --
5 aft- -- after the bankruptcy was -- was filed
6 and I obtained counsel, who are on the phone
7 now -- or in this deposition now, excuse me,
8 that was -- that transition occurred because
9 CLO was a debtor -- excuse me, a creditor to --
10 to the debtor and had to take steps to
11 establish its -- its claim. So if I understand
12 the -- things correctly, the -- the debtor
13 identified as part of the filing -- I don't
14 know how bankruptcy works, but if I under- --
15 if my recollection is correct, there's a
16 hierarchy from biggest to smallest, and we were
17 relatively high up. And when I say we or I,
18 I -- I just mean CLO was relatively high up.
19 And so initially, for the first period of so
20 many months, the -- the exclusive focus was on
21 our position as a creditor -- a creditor having
22 a certain claim against a debtor.
23 Q. Can you describe for me your
24 understanding of the nature of the claim
25 against the debtor.

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1 GRANT SCOTT - 1/21/2021
2 guess I was more of a research engineer, if
3 that matters. And I did that until I
4 transitioned -- or I began law school in the
5 fall of 1988, and then I graduated law school
6 in May of 1991.
7 Q. And where did you go to law school?
8 A. University of North Carolina.
9 Q. Do you have any formal training in
10 investing or finance?
11 A. I do not.
12 Q. Do you hold yourself out as an
13 expert in any field of investment?
14 A. None -- none at all.
15 Q. Have you had any formal training
16 with respect to compliance issues? You
17 mentioned compliance issues earlier.
18 A. No.
19 Q. Now, do you have any knowledge about
20 compliance rules or regulations?
21 A. Minimal that I've -- that have
22 occurred organically but -- but generally, no.
23 Q. You don't hold yourself out as an
24 expert in com- -- in the area of compliance,
25 correct?

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1 GRANT SCOTT - 1/21/2021

2 A. No. No. I'm -- no.

3 Q. Do you have any particular

4 investment philosophy or strategy?

5 MR. CLARK: I'm going to object to

6 the form of the question. And, John,

7 can -- can we get an agreement that -- I

8 know you were objecting just simply on the

9 form basis yesterday -- that objection to

10 form is sufficient today?

11 MR. MORRIS: Sure.

12 MR. CLARK: Okay. And I object to

13 form. Grant, you can answer to the extent

14 you can.

15 THE WITNESS: I forget the question

16 now that you interrupted. I'm sorry.

17 BY MR. MORRIS:

18 Q. So -- so -- and I'm going to ask a

19 different question because in hindsight, that's

20 a good objection.

21 In your capacity as the director

22 of -- withdrawn.

23 Do the employees of Highland that

24 you identified earlier, do they make investment

25 decisions on behalf of CLO HoldCo Limited

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2 don't recall.

3 Q. Okay. So -- withdrawn. I'll --

4 I'll go on.

5 How did you come to be the director

6 of CLO HoldCo?

7 A. I was asked either by Jim Dondero

8 or -- directly or indirectly by -- by Jim

9 Dondero.

10 Q. And who is Jim Dondero?

11 A. Well, at the time, he was the head

12 or one of the heads of Highland Capital

13 Management, a friend of mine.

14 Q. How long have you known Mr. Dondero?

15 A. Since high school so that -- 1976.

16 Q. Where did you and Mr. Dondero grow

17 up?

18 A. In northern New Jersey.

19 Q. Do you consider him among the

20 closest friends you have?

21 A. I think he is my closest friend.

22 Q. Did you two go to college together?

23 A. We actually -- for the last -- last

24 two years I was at UVA, University of Virginia,

25 excuse me, he and I were -- were at UVA. So we

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2 without your prior knowledge on occasion?

3 A. On occasion, they do.

4 Q. So there's no rule that your prior

5 approval is needed before investments are made,

6 right?

7 A. I don't know whether they have an

8 internal guideline as to the amount that

9 triggers when they get in touch with me or

10 whether it's a new -- a change, something new,

11 or -- versus recurring. So I don't -- I don't

12 know what they use internally for that metric.

13 Q. Okay. Are you aware of any

14 guideline that was ever used by the Highland

15 employees whereby they were required to obtain

16 your consent prior to effectuating transactions

17 on behalf of CLO HoldCo Limited?

18 A. I understand there was one or more,

19 but I do not know that.

20 Q. Okay. Did you ever see such a

21 policy or list of rules that would require your

22 prior consent before the Highland employees

23 effectuated transactions on behalf of CLO

24 HoldCo Limited?

25 A. Possibly some time ago, but I -- I

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2 did not start out at UVA initially, but -- but

3 we both transferred -- I transferred my

4 sophomore year. I was actually a chemical

5 engineer at the University of Delaware when I

6 transferred in, and then he transferred in his

7 junior year. So we were there at college for

8 two years.

9 Q. And -- and based on your

10 relationship with him, is it your understanding

11 that one of the reasons he chose to transfer to

12 UVA is -- is to -- because you were there?

13 A. Oh, no. He transferred -- he --

14 he -- he transferred there because of the -- so

15 he went to the University of -- he -- he went

16 to Virginia Tech University, which is more

17 known as being an engineering school, which I

18 might have wanted to go to, and less a finance

19 business school. And if I understand things

20 correctly, and I believe I do, he transferred

21 to UVA because of the well-known

22 business/finance program, accounting program.

23 Q. And did you -- did you and

24 Mr. Dondero become roommates at UVA?

25 A. We weren't roommates, but we lived

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2 in the -- we were housemates. I'm sorry. We
3 were housemates.
4 Q. So you shared a house together. How
5 would you describe your relationship with
6 Mr. Dondero today?
7 A. It's -- it's been strained a while,
8 for some time, but -- but generally, very good.
9 Good to very good.
10 Q. Without -- without getting personal
11 here, can you just generally identify the
12 source of the strain that you described.
13 A. This -- I think it would be fair to
14 say that this bankruptcy, particularly events
15 in 2020 so some months after the bankruptcy was
16 declared, things have become -- we -- we still
17 have a close friendship, but -- but things
18 are -- are a bit -- are a bit more difficult.
19 Q. Were you ever married?
20 A. I've never been married.
21 Q. Did you serve as Mr. Dondero's best
22 man at his wedding?
23 A. I did.
24 Q. Is it fair to say that -- that
25 Mr. Dondero trusts you?

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2 course of those 45 years, Mr. Dondero has
3 shared confidential information with you that
4 he didn't want you to reveal publicly to other
5 people?
6 A. Yes.
7 Q. And is it your understanding that
8 because of the nature of your relationship with
9 him, he asked you to serve as the director of
10 CLO HoldCo Limited?
11 A. Yes. I believe it's because he --
12 he trusted -- trusted me with -- with assets
13 relating to his charitable vision. I -- I --
14 yeah. Yes.
15 Q. And is it your understanding that he
16 thought you would help him execute his
17 charitable vision?
18 A. That was the point of attraction
19 initially. It wasn't for money. I wasn't
20 being paid. That was -- the charitable mission
21 was the attraction.
22 Q. Does Mr. Dondero play any role in
23 the management of the CLO HoldCo Limited asset
24 pool?
25 MR. CLARK: Objection, form.

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2 MR. CLARK: Objection, form.
3 BY MR. MORRIS:
4 Q. Withdrawn.
5 Do you believe that Mr. Dondero
6 trusts you?
7 A. I do.
8 Q. Over the years, is it fair to say
9 that Mr. Dondero has confided in you?
10 MR. CLARK: Objection, form.
11 BY MR. MORRIS:
12 Q. You can answer if you understand it.
13 A. I think so.
14 Q. I -- I -- what's your answer? You
15 think so?
16 A. Maybe you can de- -- I think of
17 confide as -- could you define confide, please.
18 Q. Sure. Is it -- is it fair to say
19 that over the -- let me -- you've known
20 Mr. Dondero for almost 45 years, right?
21 A. Yes.
22 Q. And you consider him to be your
23 closest friend in the world, right?
24 A. Yes.
25 Q. And is it fair to say over the

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2 A. I'm sorry. Could you repeat that?
3 My -- my screen went small and then big again.
4 I was distracted.
5 Q. What role does Mr. Dondero play with
6 respect to the management of the CLO HoldCo
7 Limited asset pool?
8 MR. CLARK: Objection, form.
9 A. He is with the company that manages
10 that asset pool. He's one of the people I
11 named previously as managing those assets.
12 Q. He is -- he -- he is the -- do you
13 understand that he has the final
14 decision-making power with respect to the
15 management of the assets that are held by CLO
16 HoldCo Limited?
17 MR. CLARK: Objection, form.
18 A. I believe I ansel -- answered that
19 previously. I -- I don't know who has -- for
20 certainty I do not know who has that within
21 that company. I don't. If -- if -- I -- I
22 don't know, consistent with my prior answer.
23 Q. Did you ever ask anybody who had the
24 final decision-making authority for investments
25 on behalf of CLO HoldCo Limited?

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2 A. I -- I did not.
3 Q. Did you ever make a decision on
4 behalf of -- withdrawn.
5 In your capacity as a director --
6 withdrawn.
7 In your capacity as the sole
8 director of CLO HoldCo Limited, can you think
9 of any decision that you've ever made that
10 Mr. Dondero disagreed with?
11 A. Since -- prior to the bankruptcy,
12 no, not that I'm aware of.
13 Q. And since the bankruptcy?
14 A. There are decisions that I've made
15 that he's disagreed with.
16 Q. Can you identify them?
17 A. Yes.
18 Q. Please do so.
19 A. Okay. So the reason I'm pausing is
20 I'm trying to put these in chronological order
21 and, at the same time, identify maybe some of
22 the more important ones versus the lesser
23 important ones. One of the decisions I made
24 related to a request that I received from the
25 independent board of Highland. I don't know

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2 A. I don't know when he became aware of
3 that decision. I'm not sure I ever volunteered
4 that the decision was even made, but at some
5 point, it became an issue because he found out
6 through -- if I understand the sequence of
7 events correctly, he found out possibly through
8 his counsel because there was ultimately
9 litigation about that issue. It became known
10 to everyone at some point what I had done, I --
11 I think. And subsequent to that, it became an
12 issue because of CLO HoldCo having fairly
13 significant cash flow issues with respect to
14 its expenses and obligations, including payment
15 of management fees as well as some of the
16 scheduled charitable giving that was -- that
17 was by contract already predefined. My
18 decision to tuck that money -- or to agree
19 to -- my agreement to let that money be tucked
20 away created some -- created some -- created
21 some problems --
22 Q. And -- and --
23 A. -- for CLO HoldCo.
24 Q. Okay. And I just want you to focus
25 specifically on my question, and that is, what

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2 how the request was transmitted to me, but I
3 believe the way it played out is as follows: I
4 believe I was asked to call Jim Seery, and the
5 other -- and Russell Nelms, and the third
6 independent director, I believe his name is
7 John. I -- I forget right now what his last
8 name is. They were in New York, said they were
9 in a conference room. I called in. They were
10 very pleasant. They identified who they were,
11 and they had a request, and the request was
12 that I agree to a transfer -- or that I -- that
13 I agree to allow certain assets that were not
14 Highland's assets but they were CLO's as- --
15 assets -- apparently, there was no dispute
16 about that at any point in time, but that I
17 agree to allow certain assets that were due CLO
18 to be transferred to the registry of the
19 bankruptcy court. And either on that call I
20 immediately agreed or ended the call, called my
21 attorney, and then immediately agreed. It was
22 a very -- I accommodated the request quickly.
23 Q. Okay. And can you just tell me at
24 what point in time you spoke with Mr. Dondero,
25 and what did he say that you recall?

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2 did Mr. Dondero say to you that -- that causes
3 you to testify as you did, that this is one
4 issue that he didn't agree with?
5 A. I believe his concern was that
6 because it was money that was undisputably to
7 flow to CLO HoldCo that -- which had many, many
8 other nonliquid assets -- this was a form of a
9 liquid asset. It was cash in effect, proceeds.
10 -- that the money should have been allowed to
11 flow to be available for obligations. He
12 didn't under- -- I -- I -- I don't know what he
13 was thinking, but the -- the issue was that the
14 decision to put it into escrow was -- was --
15 was in- -- incorrect, that there was no basis
16 for it.
17 Q. That -- that's an issue where after
18 learning of your decision, he didn't agree with
19 it; is that fair?
20 A. That's right.
21 Q. Okay. Can you think of any decision
22 that you've ever made on behalf of CLO HoldCo
23 Limited where Mr. Dondero had advance knowledge
24 of what you were going to do and he objected to
25 it, but you nevertheless overruled his

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2 objection and went ahead and did what -- did
3 what you thought was right?
4 A. Okay. Let me -- let me -- I have --
5 I'm sorry.
6 Q. We're here.
7 A. Oh, I'm sorry. I'm having some
8 issues with my screen. So that may have
9 occurred with respect to the original proof of
10 claim. Then there was a subsequent amendment
11 to the proof of claim, and I -- I believe it --
12 I believe that he might have been aware of both
13 of those and was in disagreement with -- with
14 those. But after working with my attorney, we
15 just -- you know, we did what we thought was
16 right, and I still think what we did was right.
17 There was an issue with respect to Har- --
18 HarbourVest that occurred relatively recently
19 where he objected to a decision that I had
20 made. As I understand it, I could have
21 contacted my attorney and changed the decision,
22 but I didn't, and I still think that was the
23 right decision.
24 We have filed plan objections. I
25 can't say if he has any -- in that regard, I --

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2 A. So we had to interface with Highland
3 employees at some point to get information to
4 support our proof of claim, and my guess, and
5 it's just a guess, is that he was aware of
6 those inquiries. I -- I'm sorry. I shouldn't
7 speculate. I don't know. But he -- with
8 respect to the original proof of claim, I'm --
9 I'm not aware of what specifically he was
10 objecting to or was -- thought should have been
11 different, but the -- with respect to the
12 amended proof of claim, which reduced the
13 original proof of claim to zero, I think that's
14 where he had a -- an issue.
15 Q. And did you speak with him about
16 that topic prior to the time the amended claim
17 was filed, or did you only speak with him after
18 it was filed?
19 A. I'm not sure the timing of that.
20 Q. And with respect to HarbourVest, did
21 he ask you to object to the settlement on
22 behalf of CLO HoldCo Limited, and is that
23 something that you declined to do?
24 MR. CLARK: Objection, form.
25 A. I'm -- I'm sorry. I was confused

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2 I -- I don't know what his thoughts are on
3 objections. They would not have been
4 communicated with -- by me to him, but my
5 attorney might have consulted with his
6 attorney, and there -- they may know what that
7 difference is, but I -- that was just another
8 big decision. I -- I -- maybe that --
9 Q. All right. Let me see if I can --
10 let me see if I can summarize this. So two
11 proofs of claim. Is it fair to say that
12 Mr. Dondero saw those proofs of claim before
13 they were filed?
14 MR. CLARK: Objection, form.
15 BY MR. MORRIS:
16 Q. Withdrawn.
17 A. It --
18 Q. Do -- do you know whether
19 Mr. Dondero saw the proofs of claim before they
20 were filed?
21 A. I don't believe he did.
22 Q. What -- what steps in filing the
23 proofs of claim did he object to that you
24 overruled? Did he think there was -- something
25 should be different about them?

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2 with the word. Could you please repeat that?
3 Q. Yes. You mentioned HarbourVest
4 before, right?
5 A. Yes.
6 Q. And you mentioned that there was an
7 issue with Mr. Dondero and you concerning
8 HarbourVest; is that right?
9 A. Yes.
10 Q. And did that have to do with whether
11 or not CLO HoldCo Limited would -- would object
12 to the debtor's motion to get the HarbourVest
13 settlement approved?
14 A. Would -- would get the
15 HarbourVest --
16 Q. Settlement approved by the court.
17 A. I'm not trying to be difficult.
18 I'm -- I'm -- could you just repeat that one
19 more time? I'm --
20 Q. What was -- what was --
21 A. There was --
22 Q. Let me try again.
23 A. Okay.
24 Q. What was the issue with respect to
25 HarbourVest that he objected to and -- and you

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2 overrode his objection and did what you thought

3 was right anyway?

4 A. Okay. Okay. That's -- that's

5 easier for me to understand. I'm sorry. So I

6 had worked with my attorney or he did the work

7 and consulted with -- we consulted, but we had

8 filed an objection, motion objecting to the

9 settlement, if I understand the terminology and

10 nomenclature correctly. Okay. He had -- we

11 had come to an agreement that we had a very

12 valid argument. That argument was evidenced

13 by, I guess it was, our motion that was

14 submitted to the court. On the day of the

15 hearing to resolve this issue, we pulled our

16 request, and that was because I believed it did

17 not have a good-faith basis in law to move

18 forward on.

19 Q. And did you discuss that issue with

20 Mr. Dondero before informing the court that CLO

21 HoldCo Limited was withdrawing its objection,

22 or did he learn about that for the first time

23 during the hearing --

24 MR. CLARK: Objection, form.

25 BY MR. MORRIS:

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2 A. -- thought, okay?

3 THE REPORTER: I didn't --

4 A. Okay. So he --

5 Q. It was a recommendation.

6 A. Yeah. So he -- he called me with a

7 recommendation. It was highly urgent. You

8 know, I was coming out of the men's room, had

9 my phone with me. I got the call.

10 MR. CLARK: Hey, Grant, I -- Grant,

11 I just want to caution you not to -- to --

12 and I don't think counsel is looking for

13 this but not to disclose the -- the

14 substance of any of your communications

15 with counsel, okay?

16 THE WITNESS: Thank you.

17 A. So --

18 THE WITNESS: Thank you. I'm -- I'm

19 sorry.

20 BY MR. MORRIS:

21 Q. It's -- it's really a very simple

22 question. Do you recall --

23 A. He made a recommendation. I -- I --

24 I think I can answer your question without

25 going off tangent. I'm sorry. So he -- my

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2 Q. -- if you know?

3 A. I -- I understand that he learned it

4 during the hearing. I don't know the -- I -- I

5 don't know the -- whether there was any -- I --

6 I don't know for certain on the second half of

7 your question.

8 Q. Let me -- let me try it -- let me

9 try it this way: Did you speak with

10 Mr. Dondero about your decision to withdraw the

11 objection to the HarbourVest settlement prior

12 to the time your counsel made the announcement

13 in court?

14 A. I don't -- I don't believe so. No.

15 No. No. I'm sorry. No.

16 Q. And did --

17 A. Okay. No. Here -- here's where

18 I'm -- I can clarify, okay? I'm sorry. I can

19 clarify.

20 Q. That's all right.

21 A. I gave the decision to my

22 attorney -- I -- I agreed with the

23 recommendation of my attorney, okay? It wasn't

24 my --

25 Q. Did you have a good --

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2 attorney made a recommendation. I agreed with

3 it. We with- -- I -- I told him to withdraw --

4 or I authorized him to withdraw.

5 Q. Okay.

6 A. Then I received a communication, and

7 I -- I guess the most likely scenario is the

8 motion had been withdrawn by the time Jim

9 Dondero found out.

10 Q. And -- and did he write to you, or

11 did he call you? Did he send you a text?

12 A. He called me.

13 Q. What did he say?

14 A. He was asking why, and I explained,

15 and I said I agreed with the decision and I was

16 sticking with the decision.

17 Q. Let's just -- let's just move on to

18 a new topic, and let's talk about the structure

19 of -- of CLO HoldCo. Are you generally

20 familiar with the ownership structure of CLO

21 HoldCo?

22 A. Yeah. I mean, in terms --

23 Q. Are -- are you -- are you generally

24 familiar with it? It's not a test. I'm just

25 asking do you have a general familiarity --

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2 A. With CLO HoldCo or the entities
3 associated with CLO HoldCo?
4 Q. The latter.
5 A. Yes, I believe so.
6 Q. All right. I've prepared what's
7 called a demonstrative exhibit. It's just --
8 A. Yes.
9 Q. -- just -- it's a document that, I
10 think, reflects facts, but I want to ask you
11 about it.
12 MR. MORRIS: La Asia, can we please
13 put up Exhibit 1.
14 (SCOTT EXHIBIT 1, Organizational
15 Structure: CLO HoldCo, Ltd., was marked
16 for identification.)
17 BY MR. MORRIS:
18 Q. Okay. Can you see that, Mr. Scott?
19 A. Yes, I can.
20 Q. Okay. So I think I took the
21 information from resolutions that were attached
22 to the CLO HoldCo proof of claim, and that's
23 why you got that little footnote there at the
24 bottom of the page. But let's start in the
25 lower right-hand corner and see if this chart

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2 particular structure, to the best of your
3 knowledge?
4 A. I -- I didn't -- I'm sorry. I
5 didn't hear you very well.
6 Q. To the best of your knowledge, did
7 Mr. Dondero make the decisions to establish the
8 structure that's reflected on this page?
9 A. Oh, I don't know if he made the
10 decision to establish this structure, although
11 it's -- it's -- I'm sorry. Strike that. I --
12 if -- if what you're saying is did he approve
13 of this structure, to my knowledge, yes.
14 Q. Okay. Do you hold any position with
15 respect to Charitable DAF Fund, L.P.?
16 A. I -- I -- your chart says no. I --
17 I -- I thought I had a role there, too.
18 Q. I don't know. I don't have
19 information on that. That's why I'm asking the
20 question.
21 A. I -- I -- I believe -- yes, I
22 believe I have the same role as I do in -- in
23 CLO HoldCo.
24 Q. And that would be director?
25 A. Yes.

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2 comports with your understanding of the facts.
3 Do you know that CLO HoldCo Limited
4 was formed in the Cayman Islands?
5 A. Yes.
6 Q. And to the best of your knowledge,
7 is CLO HoldCo Limited 100 percent owned by the
8 Charitable DAF Fund, L.P.? If you're not sure,
9 just say you're not sure if you don't know.
10 It's not a test.
11 A. So the -- the -- the familiarity
12 I -- I'm -- I'm familiar with the different --
13 I'm confused with the arrangement of the boxes
14 and the ownership interest versus managerial
15 interest. I believe that's -- that's right.
16 Q. Okay. And -- and you're the sole
17 director of CLO HoldCo Limited, right?
18 A. Yes.
19 Q. And this whole structure was -- the
20 idea for this structure, to the best of your
21 knowledge, was to implement Mr. Dondero's plan
22 for charitable giving; is that fair?
23 A. Yes. Ultimately, yes.
24 Q. And is it fair to say then that
25 he -- he made the decision to establish this

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2 Q. And to the best of your knowledge,
3 is the Charitable DAF GP, LLC, the general
4 partner of Charitable DAF Fund, L.P.?
5 A. Yes.
6 Q. And is it your understanding that
7 you are the managing member of Charitable DAF
8 GP, LLC?
9 A. Yes.
10 Q. Does Charitable DAF GP, LLC, have
11 any employees?
12 A. No.
13 Q. Does Charitable DAF GP, LLC, have
14 any officers or directors?
15 A. No.
16 Q. Are you the only person affiliated
17 with Charitable DAF GP, LLC, to the best of
18 your --
19 A. I believe so.
20 Q. Do you receive any compensation for
21 serving as the managing member of Charitable
22 DAF GP, LLC?
23 A. No. The -- I don't interact with it
24 very often. It's -- no, I don't receive any
25 compensation.

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2 Q. Can you tell me in your capacity as

3 the managing member of Charitable DAF GP, LLC,

4 what's the nature of that entity's business?

5 A. It -- it doesn't perform any

6 day-to-day operations. My understanding is --

7 is that it's -- it's there for purposes of

8 compliance. I can't recall the last time I had

9 any activity with respect to that.

10 Q. How about the Charitable DAF Fund,

11 L.P.? I apologize if I've asked you these

12 questions.

13 A. It -- it's the same. I -- I -- my

14 activity is almost exclusively CLO HoldCo.

15 Q. All right. Let me just ask the

16 questions nevertheless. Does Charitable DAF

17 Fund, L.P., have any employees?

18 A. Employees? No.

19 Q. Does it have any officers and

20 directors?

21 A. No.

22 Q. Are you the sole director of

23 Charitable DAF Fund, L.P.?

24 A. Yes, I believe so.

25 Q. So if we -- if we put under

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2 Q. And did Mr. Dondero ask you to serve

3 as the director of Charitable DAF, L.P. --

4 withdrawn.

5 Did Mr. Dondero ask you to serve as

6 director of Charitable DAF Fund, L.P.?

7 A. Yes.

8 Q. To the best of your knowledge, does

9 Charitable DAF HoldCo Limited own 99 percent of

10 the limited partnership interests in Charitable

11 DAF Fund, L.P.?

12 A. Yes. The -- the feed -- the -- the

13 feeds -- the -- the three horizontal blocks

14 there that identify Highland Dallas Foundation,

15 Kansas City, Santa Barbara -- there's a fourth

16 of -- relatively de minimus in terms of

17 participation. There's a fourth entity that's

18 missing. It's Dallas -- I forget the name.

19 That -- that -- that structure is -- is a bit

20 dated --

21 Q. Okay.

22 A. -- as it -- as is shown.

23 Q. Okay. So I will tell you and we can

24 look the documents if you want, but attached to

25 CLO HoldCo Limited's claim are a number of

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2 Charitable DAF Fund, L.P., Grant Scott,

3 director, and we put under CLO HoldCo Limited

4 Grant Scott, director, would everything on the

5 right side of that page be accurate, to the

6 best of your --

7 A. I believe so.

8 Q. Well, let's move to the left side of

9 the page. Have you heard of the entity

10 Charitable DAF HoldCo Limited?

11 A. Yes.

12 Q. Are you the sole director of

13 Charitable DAF HoldCo Limited?

14 A. Yes.

15 Q. How did you become -- how did you

16 come to be the char- -- the sole director of

17 Charitable DAF HoldCo Limited?

18 A. That was when it was established.

19 Q. And did Mr. Dondero ask you to serve

20 in that capacity?

21 A. Yes.

22 Q. And did Mr. Dondero ask you to serve

23 as the managing member of Charitable DA- -- DAF

24 GP, LLC?

25 A. Yes.

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2 resolutions, and there's one that I have in

3 mind that shows Charitable DAF HoldCo Limited

4 holding 99 percent of the limited partnership

5 interests of Charitable DAF Fund, L.P., and

6 there's another that shows it being a hundred

7 percent. Do you -- do you know which is

8 accurate at least at this time?

9 A. There's a 1 percent/99 percent

10 division, and I am -- I believe it's the 99

11 percent, but I'm -- I'm getting confused by

12 the -- by the arrangement. I'm so used to

13 another arrangement. I -- I believe the 99

14 percent is correct.

15 Q. Okay. Do you have any understanding

16 as to who owns the other 1 percent of the

17 limited partnership interests of Charitable DAF

18 Fund, L.P.?

19 A. No. This -- this is confusing to

20 me. No.

21 Q. Okay. There are, at least on this

22 page, three foundations that I think you've

23 identified. Are those three foundations

24 together with the fourth that you mentioned the

25 owners of the Charitable DAF HoldCo Limited?

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1 GRANT SCOTT - 1/21/2021
2 A. Owners?
3 Q. Yes.
4 MR. CLARK: Objection, form.
5 A. They -- they only participate in the
6 money that flows up to them.
7 Q. And what does that mean exactly?
8 A. What's that?
9 Q. What does that -- what do you mean
10 by that? Do the foundations fund Charitable
11 DAF Fund HoldCo Limited?
12 A. Initially. Initially, as I
13 understand it, the money flows downward into
14 the Charitable DAF HoldCo Limited before it
15 ultimately makes its way to CLO HoldCo, and
16 then each of those three entities, the various
17 foundations, obtain participation interest in
18 the money that flows back to them.
19 Q. And -- and is that par- -- are those
20 participation interests in Charitable -- you
21 know what, let -- let me just pull up one
22 document and see if that helps.
23 MR. MORRIS: Can we put up -- I
24 think it's Exhibit Number 5.
25 (SCOTT EXHIBIT 2, Unanimous Written

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1 GRANT SCOTT - 1/21/2021
2 Dallas Foundation?
3 A. Yes, selected by them.
4 Q. Selected by whom?
5 A. By that foundation.
6 Q. Are you -- are you a director of all
7 of the four foundations that feed into the
8 Charitable DAF HoldCo Limited entities that --
9 A. No.
10 Q. Which of the four foundations are
11 you a director of?
12 A. This and the Santa Barbara -- I'm
13 sorry, Santa Barbara and Kansas City.
14 Q. So is -- there's one that you're not
15 a director of; is that right?
16 A. Yes.
17 Q. And which one is that?
18 A. The -- could you go back to the --
19 Q. Yeah.
20 MR. MORRIS: Go back to the
21 demonstrative.
22 A. It's the Highland Dallas Foundation
23 and Santa Barbara Foundation.
24 Q. Those are the two that you're a
25 director of?

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1 GRANT SCOTT - 1/21/2021
2 Consent of Directors In Lieu of Meeting,
3 was marked for identification.)
4 MR. MORRIS: I apologize. Let's go
5 to --
6 MS. CANTY: I'm sorry, John. I
7 can't hear you. Was that not the exhibit?
8 MR. MORRIS: 4.
9 MS. CANTY: Okay.
10 THE REPORTER: And Mr. Morris, you
11 are -- Mr. Morris, you are breaking up just
12 a little bit at the end of your questions.
13 BY MR. MORRIS:
14 Q. Okay. Do you see the document on
15 the screen, sir?
16 A. Yes, I do.
17 Q. Okay. And so this is a unanimous
18 written consent of the directors of the
19 Highland Dallas Foundation. That's one of the
20 entities that was on the chart.
21 MR. MORRIS: Can we scroll down to
22 the -- the bottom of the document where the
23 signature lines are. Right there.
24 BY MR. MORRIS:
25 Q. Are you a director of the Highland

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1 GRANT SCOTT - 1/21/2021
2 A. Yes.
3 Q. To the best of your knowledge, does
4 Mr. Dondero serve as the president for each of
5 the foundations that we're talking about?
6 A. Yes.
7 Q. To the best of your knowledge, is
8 Mr. Dondero a director of each of the
9 foundations that we're talking about?
10 A. Say that again. I'm sorry.
11 Q. Is he also a director of each of the
12 foundations?
13 A. Yes.
14 Q. Do you know whether any of the
15 foundations has any employees?
16 A. I believe they do, but I -- I -- I
17 can't say for certain.
18 Q. Does -- withdrawn.
19 Do you know if there are any
20 officers of any of the four foundations other
21 than Mr. Dondero's service as president?
22 A. I'm sorry. Say that one more time,
23 please.
24 Q. Yes. Do you know whether any of the
25 four foundations has any officers other than

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1 GRANT SCOTT - 1/21/2021
2 Mr. Dondero's service as president?
3 A. No.
4 Q. You don't know, or they do not?
5 A. I -- I don't believe anyone else
6 has. I -- actually, I should say I don't -- I
7 don't recall. I -- I don't know. I don't -- I
8 don't know.
9 Q. As a director of the Dallas and
10 Santa Barbara foundations, are you aware of any
11 officers serving for either of those
12 foundations other than Mr. Dondero?
13 A. No.
14 Q. Do you know who the beneficial owner
15 of the Charitable DAF HoldCo Limited entity is?
16 A. The beneficial owner?
17 Q. Correct.
18 A. The various -- various trusts that
19 were used to -- that were the vehicles by which
20 the money originally was established within --
21 within -- within CLO HoldCo.
22 Q. Would that be -- would one of them
23 be the Get Good Nonexempt Trust?
24 A. Yes.
25 Q. And you're a trustee of the Get Good

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1 GRANT SCOTT - 1/21/2021
2 one of the trusts that has an interest in
3 Charitable DAF HoldCo Limited?
4 A. Yes.
5 Q. Are you a trustee of the Dugaboy
6 Investment Trust?
7 A. I am not.
8 Q. Do you know who is?
9 A. I believe it's his sister.
10 Q. And is that -- you're referring to
11 Mr. Dondero's sister?
12 A. I'm sorry. Yes.
13 Q. And what's the basis for your
14 understanding that Mr. Dondero's sive -- sister
15 serves as the trustee of the Dugaboy Investment
16 Trust?
17 A. Many years ago there was a -- there
18 was a clerical error that identified me as the
19 trustee of the Dugaboy. That error was present
20 for approximately two weeks or a week and a
21 half before it was detected and corrected, and
22 so I know from that correction that it's Nancy
23 Dondero.
24 Q. Are there any other trusts that have
25 an interest in Charitable DAF HoldCo Limited

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1 GRANT SCOTT - 1/21/2021
2 Nonexempt Trust, right?
3 A. Yes.
4 Q. When did you become a trustee of the
5 Get Good Nonexempt Trust?
6 A. Many years ago. I -- I don't
7 remember.
8 Q. Are there any other trustees of the
9 Get Good Nonexempt Trust?
10 A. No.
11 Q. Does the Get Good Nonexempt Trust
12 have any officers, directors, or employees?
13 A. No.
14 MR. CLARK: Objection, form. Sorry.
15 BY MR. MORRIS:
16 Q. Withdrawn.
17 Do you know whether the Get Good
18 Nonexempt Trust has any officers, directors, or
19 employees?
20 A. It does not.
21 Q. And I apologize if I asked this, but
22 are you the only trustee of the Get Good
23 Nonexempt Trust?
24 A. Yes.
25 Q. Is the Dugaboy Investment Trust also

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1 GRANT SCOTT - 1/21/2021
2 besides those trusts, to the best of your
3 knowledge?
4 A. No.
5 Q. Is it your understanding based on
6 what we've just talked about that the Get Good
7 Nonexempt Trust and the Dugaboy Investment
8 Trust are the indirect beneficiaries of CLO
9 HoldCo Limited?
10 A. Yes.
11 Q. Can you tell me who the
12 beneficiaries are of the Get Good trust?
13 A. I mean, Jim Dondero.
14 Q. And -- and what is that -- is that
15 based on the trust agreement -- your knowledge
16 of the trust agreement?
17 A. Yes.
18 Q. Do you have an understanding of who
19 the beneficiary is of the Dugaboy Investment
20 Trust?
21 A. I don't know anything about that
22 trust.
23 MR. MORRIS: Okay. All right.
24 Let's take a short break and reconvene at
25 3:30 Eastern Time. We've been going for a

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1 GRANT SCOTT - 1/21/2021
2 while.
3 MR. CLARK: Thank you.
4 MR. MORRIS: Okay. Thank you.
5 (Whereupon, there was a recess in
6 the proceedings from 3:20 p.m. to
7 3:31 p.m.)
8 BY MR. MORRIS:
9 Q. Mr. Scott, earlier I think you
10 testified that you interfaced with the folks at
11 Highland in connection with your duties as the
12 director of CLO HoldCo Limited, right?
13 A. Yes.
14 Q. Are you aware of any written
15 agreement between Highland Capital Management
16 and CLO HoldCo Limited?
17 A. Yes, the various servicer
18 agreements.
19 Q. Okay. Are you aware that
20 Mr. Dondero resigned from his position at
21 Highland Capital Management sometime in
22 October?
23 A. No.
24 Q. Have you communicated with anybody
25 at Highland Capital Management about the

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1 GRANT SCOTT - 1/21/2021
2 Do you recall the subject matter of
3 your discussions with Mr. Throckmorton?
4 MR. CLARK: Objection, form.
5 BY MR. MORRIS:
6 Q. Withdrawn.
7 Do you recall your -- the subject
8 matter of your communications with
9 Mr. Throckmorton?
10 MR. CLARK: Objection, form.
11 BY MR. MORRIS:
12 Q. You can answer.
13 A. I -- I regularly interface with
14 Mr. Throckmorton regarding approvals of
15 expenses, and he's my sort of -- he's my point
16 person for approving wire transfers and things
17 of that nature.
18 Q. How about Mr. Patrick, what -- what
19 area of responsibility does he have with
20 respect to CLO HoldCo Limited?
21 A. He -- he doesn't, to my knowledge.
22 Q. Do you recall the nature of the
23 substance of any communications that you've had
24 with Mr. Patrick since -- you know, the last
25 two or three months?

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1 GRANT SCOTT - 1/21/2021
2 affairs of CLO HoldCo Limited at any time since
3 October?
4 A. Yes.
5 Q. Anybody other than Jim Seery?
6 A. Yes.
7 Q. Okay. Let's start with Mr. Seery.
8 You've spoken with him before, right?
9 A. Yes.
10 Q. Do you have his phone number?
11 A. Yes.
12 Q. How many times have you spoken with
13 Mr. Seery, to the best of your recollection,
14 just generally? It's not a test.
15 A. Three, maybe four times.
16 Q. Okay. Can you identify by name
17 anybody else at Highland that you've spoken
18 with since -- in the last two or three months?
19 A. I spoke to Jim Dondero. I've spoken
20 with Mike Throckmorton. The usual suspects, so
21 to speak. Mark Patrick, Mel- -- Melissa
22 Schroth.
23 Q. Can you recall anybody else?
24 A. No. No. Sorry.
25 Q. Did you -- did you -- withdrawn.

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1 GRANT SCOTT - 1/21/2021
2 A. Yes. Or -- yes.
3 Q. And what -- what are the nature of
4 those conversations or the substance?
5 A. He was -- he was one of the
6 individuals that helped to establish the
7 hierarchy for the -- what I keep referring to
8 as the charitable foundation.
9 Q. And -- and do you recall why you
10 spoke to him in the last -- or -- withdrawn.
11 Do you recall the nature of your
12 communications in the last two or three months
13 with Mr. Patrick?
14 A. I --
15 MR. CLARK: And hold on, Grant. I'm
16 going to caution -- my understanding -- I
17 believe Mr. Patrick's an attorney, and so
18 I'm going to caution you that you shouldn't
19 disclose the substance of -- of those
20 communications based on the attorney-client
21 privilege.
22 MR. MORRIS: Well, I'm -- I -- I am
23 the lawyer for the company so -- I guess
24 there are other people on the phone and I
25 appreciate that, but let's see if we can --

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1 GRANT SCOTT - 1/21/2021
2 I don't mean to be contentious here, so it
3 wouldn't -- I -- I'd be part of the
4 privilege anyway.
5 BY MR. MORRIS:
6 Q. But in any event, can you tell me
7 generally -- I'm just looking for general
8 subject matter of your conversations with
9 Mr. Patrick.
10 A. I asked him how I would go about
11 re- -- resigning my position.
12 Q. And when did that conversation take
13 place?
14 A. Within the last two weeks.
15 Q. Have you made a decision to resign?
16 A. No.
17 Q. I think you mentioned Melissa
18 Schroth. Do I have that right?
19 A. Yes.
20 Q. Can you describe generally the
21 communications you had with Ms. Schroth in the
22 last few months.
23 A. They -- she has e-mailed me certain
24 documents that I needed to sign. I had a
25 conversation with her about -- about some

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1 GRANT SCOTT - 1/21/2021
2 A. No.
3 Q. In your discussions with Mr. Seery,
4 did you ever tell him that you thought Highland
5 Capital Management was in default under any
6 agreement in relation to the CLOs?
7 A. No.
8 Q. I want to focus in particular on the
9 shared services agreement. In -- in your
10 discussions with Mr. Seery, did you ever tell
11 him that you believed that Highland Capital
12 Management was in default or in breach of its
13 shared services agreement with CLO HoldCo
14 Limited?
15 A. No.
16 Q. In your communications with
17 Mr. Seery, did you ever indicate any concern on
18 the part of CLO HoldCo Limited with respect to
19 Highland Capital's Man- -- Highland Capital
20 Management's performance under the shared
21 services agreement?
22 A. No.
23 Q. As you sit here today, do you have
24 any reason to believe that Highland Capital
25 Management has done anything wrong in

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1 GRANT SCOTT - 1/21/2021
2 home -- home improvements, home construction
3 with respect to Jim Dondero's home in Colorado,
4 and that's -- I -- I think that's -- that's it.
5 Q. Okay. Do you recall communicating
6 with anybody at Highland in the last three
7 months other than Mr. Dondero,
8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?
9 A. I -- I spoke with Jim Seery this
10 week.
11 Q. Anybody else?
12 A. I don't -- I don't know.
13 Q. Okay.
14 A. I don't think so.
15 Q. In your communications with
16 Mr. Seery, did you two ever discuss his reasons
17 for making any trade on behalf of any CLO?
18 A. No.
19 Q. In your discussions with Mr. Seery,
20 did you ever tell him that you believed that
21 Highland Capital Management had breached any
22 agreement in relation to any CLO?
23 A. Have I had that discussion with Jim
24 Seery?
25 Q. Yes.

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1 GRANT SCOTT - 1/21/2021
2 connection with its performance as the
3 portfolio manager of the CLOs in which CLO
4 HoldCo Limited has invested?
5 MR. CLARK: Object to form.
6 A. In terms of the -- are you saying --
7 please say that again. I'm sorry.
8 Q. That's okay. I ask long questions
9 sometimes so forgive me, but I'm trying to
10 get -- I'm trying to be precise so that's why
11 it's difficult sometimes. But let me try
12 again.
13 Does CLO HoldCo Limited contend that
14 Highland Capital Management has done anything
15 wrong in the performance of its duties as
16 portfolio manager of the CLOs in which CLO
17 HoldCo has invested?
18 MR. CLARK: Objection, form.
19 A. Yes. It's -- it's outlined in our
20 objections to -- to the plan.
21 Q. Okay. Any -- are you aware of
22 anything that's not contained within CLO HoldCo
23 Limited's objection to the plan?
24 MR. CLARK: Objection, form.
25 A. I don't know if this is responsive

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1 GRANT SCOTT - 1/21/2021
2 to your quest -- request, but two -- two
3 issues, I believe, also pose an in- -- a
4 problem for CLO HoldCo. One is we are paying
5 for services. I think I referred to the
6 services as being soup to nuts, but we are not
7 getting the full services. We haven't been for
8 some time. So we're likely overpaying. There
9 was a Highland Select Equity issue, 11-month
10 payment that was delayed which I was unaware of
11 was due. Normally, I would have interfaced
12 with someone at Highland about that, but my
13 attorney -- but my -- my attorney had to make a
14 request for payment, and that payment was
15 ultimately made. I -- other than that, I -- I
16 don't -- I don't know. I don't believe so.
17 Q. I want to distinguish between the
18 shared services agreement between Highland
19 Capital Management and CLO HoldCo Limited on
20 the one hand and on the other hand the
21 management agreements pursuant to which
22 Highland Capital Management manages certain
23 CLOs that CLO HoldCo invests in.
24 You understand the distinction that
25 I'm making?

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1 GRANT SCOTT - 1/21/2021
2 Q. I'll try again.
3 A. I'm just -- I'm sorry. I was
4 distracted and -- and I -- I'm sorry for asking
5 you to repeat it again. Please --
6 Q. Okay.
7 A. Please re- --
8 Q. Are you aware that CLO HoldCo
9 Limited has made investments in certain CLOs?
10 A. Oh, yes, certainly.
11 Q. And are you aware that those CLOs
12 are managed by Highland Capital Management?
13 A. Yes. As the -- as the servicer,
14 yes.
15 Q. Okay. Have you ever seen any of the
16 agreements pursuant to which Highland Capital
17 Management acts as a servicer?
18 A. I've seen a few, yes.
19 Q. Does CLO HoldCo Limited contend that
20 it is a party to any agreement between Highland
21 Capital Management and the CLOs?
22 MR. CLARK: Object to form. And I
23 just want to note for the record that
24 Mr. Scott is here testifying in his
25 individual capacity, I believe, not as a

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1 GRANT SCOTT - 1/21/2021
2 A. Now I do. I'm sorry. I didn't
3 appreciate that.
4 Q. Okay. So let's just take each of
5 those pieces one at a time. You mentioned your
6 concern about services. That's a concern that
7 arises under the shared services agreement,
8 right?
9 A. Yes.
10 Q. And you mentioned something about a
11 delayed payment having to do with Highland
12 Select. Do I have that generally right?
13 A. Correct.
14 Q. And is that a concern that you have
15 that arises under the shared services
16 agreement?
17 A. It's not the agreement with respect
18 to the CLOs as I understand it.
19 Q. Okay. So then let's turn to that
20 second bucket. You were aware -- you are
21 aware, are you not, that Highland Capital
22 Management has certain agreements with CLOs
23 pursuant to which it manages the assets that
24 are owned by the CLOs?
25 A. I'm so sorry. Could you please --

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1 GRANT SCOTT - 1/21/2021
2 corporate representative.
3 MR. MORRIS: Fair enough. But he is
4 the only representative so...
5 MR. CLARK: Fair enough. I just
6 want that made -- stated for the record,
7 but I also object as to form.
8 MR. MORRIS: Got it.
9 A. It's a third-party beneficiary under
10 the agreements.
11 Q. And is that because of something you
12 read in the document, or is that just your
13 belief and understanding?
14 A. My belief and understanding.
15 Q. And is that belief and understanding
16 based on anything other than conversations with
17 counsel?
18 A. In -- in -- recently it has, but I
19 don't recall from previous interactions over
20 the years how we discussed that or how I came
21 to -- to understand that.
22 Q. Does HCLO [sic] HoldCo -- did -- in
23 your capacity as the sole director of HCLO
24 HoldCo Limited, are you aware of anything that
25 Highland Capital Management has done wrong in

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1 GRANT SCOTT - 1/21/2021
2 connection with the services provided under the
3 CLO management agreements?
4 MR. CLARK: Objection, form.
5 A. I -- I don't -- I don't -- I
6 don't -- your answer's no.
7 Q. In your capacity as the director of
8 CLO HoldCo Limited, are you aware of any
9 default or breach under the CLO management
10 agreements that -- that Highland Capital
11 Management has caused?
12 MR. CLARK: Objection, form.
13 A. We have raised the issue about
14 ongoing sales in various -- I'm not sure
15 whether they represent a technical breach,
16 though.
17 Q. Okay. Are you aware of any
18 technical breach?
19 MR. CLARK: Objection, form.
20 A. No.
21 Q. I'm sorry. You said, no, sir?
22 A. My answer's no.
23 Q. Thank you. Do you know who made the
24 decision to cause the CLO HoldCo Limited entity
25 to invest in the CLOs that are managed by

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1 GRANT SCOTT - 1/21/2021
2 making an investment in a CLO that wasn't
3 managed by Highland?
4 A. No.
5 Q. Is there any particular reason why
6 you haven't given that any consideration?
7 A. That hasn't been my role. That's
8 not my expertise. That's been something
9 Highland has done and, quite frankly, over the
10 years brilliantly so, no.
11 Q. You're aware that HCM, L.P., has
12 filed for bankruptcy, right?
13 A. Yes.
14 Q. When did you learn that Highland had
15 filed for bankruptcy?
16 A. After the fact sometime in late --
17 late 2019.
18 Q. Since the bankruptcy filing, have
19 you made any attempt to sell CLO HoldCo
20 Limited's position in any of the CLOs that are
21 managed by Highland?
22 A. No.
23 Q. So notwithstanding the bankruptcy
24 filing, you as the director haven't made any
25 attempt to transfer out of the CLOs that are

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1 GRANT SCOTT - 1/21/2021
2 Highland Capital?
3 A. The select -- ultimately, I had to.
4 Q. I thought you testified earlier that
5 you didn't make decisions as to investment. Do
6 I have that wrong?
7 A. The selection.
8 Q. Okay.
9 A. I -- I'm --
10 Q. So -- so explain to me --
11 A. I have to approve -- I have to
12 approve the selection. I'm sorry. But the
13 people making -- I was putting that in the camp
14 of the people that make the selection.
15 Q. Okay. Do you know if -- do you know
16 if there are CLOs in the world that exist that
17 aren't managed by Highland Capital Management?
18 MR. CLARK: Objection, form.
19 A. Are there CLOs in the -- in the
20 world that are not --
21 Q. Yes.
22 A. Yes. It's -- it's a well-known --
23 it's a well-known --
24 Q. In your capacity as the director of
25 CLO HoldCo Limited, did you ever consider

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1 GRANT SCOTT - 1/21/2021
2 managed by Highland, correct?
3 A. Correct.
4 Q. Did you ever give any thought to
5 exiting the CLO vehicles that were managed by
6 Highland in light of its bankruptcy filing?
7 A. No.
8 Q. Have you ever discussed with
9 Mr. Seery anything having to do with the
10 management -- withdrawn.
11 Have you ever discussed with
12 Mr. Seery any aspect of the debtor's management
13 of the CLOs in which CLO HoldCo Limited is
14 invested?
15 A. No.
16 Q. You mentioned earlier a request to
17 stop trading. Do I have that right?
18 A. Yes.
19 Q. Okay. And are you aware that a
20 letter was written purportedly on behalf of CLO
21 HoldCo Limited in which a request to stop
22 trading was made?
23 A. As a cos- -- yeah. Yes.
24 Q. Okay. Have you ever seen that
25 letter before?

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1 GRANT SCOTT - 1/21/2021

2 Q. How did you form your opinion that

3 the debtor doesn't have the expertise to

4 execute trades on behalf of the CLOs today?

5 What's the basis for that belief?

6 A. I -- as I understood it, the -- the

7 people historically making that decision were

8 no longer making that decision.

9 Q. Who besides Mr. Dondero --

10 withdrawn.

11 Who are you referring to?

12 A. Well, Mr. Dondero is one. I don't

13 know the names, but I -- I understood it to

14 mean that the group previously responsible, for

15 exam- -- for example, Hunter Covitz, including

16 Hun- -- him, were no longer involved in the

17 decision-making process, but...

18 Q. How did you -- how -- how -- who

19 gave you the information that led you to

20 conclude that Hunter Covitz was no longer

21 involved in the decision-making process?

22 A. Specifically him and that name being

23 mentioned, I -- I -- I wasn't informed of his

24 speci- -- him -- him being removed. I was

25 under the impression that the team that had

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1 GRANT SCOTT - 1/21/2021

2 updated my contacts to -- to add his name so

3 now I have his name. And during that

4 conversation he informed me that he did have

5 that expertise --

6 Q. And --

7 A. -- without me making any inquiry.

8 He volunteered that.

9 Q. But you hadn't made any inquiry

10 prior to the time that you authorized the

11 sending of this letter; is that fair?

12 A. That's correct.

13 Q. Do you know whether Mr. Seery, in

14 fact, engaged in transactions on behalf of the

15 debtor since he was appointed back in January?

16 A. I do not.

17 Q. Did you ask that question prior to

18 the time you authorized the sending of this

19 letter?

20 A. I did not.

21 Q. Can you identify a single

22 transaction that Jim Seery has ever made that

23 you disagree with?

24 A. No.

25 Q. Can you identify any transaction

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1 GRANT SCOTT - 1/21/2021

2 previously been doing that was no longer doing

3 it.

4 Q. And what gave you that impression?

5 A. Was communications I had with my

6 attorney.

7 Q. Okay. Is there any source for your

8 information that led you to conclude that the

9 team was no longer there that was able to

10 engage in the trades on behalf of the CLOs

11 other than your attorneys?

12 A. Well, this -- this letter -- I -- I

13 think the answer is no.

14 Q. Thank you. Do you know if Jim -- do

15 you have an opinion or a view as to whether Jim

16 Seery is qualified to make trades?

17 A. This --

18 MR. CLARK: Objection, form.

19 A. I don't know -- I spoke to Jim Seery

20 earlier this week. You -- you asked me whether

21 I had his number. I said I did. That's only

22 because he called me. My phone rang with his

23 number. It was a number I did not recognize,

24 it was not in my contacts, but he left me a

25 voice mail so I called him back. Then I

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1 GRANT SCOTT - 1/21/2021

2 that the debtor made on behalf of any of the

3 CLOs since the time that you understand

4 Mr. Dondero left Highland that you disagree

5 with?

6 A. No.

7 Q. Did you have any discussion with any

8 representative of any of the entities listed on

9 this document where they told you they believe

10 Jim Seery didn't have the expertise to engage

11 in transactions on behalf of the whole -- of

12 the CLOs?

13 A. You -- your question -- I'm -- I'm

14 sorry. I'm trying to be -- I'm trying to be a

15 hundred perc- -- I'm trying to be accurate

16 here.

17 Q. Let me interrupt you and just say,

18 I'm very grateful for your testimony. I know

19 this is not easy, and I do believe that you're

20 earnestly and honestly trying to answer the

21 questions the best you can. So no apologies

22 necessary anymore. If you need me to repeat

23 the question or rephrase it, just say that,

24 okay?

25 A. Please -- yes.

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2 Q. Okay.

3 A. Please -- please repeat that.

4 Q. Did you ever communicate with any

5 employee, officer, director, representative of

6 any of the entities that are on this page

7 concerning the debtor's ability to service the

8 CLOs?

9 A. I believe so.

10 Q. And can you identify the person or

11 persons?

12 A. I think it's Jim Dondero.

13 Q. Anybody else other than Mr. Dondero?

14 A. No.

15 Q. When did you have that conversation

16 or those conversations with Mr. Dondero?

17 A. This letter is dated the 22nd --

18 Q. Correct.

19 A. -- right?

20 Q. Yes.

21 A. I believe that's the Tuesday before

22 Christmas, and this would have been on the

23 21st, the Monday.

24 Q. What do you recall about your

25 conversation on the 21st regarding the

Page 92

1 GRANT SCOTT - 1/21/2021

2 there.

3 BY MR. MORRIS:

4 Q. Do you see the request that's in the

5 last sentence?

6 A. Yes.

7 Q. Is that the same thing that

8 Mr. Dondero told you should happen, that --

9 that there should be no further CLO

10 transactions at least until the issues raised

11 and addressed by the debtor's plan were

12 resolved substantively?

13 A. Yes.

14 Q. Is there anything that he said

15 that's inconsistent with the request that's

16 made here?

17 MR. CLARK: Objection, form.

18 A. This -- and can you -- can you show

19 me earlier parts?

20 Q. Of course. You know what, I'll

21 withdraw the question.

22 And let me see if I can do it this

23 way: In your discussion with Mr. Dondero, did

24 he indicate that he had seen a draft of this

25 letter?

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1 GRANT SCOTT - 1/21/2021

2 substance of this particular letter?

3 A. Jim Dondero described why he

4 believed sales being made on an ongoing basis

5 after a request was made to stop was im- --

6 improper.

7 Q. Do you -- do you rely on what

8 Mr. Dondero said to you during that phone call

9 on December 21st in -- in deciding to join in

10 this particular letter?

11 A. No.

12 Q. Did you only then rely on the

13 information you obtained from counsel?

14 A. Yes. I -- I -- I -- I considered

15 this letter to be nearly the most gentle

16 request imaginable amongst lawyers to maintain

17 the status quo.

18 Q. And the request that's made in this

19 letter is perfectly consistent with what

20 Mr. Dondero told you on the 21st of December,

21 correct?

22 A. I don't -- no.

23 Q. How --

24 MR. MORRIS: Can we go to the end of

25 this letter, please. All right. Right

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1 GRANT SCOTT - 1/21/2021

2 A. No. And I didn't -- I didn't have a

3 discussion with him. I -- I merely listened to

4 him. There was no -- I -- I had no input to

5 the conversation.

6 Q. Okay. I -- I did -- I didn't --

7 I -- I appreciate that. So he called you; is

8 that right?

9 A. We -- we called in.

10 Q. Oh, was it --

11 A. I --

12 Q. Was it --

13 A. I don't know --

14 Q. Was it --

15 A. I don't know the sequence of the

16 calls. I'm sorry.

17 Q. Was there anybody on the call other

18 than you and Mr. Dondero, the call that you're

19 describing on December 21st?

20 A. Yes, my attorney and an attorney --

21 I believe the attorney that signed this letter.

22 Q. Okay. And I just want to focus on

23 what Mr. Dondero said. Did he -- did he say

24 during the call that Highland should not be

25 engaging in any further CLO transactions?

EXHIBIT 17

1 Grant Scott

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

5 In Re: Case No.
6 HIGHLAND CAPITAL MANAGEMENT L.P., 19-34054
7 Debtor, Chapter 11

8 _____
9 HIGHLAND CAPITAL MANAGEMENT, Adversary No.
10 L.P., 21-03003-sgi

11 Plaintiff,

12 Vs.

13 JAMES D. DONDERO,
14 Defendant.

15
16 Virtual Zoom Deposition of Grant Scott

17 Tuesday, June 1, 2021

18 At 2:00 p.m.

19
20
21
22
23 Reported by LeShaunda Cass-Byrd, CSR, RPR

24 TSG Job No. 194692

25

Page 6

1 Grant Scott
2 GRANT SCOTT,
3 having been first duly sworn, was examined and
4 testified as follows:
5 EXAMINATION
6 BY MR. MORRIS:
7 Q. Good afternoon, Mr. Scott.
8 A. Good afternoon, John.
9 Q. Okay. As you recall, my name is John
10 Morris. I'm an attorney with Pachulski Stang Ziehl &
11 Jones. We represent Highland Capital Management LP, a
12 debtor in a bankruptcy case that is pending in the
13 Northern District of Texas.
14 Do you recall any of that?
15 A. Yes.
16 Q. Okay. And we are here today for your
17 deposition, and I appreciate your compliance with the
18 subpoena. Just a few ground rules to remind you, I'm
19 going to ask you a series of questions, and it's
20 important that you allow me to finish my question
21 before you begin your answer; is that fair?
22 A. Yes.
23 Q. And I will attempt to give you the same
24 courtesy, but if for some reason I step on your words,
25 just let me know that because I don't mean to cut you

Page 8

1 Grant Scott
2 A. Yes.
3 Q. So today's deposition concerns a particular
4 motion that the debtor filed recently where the debtor
5 is seeking to hold certain individuals and entities in
6 contempt of court. Have you seen or reviewed the
7 debtor's motion that was filed?
8 A. I have seen the e-mails which I kept, but I
9 have not read them.
10 Q. Okay. I want to just begin with some
11 background.
12 MR. MORRIS: And then I would ask Ms.
13 Canty to put up what we will mark as
14 Exhibit -- you know, let's pick up the
15 numbering from this morning, La Asia. Did
16 we use 7 this morning?
17 Actually, this is going to be Exhibit
18 1. It's the same document that we had this
19 morning.
20 MS. CANTY: Yes.
21 MR. MORRIS: We will call it Exhibit
22 1, and it's an organizational chart. If we
23 can just put that on the screen.
24 (Deposition Exhibit 1 was marked for
25 identification.)

Page 7

1 Grant Scott
2 off. Okay?
3 A. Okay.
4 Q. If there's anything that I ask you that you
5 do not understand, will you let me know?
6 A. Yes, sir.
7 Q. If you need a break at any time, will you
8 let me know?
9 A. Yes.
10 Q. Okay. Because this deposition is being
11 conducted remotely, we are going to be putting
12 documents on the screen. I'm not attempting to trick
13 you in any way. If you believe there is any of
14 portion of a document that you need to see, either to
15 put something in context or to refresh your
16 recollection, I encourage to let me know that, and I
17 will be happy to accommodate you. Okay?
18 A. Okay.
19 Q. Okay. Have you seen the subpoena that the
20 debtors served on your lawyer in this case?
21 A. The one relating to my deposition?
22 Q. Correct.
23 A. Yes.
24 Q. And are you here today pursuant to that
25 subpoena?

Page 9

1 Grant Scott
2 BY MR. MORRIS:
3 Q. Okay. Have you seen this before,
4 Mr. Scott?
5 A. Yes.
6 Q. Do you know what it is?
7 A. It's the -- yes. The DAF CLO HoldCo
8 structure chart.
9 Q. And this is structure chart that you
10 produced in response to the subpoena; is that right?
11 A. Correct.
12 Q. You are familiar with the gentleman named
13 Mark Patrick; is that right?
14 A. Yes.
15 Q. Is it your understanding that Mr. Patrick
16 was one of the individuals that helped establish the
17 hierarchy that is depicted on Exhibit 1?
18 A. Yes.
19 Q. And what is the basis for that
20 understanding?
21 A. That goes back many years to the
22 origination of my role.
23 Q. Okay. And do you recall that you assumed
24 your role in or around 2012?
25 A. Yes.

Page 10

1 Grant Scott

2 Q. Okay. Did you know Mr. Patrick prior to

3 the time that you assumed your role?

4 A. I did not.

5 Q. Okay. Do you know -- withdrawn.

6 Do you have any knowledge as to whether

7 anybody other than Mr. Patrick helped establish the

8 hierarchy that is depicted on Exhibit 1?

9 A. There was a law firm name that came to

10 mind, and there was an expert, I gather, a lawyer that

11 was familiar with charitable entities that I believe

12 was involved.

13 Q. Can you identify any -- withdrawn.

14 At the time that you understood Mr. Patrick

15 had helped to create this hierarchy, did you

16 understand who employed Mr. Patrick?

17 A. Yes. I believe so.

18 Q. Who did you believe Mr. Patrick worked for

19 at that time?

20 A. Highland Capital Management.

21 Q. Can you identify any other person at

22 Highland Capital Management who was involved in the

23 creation of this hierarchy?

24 A. No.

25 Q. Okay. Now for looking at the hierarchy

Page 12

1 Grant Scott

2 members of some of those organizations.

3 Q. And would they be the ones that are

4 labelled as third parties or as supporting

5 organizations?

6 A. The -- the third party organizations.

7 And -- and possibly the supporting organizations.

8 Q. Do you know what the difference is between

9 a third party and a supporting organization as those

10 phrases are used on Exhibit 1?

11 A. I don't recall anymore what the delineation

12 is between those two.

13 Q. Okay. Do you hold any position today with

14 any of the entities that are depicted on Exhibit 1?

15 A. I do not -- I do not believe so. Well, I

16 believe technically, I'm still -- I may still be a

17 director of CLO HoldCo, but I -- I'm not certain of

18 the status as of today.

19 Q. Is there a particular reason why you may

20 remain today as a director of CLO HoldCo Limited?

21 A. I don't know if the -- I don't know if the

22 transfer after my resignation has been completely

23 finalized, and I haven't -- yeah. I don't know how

24 close it is to being completely finalized. I'm not --

25 I'm not sure.

Page 11

1 Grant Scott

2 here, for the period for approximately 10 years prior

3 to March 24th, 2021, you served as the managing member

4 of the charitable DAF GP, LLC, correct?

5 A. Correct.

6 Q. And for approximately 10 years prior to

7 March 30 -- 20 -- withdrawn.

8 For approximately 10 years prior to March

9 24th, 2021, you were the sole director of charitable

10 DAF HoldCo, LTD, correct?

11 A. Correct.

12 Q. And for approximately 10 years prior to

13 March 24th, 2021, you were the sole director of

14 charitable DAF Fund LP, correct?

15 A. I believe that is correct.

16 Q. And for approximately 10 years prior to

17 March 24, 2021, you served as the sole director of CLO

18 HoldCo Limited, correct?

19 A. Yes. That is correct.

20 Q. Did you serve in any capacity for any other

21 entity that is depicted on this sheet at any time

22 prior to March 24th, 2021?

23 A. If you go -- if you look at the top of that

24 chart where it's directed at the charitable giving

25 components, I had some involvement with various

Page 13

1 Grant Scott

2 Q. But your intent is to resign as the

3 director of CLO HoldCo Limited; is that right?

4 A. Yes.

5 Q. And the only reason that that hasn't

6 happened yet, is it fair to say, is for administrative

7 reasons?

8 MR. BRIDGES: Objection. Assumes

9 facts not in evidence.

10 BY MR. MORRIS:

11 Q. You can answer.

12 A. I --

13 Q. Withdrawn. I will ask a different

14 question.

15 Do you know why your intended resignation

16 from CLO HoldCo Limited has not yet become effective?

17 MR. BRIDGES: The same objection.

18 Facts not in evidence.

19 BY MR. MORRIS:

20 Q. You can go ahead.

21 MR. KANE: I object to form, also.

22 Grant, go ahead.

23 THE WITNESS: I do not.

24 BY MR. MORRIS:

25 Q. Okay. Do you hold any positions of any

Page 14

1 Grant Scott
2 kind today with any entity that you believe is either
3 directly or indirectly owned or controlled by
4 Mr. Dondero?
5 A. I don't believe so.
6 Q. Do you have -- I'm just going to explore
7 that for a little bit.
8 Do you know have -- do you know whether you
9 continue to HoldCo any position with any NexBank
10 entity?
11 A. I'm not in -- no, I don't have any
12 involvement with NexBank.
13 Q. Okay.
14 MR. KANE: Hey, John, can you shed a
15 little light on why that is relevant?
16 MR. MORRIS: I'm just trying to find
17 connections between Mr. Scott and
18 Mr. Dondero because I -- I just -- I
19 think -- I think the purpose of the
20 deposition is to try to -- to try to deduce
21 facts that are related to whether or not
22 Mr. Dondero is going to be a responsible
23 party under the contempt motion. So I'm
24 just looking for --
25 MR. KANE: I understand. I'm just

Page 16

1 Grant Scott
2 ahead, Grant.
3 (Reporter clarification.)
4 THE WITNESS: I believe so.
5 BY MR. MORRIS:
6 Q. And is it your understanding that Mr. Mark
7 Patrick replaced you in those capacities on or about
8 March 24th, 2021?
9 A. It's my understanding that on March 24th,
10 the management shares that I had previously -- that
11 had been in my name were transferred to him. I am not
12 sure how that impacts the current status in the
13 various other entities.
14 Q. Okay. During the time that you served as
15 the managing member of the charitable DAF GP LLC, that
16 entity had no officers or employees, correct?
17 A. I believe that is correct.
18 MR. KANE: Object to the form.
19 BY MR. MORRIS:
20 Q. And you served as the sole director of that
21 entity during the time that you served as the
22 director, correct?
23 A. I believe that is correct.
24 Q. And during the period of time that you
25 served as a director of charitable DAF HoldCo Limited,

Page 15

1 Grant Scott
2 trying to figure out Grant's -- you know,
3 whether he has a --
4 MR. MORRIS: That is all right. I'm
5 moving on anyway.
6 MR. KANE: Appreciate it.
7 BY MR. MORRIS:
8 Q. Now looking at the chart, Mr. Scott, I
9 believe you testified that you were either the
10 managing member or a director of each of the DAF
11 entities and CLO HoldCo Limited.
12 Do I have that right?
13 A. I believe that is correct.
14 Q. All right. Is it your understanding that
15 Mr. --
16 A. Excuse me. I am sorry. Currently or was?
17 Q. Was. Up until March 24th.
18 A. Okay. Correct.
19 Q. All right. Let me ask the question again
20 so it's clean.
21 Did you serve as either the managing member
22 or the director for each of the charitable DAF
23 entities and the CLO HoldCo Limited entity for
24 approximately 10 years prior to March 24th, 2021?
25 MR. KANE: Objection. Form. Go

Page 17

1 Grant Scott
2 you were the only person to serve in that capacity; is
3 that correct?
4 A. I believe so.
5 Q. And during the period that you served as
6 director of charitable DAF HoldCo Limited, that entity
7 had no officers or employees, correct?
8 A. I believe that is correct.
9 Q. During the time that you served as a
10 director of charitable DAF Fund LP, you were the sole
11 director of that entity, correct?
12 A. Correct.
13 Q. And during the time that you served as the
14 sole director of charitable DAF Fund LP, that entity
15 had no officers or employees, correct?
16 A. I believe that is correct.
17 Q. You served as the sole director of CLO
18 HoldCo Limited; is that right?
19 A. Yes. That is correct.
20 Q. And during the period that you served as
21 the sole director of CLO HoldCo Limited, that entity
22 had no officers or employees, correct?
23 A. That is correct.
24 Q. Is that why the DAF had certain agreements
25 with Highland Capital Management LP pursuant to which

Page 18

1 Grant Scott

2 HCMLP provided back office and advisory and investment

3 services?

4 MR. KANE: Objection. Form.

5 THE WITNESS: I think that is

6 correct.

7 BY MR. MORRIS:

8 Q. Do you recall that that DAF had agreements

9 with Highland Capital Management that were amended and

10 restated in 2014?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I understand there were

13 various agreements over the years that had

14 been restated. I'm not entirely sure

15 anymore of the dates that we received

16 that --

17 MR. MORRIS: Okay. Let's mark --

18 THE WITNESS: I'm sorry?

19 MR. MORRIS: Let's mark as Exhibit

20 8 --

21 MR. BRIDGES: Objection. Objection.

22 Please let the witness answer his question.

23 MR. MORRIS: Let's mark this --

24 MR. BRIDGES: No. Please allow the

25 witness to continue his answer.

Page 20

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Okay. Do you see that Mrs. Kim sends you

4 an e-mail on August 26th, 2014?

5 A. Yes. I see that.

6 Q. And do you see that she had attached for

7 your review and execution, drafts of an amended and

8 restated service agreement and amended and restated

9 advisory agreement and GP resolutions?

10 A. I do see that.

11 Q. Okay. Do you have any recollection as to

12 whose idea it was to amend and restate those

13 agreements at that moment in time?

14 A. I do not.

15 Q. Do you have any recollection as to why

16 those agreements were amended and restated at that

17 time?

18 A. No, I do not.

19 Q. Okay. Let's just scroll down and just show

20 Mr. Scott the agreements. I'm not going to ask

21 anything substantive about it. But do you see here is

22 the -- if we can stop right there -- the Amended and

23 Restated Service Agreement that is dated from the

24 first day of July, 2014, and it's between the DAF

25 Fund -- the charitable DAF Fund LP, the charitable DAF

Page 19

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Grant, do you have anything else to add?

4 A. You had asked me -- you asked about a

5 specific date, I think, 2014. I just -- I don't know

6 what the dates are or were.

7 Q. That is what I heard you say. Is there

8 anything else that you have to add?

9 A. No, I don't -- I don't think so.

10 Q. I didn't think so either.

11 MR. MORRIS: Let's go to Exhibit 8,

12 please, the next document.

13 (Deposition Exhibit 8 was marked for

14 identification.)

15 MR. MORRIS: Okay. If we could just

16 scroll down a little bit. Just to the

17 e-mail.

18 BY MR. MORRIS:

19 Q. All right. Were you familiar with Caitlin

20 Nelson and Helen Kim and Thomas Surgent and David Klos

21 in and around August 2004?

22 A. I believe they were all Highland employees.

23 Q. Okay.

24 MR. MORRIS: Can we just scroll up to

25 the next e-mail, please?

Page 21

1 Grant Scott

2 GP LLC, as well as Highland Capital Management LP.

3 Do you see that?

4 A. I do see that.

5 Q. Do you recall that the entity that is

6 commonly referred to as the DAF had a service

7 agreement with Highland Capital Management LP?

8 A. I believe that is correct. Yes.

9 Q. Do you recall whether -- whether the

10 service agreement was ever the subject of any

11 negotiations?

12 A. I don't know.

13 Q. Did you participate in any negotiations

14 concerning the service agreement that was entered --

15 entered in between the entity known as the DAF and

16 Highland Capital Management LP?

17 MR. KANE: Objection to form.

18 John, will you clarify the time

19 period?

20 BY MR. MORRIS:

21 Q. Right here. 2014.

22 A. Sir, I don't recall anything about this

23 with respect to 2014.

24 Q. Do you know if -- if the agreement was ever

25 amended at any time after 2014? And when I use the

Page 22

1 Grant Scott
2 phrase "agreement," I'm specifically referring to the
3 Amended and Restated Service Agreement that we are
4 looking at.
5 A. I believe -- I think there was a further
6 amended and restated agreement.
7 Q. Okay. Did you participate in any
8 negotiations concerning that further amended and
9 restated agreement?
10 A. I don't remember.
11 Q. Do you remember offering any comments
12 concerning any subsequent amendment or restatement?
13 A. I don't -- I don't remember.
14 Q. Did you ever hire outside counsel to assist
15 you in the negotiation of any service agreements with
16 Highland Capital Management LP?
17 A. I did not.
18 Q. Do you -- do you recall who prepared each
19 of the service agreements to which the DAF was a
20 party?
21 A. I don't remember.
22 Q. To the best of your recollection, would it
23 have been inhouse counsel at Highland Capital
24 Management?
25 MR. KANE: Objection. Form.

Page 24

1 Grant Scott
2 A. I believe so.
3 Q. And the agreements that you signed on
4 behalf of that entity, were any of them -- were there
5 multiple drafts of any such agreement?
6 A. There were frequently multiple drafts or
7 agreements. But I just don't remember them.
8 Q. Do you remember whether you personally ever
9 provided any comments to any particular draft?
10 A. I do not.
11 Q. Let me ask you this: Are you familiar with
12 the phrase "arm's length negotiations"?
13 A. Yes.
14 Q. And can you tell me what your understanding
15 is of an arm's length negotiation?
16 A. Well, it would depend on the nature of the
17 parties. For example, a -- two strangers would
18 have -- arm's length would differ from the nature of
19 an agreement between parties maybe having fiduciary or
20 related obligations.
21 Q. Let me ask you this --
22 A. I don't know what the black -- I don't know
23 what the blackball definition is to that term.
24 Q. Would you agree that arm's length
25 negotiations take place between two parties that are

Page 23

1 Grant Scott
2 THE WITNESS: I don't -- I don't
3 know.
4 BY MR. MORRIS:
5 Q. Can you recall the name of any law firm
6 that was involved in the drafting or the negotiation
7 of any service agreement between the entity known as
8 the DAF and Highland Capital Management LP?
9 MR. KANE: Objection. Form.
10 THE WITNESS: I don't remember any.
11 BY MR. MORRIS:
12 Q. Can you recall during your tenure as the
13 managing member of the DAF GP LLC, whether there was
14 any particular term or provision in any service
15 agreement that was the subject of negotiation or even
16 discussion?
17 A. I don't remember those -- any of those
18 discussions.
19 Q. Do you know if they took place or you just
20 can't remember them?
21 A. I just can't remember them.
22 Q. Do you recall ever seeing multiple drafts
23 of any service agreement that you -- withdrawn.
24 Did you personally sign service agreements
25 on behalf of the entity known as the DAF?

Page 25

1 Grant Scott
2 acting out of their own self interest?
3 MR. KANE: Objection.
4 MR. BRIDGES: Objection to form and
5 foundation.
6 BY MR. MORRIS:
7 Q. Withdrawn. Withdrawn.
8 MR. BRIDGES: Calls for a legal
9 opinion.
10 BY MR. MORRIS:
11 Q. Mr. Scott, do you believe that the service
12 agreements between the entity known as the DAF and
13 the -- and Highland Capital Management LP were arm's
14 length agreements?
15 MR. BRIDGES: Objection. Again, lack
16 of foundation, calls for a legal opinion.
17 MR. MORRIS: Okay. I'm not asking
18 for a legal opinion. I'm asking for
19 Mr. Scott's view of it, so I will try one
20 more time.
21 BY MR. MORRIS:
22 Q. Mr. Scott, do you believe that the service
23 agreements between the DAF and HCMLP were the subject
24 and result of arm's length negotiations?
25 MR. BRIDGES: Objection. Foundation,

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1 Grant Scott

2 A. Why did I send it at the end of January?

3 Q. What caused you to send this e-mail at that

4 moment in time?

5 A. Well, I mean, there are a couple of

6 reasons. It was -- it was necessary that I do it, and

7 the time seemed right in view of the events in

8 January. It was like a good transition point from my

9 perspective.

10 Q. And why was it necessary at that time?

11 A. Well, there was --

12 MR. BRIDGES: Objection. Assumes

13 facts not in evidence.

14 BY MR. MORRIS:

15 Q. You can answer.

16 A. I previously testified during this

17 deposition that throughout 2020, the desire -- or,

18 rather, the appropriateness of my wanting to resign

19 was expanding, and based on what had happened in

20 January and December as well, but mostly January, I

21 basically just did a critical mass on whether I could

22 sustain my role, given my commitments to my existing

23 firm and given my discussions with the managing

24 members of my existing firm.

25 And it -- there was just no way I could

Page 48

1 Grant Scott

2 John Kane.

3 THE WITNESS: Yes. I didn't know who

4 best to inform my decision.

5 BY MR. MORRIS:

6 Q. And why did you think that Mr. Dondero

7 would know?

8 MR. BRIDGES: Objection. Asked and

9 answered.

10 THE WITNESS: He knows a lot more

11 about the workings of -- I mean, it was --

12 CLO HoldCo and the charitable admission was

13 something that he worked to develop with

14 others 10 years ago, and he was committed

15 to the charity and he knew all of the

16 players and I just -- I guess I just

17 assumed he would know where to direct it.

18 BY MR. MORRIS:

19 Q. Did you ever ask?

20 A. He knew how to effectuate -- he knew how to

21 effectuate -- or I thought he knew how to effectuate

22 my resignation by directing it to the appropriate

23 personnel.

24 Q. Did you ever ask him who it should be

25 directed to?

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1 Grant Scott

2 continue with the time commitment required. I had

3 made various promises and representations to my firm

4 throughout 2020 that the bankruptcy would be handled

5 relatively efficiently and wouldn't require a great

6 deal of time commitment. And then I guess the straw

7 that broke the camel's back was the second lawsuit,

8 meaning me personally, and it just -- from a personal

9 standpoint, the most significant factor was just my --

10 my being overwhelmed, trying to sustain my career and

11 engage in what seem like the 2021 that was going to

12 involve my having to defend two lawsuits. And I felt

13 like I got CLO HoldCo through the bankruptcy and then

14 that was a good jumping off point.

15 Q. What -- why did you send this e-mail to

16 Mr. Dondero?

17 A. I knew, or at least I reasonably believed

18 he would know where to who to send it to because I

19 wasn't exactly sure.

20 Q. So you were the managing member of the

21 general partnership and the director of the other DAF

22 entities and CLO HoldCo Limited, and you were not sure

23 who to send your notice of resignation to.

24 Do I have that right?

25 MR. KANE: Objection. Form. That's

Page 49

1 Grant Scott

2 A. No.

3 Q. Looking at the third paragraph, it says,

4 quote, my resignation will not be effective until I

5 approve of the indemnification provisions and obtain

6 any and all releases.

7 Do you see that?

8 A. Yes.

9 Q. Why did you condition the effectiveness of

10 your resignation on those things?

11 A. Well, although I'm a patent attorney and

12 basically just a technical writer that doesn't deal

13 with legal issues all of the time, it seemed like

14 appropriate language.

15 I have a number of outstanding litigations

16 where I am named personally, and the actions that I

17 took which resulted in my being sued were actions I

18 took on behalf of CLO HoldCo solely in that position,

19 and so I thought just to have the appropriate notice

20 that I would like indemnification to help -- to help

21 deal with those litigation matters. That is all.

22 Q. Did anybody suggest to you at any time

23 prior to the time that you sent this e-mail, that any

24 of the DAF entities or CLO HoldCo Limited might have

25 claims against you?

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1 Grant Scott

2 A. No. No.

3 Q. Were you concerned that Mr. Dondero or

4 anyone acting on his behalf might sue you?

5 A. No.

6 Q. Did Mr. Dondero ever threaten to sue you?

7 A. No.

8 Q. Did you ever obtain the Indemnity provision

9 and any and all necessary releases that you asked for

10 in this e-mail?

11 A. Not yet.

12 Q. And what does that mean?

13 A. I understand that those provisions are --

14 indemnification proposals are in the works, I think.

15 Q. And do you know who is negotiating --

16 withdrawn.

17 Is somebody negotiating those

18 indemnification and release provisions on your behalf?

19 A. My -- my attorney would be.

20 Q. And do you know if your attorney is

21 negotiating with anybody concerning potential

22 indemnification and release provisions for you?

23 A. I don't know specifically, no.

24 Q. Do you know if he is -- if -- from whom do

25 you want to obtain releases?

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1 Grant Scott

2 A. I would like to, yes.

3 Q. Did you ever have any discussion with

4 Mr. Dondero about the releases that you wanted?

5 A. No.

6 Q. Have you communicated with Mr. Dondero

7 since -- since you sent this e-mail?

8 A. Yes.

9 Q. Other than the birth date text that he sent

10 to you, have you spoken with him?

11 A. In February.

12 Q. So you haven't spoken to him since then?

13 A. That is correct.

14 Q. What did you speak to him about in

15 February?

16 A. He called me to ask me if I knew anything

17 about in particular -- I think it might have been an

18 asset of CLO HoldCo, if I was aware of whether it had

19 been purchased or sold, and I just told them I didn't

20 know what he was -- I didn't know what -- I didn't

21 know what he was referring to. That was the last

22 conversation that we had.

23 Q. Can I refer to the period from the date of

24 this --

25 MR. MORRIS: Actually, let's look

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1 Grant Scott

2 MR. BRIDGES: Objection. Facts not

3 in evidence.

4 BY MR. MORRIS:

5 Q. Withdrawn.

6 When you refer to any and all necessary

7 releases, who did you want to obtain releases from?

8 A. CLO HoldCo.

9 Q. Anybody else?

10 A. Well, I mean, and -- and the related

11 entities in that structure chart that you showed.

12 I'm -- I'm -- understand that to me, that is just

13 boilerplate legal language to put in a resignation,

14 you know, just to cross the T's, dot the I's, so to

15 speak. I'm not anticipating that will be -- that will

16 be a problem. I am sorry.

17 Q. You asked for this more than three months

18 ago now, right?

19 A. Correct.

20 Q. Do you know why you haven't gotten what you

21 asked for more than three months ago?

22 MR. BRIDGES: Objection. Form.

23 THE WITNESS: I -- I don't.

24 BY MR. MORRIS:

25 Q. But you still want the releases, right?

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1 Grant Scott

2 at -- let's scroll up a little bit, please.

3 BY MR. MORRIS:

4 Q. Did Mr. Dondero ever try to talk you out of

5 resigning?

6 A. No.

7 MR. MORRIS: Can you scroll up?

8 THE WITNESS: I -- I am sorry. I

9 need to correct that. I had conversations

10 with him where I had expressed, not so much

11 a desire to resign, but a belief that it --

12 it made strategic sense or was appropriate.

13 And it had to do with this issue of my

14 independence, and he suggested that family

15 members and friends are not precluded from

16 occupying positions of trust like trustees

17 and things like that, and that there was

18 nothing per se wrong with my -- my activity

19 with CLO HoldCo by virtue of being a friend

20 of his. So in that sense, he was trying to

21 talk me out of that, I guess.

22 BY MR. MORRIS:

23 Q. When did that conversation take place?

24 A. We had a number of those in 2020 and

25 January of 2021.

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1 Grant Scott
2 MR. MORRIS: Can we scroll up just a
3 little bit on this e-mail, please?
4 MR. BRIDGES: May I ask what exhibit
5 number this is? I've lost track. I am
6 sorry.
7 MS. CANTY: This is Exhibit 5 from
8 earlier. We are continuing the numbers.
9 So this was marked as Exhibit 5 in this
10 morning's deposition.
11 MR. BRIDGES: Thank you so much.
12 BY MR. MORRIS:
13 Q. Do you see where Mr. Dondero wrote to
14 you -- it's just of above the yellow highlighting
15 at -- 9:57 a.m. This is the next day. Quote, you
16 need to tell me ASAP that you have no intent to divest
17 assets.
18 Do you see that?
19 A. Yes.
20 Q. Did Mr. -- do you have any understanding as
21 to why he said that to you?
22 A. I know that he was mistaken in that
23 statement.
24 Q. Right. Do you have any understanding as to
25 whether Mr. Dondero had the ability to stop you from

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1 Grant Scott
2 being sold?
3 MR. BRIDGES: Objection to form.
4 MR. KANE: Objection. Asked and
5 answered.
6 BY MR. MORRIS:
7 Q. You can answer.
8 A. No. I had -- I had no idea what he was --
9 Q. Okay. Let's -- let's -- can we -- can we
10 call the period of time between the time you sent this
11 notice of your intent to resign in March 24, 2021 as
12 the interim period?
13 A. Sure.
14 Q. And that's the period during which you had
15 expressed your intent to resign, but your resignation
16 had not yet become effective; is that fair?
17 A. I guess it was the period of time when --
18 yes. I guess that is correct.
19 Q. Okay. Is it fair to say that there were
20 certain things you needed to do during the interim
21 period on behalf of CLO HoldCo and the DAF entities
22 before -- even before your resignation became
23 effective?
24 A. Yes.
25 Q. Okay. Was someone designated to act as

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1 Grant Scott
2 selling assets?
3 A. No. It wasn't -- it was a misunderstanding
4 about what the word "divest" meant in the subject
5 line.
6 Q. And did you understand that until you
7 corrected him, he was concerned and he expressed the
8 concern to you not to sell any assets?
9 MR. KANE: Objection to form.
10 THE WITNESS: No. It had -- I am
11 sorry. There -- the term "divest" was
12 maybe not a term I should have used.
13 However, my understanding was that my -- my
14 status at CLO HoldCo had a property related
15 aspect to it. And I used that term to
16 emphasize that I would need to -- that that
17 property aspect would need to be
18 transferred, meaning to the next entity or
19 person. He mistook it as something being
20 sold. It had nothing to do with that.
21 That is all.
22 BY MR. MORRIS:
23 Q. I understand that. But did you
24 understand -- did you have any understanding as to
25 what interest he had and whether or not assets were

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1 Grant Scott
2 your liaison with respect to matters concerning the --
3 the DAF entities and the CLO HoldCo during the interim
4 period?
5 MR. KANE: Objection. Form.
6 THE WITNESS: I had conversations
7 with Mark Patrick in February when I came
8 to -- to believe he -- he would be director
9 elect, so to speak, in terms -- in terms of
10 moving forward.
11 BY MR. MORRIS:
12 Q. During the interim period, did you have any
13 understanding as to whether Mr. Patrick had any
14 authority to act on behalf of any of the DAF entities
15 or CLO HoldCo?
16 MR. KANE: Objection. Form.
17 THE WITNESS: I came to believe he
18 did, upon signing the management shared
19 transfer agreement.
20 BY MR. MORRIS:
21 Q. Okay. So that was -- that was on or about
22 March 24th, 2021, right?
23 A. Correct.
24 Q. So I'm asking just about the interim period
25 between January 31st, 2021 when you sent your notice

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1 Grant Scott
2 of intent to resign, and March 24th. That is what I
3 am defining as the interim period.
4 So with that understanding, did you have
5 any reason to believe that Mr. Patrick had any
6 authority to act on behalf of any of the DAF entities
7 or CLO HoldCo during the interim period?
8 A. Well, it was -- he was part of a group of
9 entity -- a group of individuals that were with an
10 entity that had taken over from -- from Highland, and
11 so in -- certainly in that capacity, he -- as -- as
12 occurred for 10 years or more prior, that -- in that
13 role, you certainly had rights to -- to perform or to
14 act on CLO's behalf here.
15 Q. And what entity are you referring to?
16 A. I think it's the Highgate Consulting Group,
17 the Highland employees that took over -- or that
18 created that entity.
19 Q. And did the -- do you have an understanding
20 as to whether the Highgate Employment Group succeeded
21 to Highland Capital Management LP in the shared
22 services capacity or in the investment advisory
23 capacity or something else?
24 MR. BRIDGES: Object to form.
25 (Reporter clarification.)

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1 Grant Scott
2 A. They were conversations about the workings
3 with outside counsel to arrange the -- to arrange the
4 transfer of my responsibilities to another person or
5 entity at first, and then I came to learn that that
6 person was -- was -- would be Mark.
7 Q. Do you know who selected mark?
8 A. I do not.
9 Q. Do you know how Mark was selected?
10 A. I -- I do not.
11 Q. Did you ever ask Mark how he was selected?
12 A. I did not.
13 Q. Did you ever ask Mark who selected him?
14 A. I did not.
15 Q. Did you ever ask anybody at any time how
16 Mr. Patrick was selected to succeed you?
17 A. No, I did not.
18 Q. Did you ask anybody at any time as to who
19 made the decision to select Mr. Patrick to succeed
20 you?
21 A. No, I did not.
22 MR. BRIDGES: Objection. Facts not
23 in evidence and foundation.
24 BY MR. MORRIS:
25 Q. Okay. Do you have any understanding today,

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1 Grant Scott
2 THE WITNESS: I'm not entirely sure
3 of that.
4 BY MR. MORRIS:
5 Q. So is --
6 A. But he -- but --
7 Q. I am sorry. Did you finish your answer?
8 A. I'm not -- I'm not sure of the delineation
9 between the two.
10 Q. So on what basis did you believe that
11 Mr. Patrick had the authority to act on behalf of the
12 DAF entities and CLO HoldCo during the interim period?
13 MR. BRIDGES: Objection. Asked and
14 answered.
15 THE WITNESS: We had -- we had had a
16 number of conversations. And over the
17 course of a number of weeks, I came to -- I
18 came to understand that he would be the
19 director going forward. So...
20 BY MR. MORRIS:
21 Q. How did you come to that understanding?
22 A. Through the conversations that we had had,
23 I guess.
24 Q. What conversations did you have with Mr. --
25 were these conversations with Mr. Patrick?

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1 Grant Scott
2 as to who has the authority to select your --
3 withdrawn.
4 Do you have any understanding today, as to
5 who had the authority to select your replacement?
6 A. I do not.
7 MR. MORRIS: All right. Let's take a
8 short break. And I am certainly -- I'm
9 closer to the end than the beginning. It's
10 3:22 Eastern Time. Let's come back at
11 3:35, please, and hopefully I will be
12 finished by about 4, 4:15.
13 (Recess taken.)
14 BY MR. MORRIS:
15 Q. I want to go back, Mr. Scott, to the time
16 that you became appointed the managing member of the
17 general partnership and to the director of the other
18 DAF entities and CLO HoldCo. Do you remember how that
19 came to be?
20 A. My recollection is that various law firms
21 and Mark Patrick had a role in its creation and
22 configuration following some -- it's -- I believe it's
23 modeled after some expert -- expert in the field. I
24 am sorry. I don't know if I answered your question.
25 Q. You did not. So let me try it again. Do

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1 Grant Scott

2 you recall how it came to be that you assumed those

3 positions?

4 A. Ten years ago I accepted that role.

5 Q. And who offered the role to you?

6 A. Jim Dondero.

7 Q. Did -- did you communicate with anybody

8 other than Mr. Dondero concerning the opportunity that

9 he presented to you to assume these roles prior to the

10 time you accepted the position?

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. Withdrawn.

14 A. Possibly or --

15 Q. Withdrawn. Let me ask -- let me ask --

16 it's a good objection.

17 Mr. Scott, prior to the time that you

18 assumed your positions with the DAF entities and

19 CLO HoldCo, did you speak with anybody other than

20 Mr. Dondero, about the duties and responsibilities of

21 those positions?

22 MR. KANE: Objection to form.

23 THE WITNESS: The only thing that

24 comes to mind is Hunton & Williams. But

25 I -- I'm not sure. I don't know.

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1 Grant Scott

2 Do you see that?

3 A. Yes.

4 Q. And do you see that it's effective January

5 1, 2012?

6 And if we could go to the last page. And

7 is that your signature, sir?

8 A. That is correct.

9 Q. And is this the document that you signed on

10 March 12th, 2012, pursuant to which you became the

11 general partner of the DAF GP?

12 MR. KANE: Objection. Form.

13 THE WITNESS: It's not March 12th.

14 It's dated as March 21st, just to clarify,

15 but I believe so.

16 BY MR. MORRIS:

17 Q. I appreciate that. I'm going to ask the

18 question again, just because I was wrong and I want to

19 get it right.

20 Is this the document you signed on or about

21 March 21, 2012, pursuant to which you became the

22 managing member of the DAF GP, LLC?

23 A. I believe so.

24 Q. Okay. And you replaced Mr. Dondero in that

25 capacity; is that right?

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. Do you have any memory of interviewing with

4 anybody?

5 A. I don't have any recollection of that, no.

6 Q. Did you submit a resume of any kind?

7 A. Possibly a CV. But I -- I just don't

8 remember anymore.

9 Q. Do you know who made the decision to select

10 you to serve in those capacities?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I don't know.

13 BY MR. MORRIS:

14 Q. Did anybody -- withdrawn.

15 Did you meet with Patrick before or after

16 you assumed these roles?

17 A. It's going back 10 years. I -- I'm not

18 sure.

19 MR. MORRIS: Can we put up on the

20 screen a document that we marked this

21 morning. I believe it's Exhibit 2.

22 BY MR. MORRIS:

23 Q. And this is a document titled An Amended

24 and Restated Limited Liability Company Agreement of

25 Charitable DAF GP LLC.

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1 Grant Scott

2 A. Yes.

3 Q. And your recollection is that Mr. Dondero

4 presented the opportunity to you; is that right?

5 MR. KANE: Objection. Form.

6 THE WITNESS: Yes. I guess you could

7 call it an opportunity.

8 BY MR. MORRIS:

9 Q. And do you have any recollection as to

10 whether or not anybody else was involved in the

11 decision to offer the opportunity to you?

12 A. I -- I don't recall.

13 Q. Okay. We can take that down, please.

14 Do you recall whether Mr. Patrick was

15 involved in your selection as the replacement

16 management member of the DAF GP, LLC in 2012?

17 A. I have no recollection.

18 MR. KANE: Objection to form.

19 Yes. Okay.

20 BY MR. MORRIS:

21 Q. I want to go back to what we had defined

22 earlier as the interim period, and that was the period

23 between January 31st, 2021, when you sent in that

24 notice and March 24, 2021, when you transferred the

25 shares. That is what we were calling the interim

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1 Grant Scott

2 period, right?

3 A. Yes.

4 Q. Okay. Is it fair to say that Mr. Patrick

5 served as your primary contact with respect to matters

6 concerning CLO HoldCo and the DAF during the interim

7 period?

8 A. Yes.

9 Q. Okay. And, in fact, Mr. Patrick gave you

10 instructions on what to do for the DAF and the

11 CLO HoldCo on certain matters during the interim

12 period, correct?

13 MR. KANE: Objection to form.

14 THE WITNESS: Periodically, yes.

15 BY MR. MORRIS:

16 Q. I am sorry. What is the answer?

17 A. Periodically, yes.

18 Q. Okay. Did somebody ever tell you that you

19 should follow Mr. Patrick's instructions?

20 A. No, I don't believe so.

21 Q. And, Mr. Patrick, to the best of your

22 knowledge, didn't HoldCo any positions with any of the

23 DAF entities or CLO HoldCo Limited, correct?

24 MR. KANE: Objection to form.

25 MR. BRIDGES: Object to foundation.

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1 Grant Scott

2 Q. Did you sign any agreement on behalf of any

3 of the DAF entities or CLO HoldCo with the entity that

4 you are referring to as Highgate?

5 A. I'm not sure.

6 Q. Do you have any recollection at all of ever

7 signing any agreements in your capacity as the

8 authorized representative of any of the DAF entities

9 or CLO HoldCo and Highgate?

10 MR. KANE: Objection. Form.

11 THE WITNESS: I -- I don't recall.

12 BY MR. MORRIS:

13 Q. And I may have asked you this already. If

14 I have, I'm sure there will be an objection. But do

15 you recall if Highgate was providing services

16 equivalent to the shared services that Highland

17 previously provided, or was it providing investment

18 advisory services of the type Highland previously

19 provided?

20 MR. KANE: Objection to form.

21 MR. BRIDGES: Objection.

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know the delineation of the

25 services they were providing.

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. You can answer.

4 A. During the interim period?

5 Q. Correct.

6 A. I do not believe so.

7 Q. If Mr. Patrick didn't hold any positions,

8 why did you follow his instructions?

9 MR. BRIDGES: Objection.

10 MR. KANE: Objection. Go ahead,

11 sorry.

12 MR. BRIDGES: Facts not in evidence.

13 MR. KANE: And objection to form.

14 BY MR. MORRIS:

15 Q. You can answer, sir.

16 A. Yes. Well, there -- I mean, there was a

17 lot of activity that was required to transfer over

18 from how things had been handled under Highland, to

19 how they would now be handled under -- with the

20 services being provided by Highgate, and he was a

21 member, and he was the point person, I guess, and he

22 was my main interface to get those large numbers of

23 issues resolved.

24 There was -- you know, it was a very busy,

25 challenging time.

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1 Grant Scott

2 Q. Do you know whether during the interim

3 period, any entity other than Highgate was providing

4 services on behalf of any of the DAF entities or

5 CLO HoldCo?

6 A. Well, I knew from various wires that were

7 approved, that various entities were providing

8 services. Law firms, for example.

9 Q. But was there any -- any entity other than

10 Highgate that was providing any of the services that

11 had previously been provided by Highland?

12 A. Well, Highland provided a lot of legal

13 services. I don't know that Highgate had the same

14 capability. So I don't know how to answer that.

15 Q. All right. I'm going to try a different

16 way.

17 Before -- before 2021, the DAF entities had

18 both a shared services arrangement and an investment

19 advisory arrangement with Highland.

20 Do I have that right?

21 A. Yes.

22 Q. During the interim period, Highland was no

23 longer providing any of those services, correct?

24 A. That's what I understand, yes.

25 Q. Did anybody replace Highland in the

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1 Grant Scott
2 provision of those services during the interim period?
3 MR. BRIDGES: Objection, asked and
4 answered.
5 BY MR. MORRIS:
6 Q. You can answer, sir.
7 A. I mean, besides the services Highgate
8 were -- was -- were providing, I'm not sure.
9 Q. And -- and I do know that I've asked this
10 before, but now with that context: Do you know
11 whether Highgate was providing services of the shared
12 services type, or the investment advisory type, or you
13 just don't know?
14 MR. BRIDGES: Objection to the form.
15 THE WITNESS: At least I would think
16 mostly the shared services type.
17 BY MR. MORRIS:
18 Q. Okay. Is it your understanding that under
19 the shared services agreement, that Highgate had the
20 ability to make decisions on behalf of any of the DAF
21 entities or CLO HoldCo?
22 MR. BRIDGES: Objection.
23 MR. KANE: Objection to form.
24 MR. BRIDGES: Misstates testimony.
25 THE WITNESS: Yeah, my prior

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1 Grant Scott
2 fact, to be clear. I'm not asking for any legal
3 conclusions. I'm asking for your understanding as the
4 authorized representative of the DAF entities and
5 CLO HoldCo during the interim period.
6 So with that -- with that background as the
7 authorized entity, that -- withdrawn.
8 As the authorized representative during the
9 interim period, did you have any understanding as to
10 whether Mr. Patrick had the authority to bind any of
11 the DAF entities or CLO HoldCo during that time?
12 MR. KANE: Objection.
13 MR. BRIDGES: Objection. Calls for
14 legal conclusion. Also, objection as to
15 vagueness of the question.
16 BY MR. MORRIS:
17 Q. I'm sorry, Mr. Scott, did you answer?
18 A. I did not. No, I have not. I --
19 Q. I apologize.
20 A. I don't know what the status of his legal
21 authorization was.
22 Q. Do you recall that in early March, you
23 bought a couple of events to Mr. Patrick's attention?
24 A. I know that I forwarded documents to his
25 attention, yes.

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1 Grant Scott
2 testimony was I didn't see the agreements,
3 so I don't know.
4 BY MR. MORRIS:
5 Q. You haven't seen any agreement with
6 Highgate; is that right?
7 A. I don't recall that I have.
8 Q. Do you have any understanding as to whether
9 Highgate had the authority to bind any of the DAF
10 entities or CLO HoldCo during the interim period?
11 MR. BRIDGES: Objection. Calls for a
12 legal conclusion.
13 THE WITNESS: I don't know.
14 BY MR. MORRIS:
15 Q. Do you have any understanding as to whether
16 Mark Patrick had the ability as an individual to bind
17 any of the DAF entities or CLO HoldCo during the
18 interim period?
19 MR. BRIDGES: Objection. Calls for a
20 legal conclusion.
21 MR. KANE: Objection. Calls for a
22 legal conclusion.
23 THE WITNESS: I don't know.
24 BY MR. MORRIS:
25 Q. Okay. And I'm just asking as a matter of

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1 Grant Scott
2 Q. And why did you forward documents to
3 Mr. Patrick's attention during the interim period?
4 A. Because I was resigning, and I understood
5 that he was essentially going to be, or was the
6 director elect, and I just thought it appropriate to
7 bring such things to his attention.
8 Q. And when did you -- when did you learn that
9 he was doing to be the director elect?
10 A. I -- I believe it was February. Sometime
11 in February.
12 Q. Do you recall how you learned that he was
13 going to become the director elect?
14 A. I can't point to a specific conversation.
15 I can't -- I can't point to the specific conversation.
16 At some point, it went from being some future third
17 party, and I came to believe it would be him. I'm
18 not -- I'm not sure of the timing.
19 Q. Okay. Do you know from whom you learned
20 that he was going to be the director elect?
21 A. I believe it was him.
22 Q. Okay. So he told you that he was going to
23 replace you; is that right?
24 A. I don't know that he said it specifically.
25 I don't remember our conversations.

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1 Grant Scott

2 Q. Did you ever do anything to confirm with

3 anybody that Mark Patrick was going to be the director

4 elect, or did you just take his word for it?

5 A. I did not independently confirm it, no.

6 Q. Did you ever ask Mr. Dondero if -- if he

7 approved of the selection of Mr. Patrick as your

8 successor?

9 A. I did not.

10 Q. Did you ever discuss with Mr. Dondero, the

11 topic of who would be your successor?

12 A. Going back. Prior to the interim period, I

13 had recommended him, Mark.

14 Q. Did you -- did you discuss Mr. Patrick's

15 selection as your successor with anybody in the world

16 at any time other than Mr. Patrick?

17 A. I talked with my attorney about it. But I

18 don't think so. No.

19 Q. Did you talk with anybody that you believed

20 was authorized to make the decision on behalf of the

21 DAF entities and CLO HoldCo about your successor?

22 A. No, I did not.

23 MR. MORRIS: Can we put up the

24 document that was marked, La Asia, on Page

25 7, as Bates number 80.

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1 Grant Scott

2 Q. Yeah. And was the first lawsuit, the one

3 that you settled, before you gave notice?

4 A. No. The -- no, both lawsuits are pending.

5 Q. Okay. Do you know when the -- who's the

6 plaintiff in the first one?

7 A. Acis.

8 (Reporter clarification.)

9 THE WITNESS: Acis, A-C-I-S.

10 BY MR. MORRIS:

11 Q. So the debtor never sued you personally; is

12 that right?

13 A. Not yet.

14 Q. And is it right that Mr. Patrick told you

15 that -- that the successor will respond to the

16 complaint?

17 A. Yes.

18 Q. Now, he's not referring to himself yet, is

19 he?

20 A. That appears correct, yes.

21 Q. Does that refresh your recollection that

22 you had not known yet as of March 2nd who the

23 successor would be?

24 A. I guess it does.

25 MR. MORRIS: Can we put up the next

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1 Grant Scott

2 (Deposition Exhibit 10 was marked for

3 identification.)

4 BY MR. MORRIS:

5 Q. Do you see that -- if you scroll just down

6 a little bit. I guess not.

7 Mr. Patrick wrote an e-mail to you and

8 said, "The successor will respond to this complaint,"

9 and at the top you wrote "understood" --

10 A. Yes.

11 Q. -- or the top of the e-mail.

12 Do you recall that in early March, you

13 received a new complaint in which CLO HoldCo was named

14 the defendant?

15 A. I believe this -- this was the unsecured

16 creditors' committee complaint; is that correct?

17 Q. I think so, but it's your testimony. I'm

18 just asking you if you recall that in early March,

19 CLO HoldCo was sued?

20 A. Yes. I think this was the second lawsuit

21 that I was referring to personally.

22 Q. Okay. And so this -- this actually

23 occurred after the time you had already given notice,

24 right?

25 A. Yes.

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1 Grant Scott

2 exhibit, please, the one ending in -- the

3 one Bates number 85. And please remind us,

4 La Asia, what exhibit number are we up to?

5 MS. CANTY: We're up to 10, but the

6 one I'm about to put up is Exhibit 6 from

7 earlier today.

8 MR. MORRIS: Thank you very much.

9 BY MR. MORRIS:

10 Q. Now, if we can just scroll down a little

11 bit. Do you remember something called an Adherence

12 Agreement being discussed in March of 2021?

13 A. A what agreement?

14 Q. Adherence Agreement.

15 A. I see that. Was it directed to me?

16 Q. Yeah. If we can just scroll up.

17 Okay. So right there, do you see that

18 Thomas Surgent sends it to Mr. Kane? The subject is

19 'Adherence Agreement.'

20 A. Yes.

21 Q. And you do see that you forwarded that

22 e-mail to Mr. Patrick on the same day, March 2nd?

23 A. Yes.

24 Q. And it says "This relates to the second

25 issue from the debtor."

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1 Grant Scott
2 MR. BRIDGES: Objection.
3 MR. MORRIS: Withdrawn. Withdrawn.
4 BY MR. MORRIS:
5 Q. You didn't provide a substantive response
6 to Elysium; is that right?
7 MR. KANE: Objection. Assumes facts
8 not in evidence.
9 MR. MORRIS: That is why I'm asking
10 the question.
11 BY MR. MORRIS:
12 Q. Go ahead, Mr. Scott. You can answer.
13 A. I did not provide a substantive response to
14 their inquiry.
15 Q. Okay. Thank you.
16 Can we go to the top. In fact -- in fact,
17 you were instructed by Mr. Patrick to do nothing,
18 correct?
19 MR. BRIDGES: Objection. Misstates
20 the testimony.
21 THE WITNESS: No.
22 BY MR. MORRIS?
23 Q. Sir, the e-mail says "Do nothing," correct?
24 A. That is correct, and they were handling it,
25 not me.

Page 88

1 Grant Scott
2 Q. Did you sign this document?
3 A. Yes, sir.
4 Q. Okay. Do you know what this document is?
5 A. I believe it's the Management Share
6 Transfer Agreement.
7 Q. Okay. And do you know who prepared it?
8 A. I do not.
9 Q. Did you assign something pursuant to this
10 document?
11 A. Yes. The -- the -- the management shares.
12 MR. MORRIS: Okay. Can we go to the
13 first page, please?
14 BY MR. MORRIS:
15 Q. And do you see in paragraph 1, there is a
16 description of the assignment and assumption of the
17 signed interest?
18 A. Yes, I see that.
19 Q. Okay. Does that paragraph describe
20 everything that you assigned to Mr. Patrick?
21 A. In this agreement. Yes.
22 MR. BRIDGES: Objection. Calls --
23 objection. Calls for a legal conclusion.
24 MR. KANE: I join the objection.
25 BY MR. MORRIS:

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1 Grant Scott
2 Q. Okay. Now, did you resign on or about
3 March 24th, 2021?
4 A. Yes. That's -- that's when the transfer --
5 share of transfer.
6 Q. Okay.
7 MR. MORRIS: Can we put the next
8 exhibit up, please. It's the one at the
9 top at page 10. It's file 3, document 5.
10 MR. BRIDGES: Mr. Morris, can I ask
11 you how it is for time because you told us
12 earlier -- you teased us with a 4:15 end
13 time, potentially.
14 MR. MORRIS: Yeah, I'm just on the
15 last couple of documents.
16 MR. BRIDGES: Thank you.
17 MR. MORRIS: You bet.
18 BY MR. MORRIS:
19 Q. Do you see this is a document called an
20 Assignment and Assumption of Membership Interest
21 Agreement?
22 A. Yes.
23 MR. MORRIS: And if we can scroll
24 down.
25 BY MR. MORRIS:

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1 Grant Scott
2 Q. You can answer, sir.
3 A. Yes. I mean, it says what it says. But
4 yes, that is what I was transferring.
5 Q. And can you identify for me anything that
6 you know that you ever assigned to Mr. Patrick that is
7 not set forth in paragraph 1?
8 MR. BRIDGES: Objection. Form.
9 THE WITNESS: I'm unaware of
10 anything.
11 BY MR. MORRIS:
12 Q. Do you know if -- if the items and assets
13 that are set forth in paragraph 1 had any value?
14 MR. KANE: Objection. Form.
15 THE WITNESS: They had value, maybe
16 not monetary.
17 BY MR. MORRIS:
18 Q. And what value did they have?
19 A. I believe they had the property interest
20 that I referred to previously.
21 Q. And what property interest are you
22 referring to?
23 MR. KANE: Objection. Form. Calls
24 for a legal conclusion.
25 BY MR. MORRIS:

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1 Grant Scott

2 Q. You can answer. Sir, it's your words we

3 need.

4 A. The shares were the -- these management

5 shares were the -- I was treating as property.

6 Q. Do you have any understanding as to what

7 the value of the management shares was at the time you

8 entered into this agreement?

9 A. I did not.

10 Q. Did you have any understanding as to

11 whether those management shares held any particular

12 rights at the time you entered into this agreement?

13 MR. KANE: Objection to form.

14 THE WITNESS: My understanding was

15 they had my rights previously. Ultimately.

16 BY MR. MORRIS:

17 Q. And what rights did you believe flowed from

18 the management shares?

19 A. The controlling rights that flowed down to

20 the various entities.

21 Q. Did you receive anything in return in

22 exchange for your assignment of these property

23 interests and the other assets set forth in paragraph

24 1?

25 A. It allowed me to finally resign. That is

Page 92

1 Grant Scott

2 legal conclusion.

3 MR. KANE: I join the objection.

4 THE WITNESS: I didn't make -- I did

5 not make an assessment of that.

6 BY MR. MORRIS:

7 Q. Do you know -- withdrawn.

8 Do you have any understanding as to whether

9 there were any restrictions on the transferability of

10 the interests that you assigned pursuant to this

11 agreement?

12 MR. KANE: Objection. Calls for a

13 legal conclusion.

14 THE WITNESS: I did not.

15 BY MR. MORRIS:

16 Q. Did you let anybody know that you were

17 willing to assign the interests that are described in

18 paragraph 1 other than Mr. Patrick?

19 A. Anyone that I -- conceivably, anyone that I

20 let know that was at all familiar with the structure,

21 anyone that was informed of my desire to resign would

22 have arguably have known that.

23 Q. Okay. I'm not asking you to put yourself

24 in the shoes of anybody else. I'm asking for what you

25 recall telling people.

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1 Grant Scott

2 what I received. I mean, it ended my -- it ended my

3 role as a -- maybe as an agent, or an employee or

4 whatever. Those are my substantive rights, as I

5 understood it.

6 Q. Okay. So you -- you surrendered the

7 substantive rights in an exchange -- you no longer had

8 your substantive rights?

9 MR. BRIDGES: Objection. Asked and

10 answered.

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. You can answer, sir. Did you get anything

14 other than -- withdrawn.

15 Did you get anything other than what you

16 already described?

17 A. Relief. Yes.

18 Q. Excellent. Did you ever consider assigning

19 these interests or assets to anybody other than

20 Mr. Patrick?

21 A. I did not.

22 Q. Did you ever consider -- did you have any

23 belief as to whether the interests that were assigned

24 were freely tradeable?

25 MR. BRIDGES: Objection. Calls for a

Page 93

1 Grant Scott

2 Did you ever tell anybody at any time that

3 you were ready, willing and able to transfer and

4 assign the interests that are in this document other

5 than Mr. Patrick and your lawyers?

6 A. I am sorry. I misunderstood your question.

7 The answer is no.

8 Q. Did you ever think to try to assign these

9 interests for a profit?

10 A. Good grief, no.

11 (Reporter clarification.)

12 A. No.

13 Q. Did you -- was anybody, other than

14 Mr. Patrick, ever identified as a potential assignee

15 of the interests that are described in paragraph 1?

16 MR. KANE: Objection to form.

17 THE WITNESS: I was unaware of any.

18 BY MR. MORRIS:

19 Q. Okay. Did you make any effort to identify

20 anybody other than Mr. Patrick as a potential assignee

21 for the interests that are set forth in paragraph 1?

22 A. No, I did not.

23 Q. Did any -- did anybody acting on your

24 behalf, to the best of your knowledge, ever make any

25 efforts to identify any potential assignee other than

Page 94

1 Grant Scott

2 Mr. Patrick for the interests set forth in paragraph

3 1?

4 MR. BRIDGES: Objection. Foundation.

5 THE WITNESS: I don't have that

6 knowledge. No.

7 MR. MORRIS: Can we go to the next

8 exhibit, please?

9 (Deposition Exhibit 14 was marked for

10 identification.)

11 BY MR. MORRIS:

12 Q. Okay. And do you see that these are

13 written resolutions dated the next day, March 25th?

14 A. Yes.

15 Q. And these resolutions provide for the

16 shared transfer described in the document?

17 A. It appears so, yes.

18 Q. And are these the management shares that

19 you were referring to earlier?

20 A. I believe so.

21 Q. Did you believe at the time that you owned

22 all of the management shares of charitable DAF HoldCo

23 Limited?

24 A. That was my understanding.

25 Q. How did you acquire those shares?

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1 Grant Scott

2 Q. Were you paid anything of value for your

3 services as the, either the managing member of the DAF

4 GP, or as a director of any of the other DAF or

5 CLO HoldCo Limited entities at any time?

6 A. For a majority of the years, yes, I

7 received a monthly statement.

8 Q. And is that -- how much was the monthly

9 statement?

10 A. I believe it was \$5,000.

11 Q. Did it ever increase to an amount more than

12 \$5,000?

13 A. No.

14 Q. Did you receive anything else of value for

15 your service to the DAF entities and CLO HoldCo

16 Limited other than the \$5,000 monthly stipend that you

17 just described?

18 A. I did not.

19 Q. Do you recall that after you resigned, you

20 got reappointed, and then subsequently replaced again

21 by Mr. Patrick?

22 MR. KANE: Objection to form.

23 (Reporter clarification.)

24 THE WITNESS: Can you repeat -- did

25 you say -- it went away, and then it came

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1 Grant Scott

2 A. I'm not sure the exact timing, but I

3 believe that was all established when I became

4 involved.

5 Q. Did you pay anything of value for the

6 shares at the time that you acquired them?

7 A. I am -- I don't believe so, no.

8 Q. Did you need to obtain anybody's approval

9 before you could transfer the shares?

10 A. No. I don't believe so.

11 Q. Did you make any effort to obtain anybody's

12 approval before you transferred the shares?

13 A. I did not.

14 Q. Did you have any reason to believe that

15 Mr. Dondero approved of the transfer of the management

16 shares to Mr. Patrick?

17 A. I -- I don't know that.

18 Q. Did you testify earlier, that you had

19 discussed with Mr. Dondero in January, Mark Patrick

20 succeeding you?

21 MR. BRIDGES: Objection. Misstates

22 prior testimony.

23 BY MR. MORRIS:

24 Q. You can answer, sir.

25 A. I believe it was prior to that.

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1 Grant Scott

2 back. I don't understand the question. I

3 am sorry.

4 BY MR. MORRIS:

5 Q. That is okay. I just saw this in the

6 documents, and I thought it was odd. But let me put

7 the documents up and see if you can shed any light.

8 MR. MORRIS: Let's start with the

9 next exhibit, Patrick File 3, Document 9.

10 (Deposition Exhibit 15 was marked for

11 identification.)

12 BY MR. MORRIS:

13 Q. And do you see in the resolutions, if we

14 can go up just a bit, dated March 24th, and it was

15 resolved that you were removed as a director of the

16 company and Mr. Patrick was appointed as your

17 replacement, if that is a fair characterization?

18 Do you see that?

19 A. I see that.

20 MR. MORRIS: And now if we can put up

21 the next document.

22 (Deposition Exhibit 16 was marked for

23 identification.)

24 BY MR. MORRIS:

25 Q. So this is a week later. It's March 31st.

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1 Grant Scott
2 MR. MORRIS: And if we can just
3 scroll down and see if it's signed.
4 BY MR. MORRIS:
5 Q. Do you see that Mr. Patrick was removed as
6 the director and you were reappointed?
7 A. Yes, I do see that.
8 Q. Do you have any understanding as to why
9 Mr. Patrick resigned and reappointed you as the
10 director a week later?
11 A. I don't have -- I don't -- I don't know.
12 Q. Did you even know this happened?
13 A. Is my signature on that agreement?
14 Q. No.
15 A. I'm not sure.
16 Q. Do you have any -- do you have any
17 recollection as -- as to whether or not you were ever
18 reappointed as the director of the company on or about
19 March 31st, 2021?
20 A. I don't know if I have received any
21 communication about this or not.
22 Q. Okay.
23 MR. MORRIS: Can we go to the next
24 document, please?
25 (Deposition Exhibit 17 was marked for

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1 Grant Scott
2 Q. Did anybody ever describe for you or
3 explain to you what error had been made?
4 A. I am sorry. I'm not familiar with these
5 documents.
6 Q. Okay. Is it fair to say that -- well, I
7 will just leave it at that.
8 So nobody ever informed you that there was
9 a mistake that had to be corrected; is that right?
10 MR. BRIDGES: Objection. Asked and
11 answered.
12 BY MR. MORRIS:
13 Q. You can answer.
14 A. I don't know that there was this -- this
15 may have -- I don't know that there was a mistake.
16 Q. You have no knowledge of --
17 A. I have no knowledge of this. I was in a
18 very complex process. I think there...
19 Q. And nobody ever asked -- nobody ever asked
20 your consent to be reappointed as the director of the
21 company, correct?
22 MR. BRIDGES: Objection. Asked and
23 answered.
24 THE WITNESS: I didn't receive any
25 communications about this.

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1 Grant Scott
2 identification.)
3 MR. KANE: Mr. Morris, can you help
4 me with the exhibit numbers? Was that 16,
5 or are we still on 15, additional portions
6 of it?
7 MS. CANTY: That was 16 but not going
8 to 17.
9 MR. KANE: Thank you. I apologize.
10 MR. MORRIS: That is okay, Jonathan.
11 We will get to everything and clear up any
12 confusion.
13 BY MR. MORRIS:
14 Q. So if you go to the bottom of that
15 document, can you see that it was signed?
16 All right. Do you see Mr. Patrick signed
17 this document?
18 A. Yes, I see that.
19 Q. Do you see that it's dated -- if we can go
20 back up to the top. It's April 2nd, and do you see
21 that you are -- pursuant to these resolutions, you
22 were removed as the director again and replaced by
23 Mr. Patrick?
24 A. Yes, I see that. And they seem to be
25 correcting an error of some sort.

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1 Grant Scott
2 BY MR. MORRIS:
3 Q. And so you didn't provide your consent to
4 be reappointed as the director of the company,
5 correct?
6 MR. BRIDGES: Objection. Asked and
7 answered.
8 THE WITNESS: That's correct.
9 BY MR. MORRIS:
10 Q. Okay. Did you become aware that after you
11 resigned, that DAF and CLO HoldCo started a lawsuit
12 against the debtor and some other defendants related
13 to the HarbourVest settlement?
14 A. I did become aware of it, yes.
15 Q. And were you aware of the lawsuit -- were
16 you aware that DAF and CLO HoldCo were considering
17 filing the lawsuit before it was actually commenced?
18 A. No.
19 Q. Did you have any communications with
20 anybody at any time about the possibility that the DAF
21 and CLO HoldCo would commence a lawsuit against the
22 debtor and others relating to the HarbourVest
23 settlement prior to the time that the lawsuit was
24 commenced?
25 A. I did not.

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1 Grant Scott

2 Q. So is it fair to say that you did not

3 provide any information to anybody at any time to

4 support the claim -- the complaint that was filed

5 against the debtor and the other defendants in the

6 lawsuit that was brought by the DAF and CLO HoldCo?

7 MR. BRIDGES: Objection. Foundation.

8 THE WITNESS: I didn't provide

9 anything with respect to the litigation

10 that was filed.

11 BY MR. MORRIS:

12 Q. And did anybody ever ask you for

13 information relating to potential claims against the

14 debtor and others?

15 A. No.

16 Q. Did you ever have any discussions with

17 anybody at any time as to whether Jim Seery should be

18 named as a defendant in the lawsuit that was bought by

19 the DAF and CLO HoldCo against the debtor and others?

20 A. No.

21 MR. MORRIS: I have no further

22 questions. Thank you, Mr. Scott.

23 MR. BRIDGES: I don't have any

24 questions.

25 MR. KANE: Can I -- I've got a couple

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1 Grant Scott

2 Q. And did you read that transcript?

3 A. I believe we discussed it. I'm not -- I'm

4 not sure.

5 Q. Did you have a recollection that Judge

6 Jernigan made a comment or comments about you and

7 Jim Dondero during her ruling?

8 A. Yes.

9 Q. Do you believe that Judge Jernigan's

10 comments were inaccurate?

11 MR. MORRIS: Objection to the form of

12 the question. No foundation. Leading.

13 BY MR. KANE:

14 Q. I will rephrase. I will rephrase.

15 I will ask it -- a different question.

16 Mr. Scott, do you believe that you acted

17 independently during the bankruptcy case?

18 A. Yes.

19 Q. Do you believe you acted in the best

20 interests of CLO HoldCo?

21 A. Yes, I do.

22 MR. KANE: I'm done.

23 MR. MORRIS: Just some follow-up

24 questions, Mr. Scott.

25

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1 Grant Scott

2 just follow-up for clarification purposes.

3 EXAMINATION

4 BY MR. KANE:

5 Q. Grant, earlier you were testifying about

6 resigning and noted -- I believe your testimony was

7 one of the reasons was an issue of independence. Can

8 you clarify what you meant by issue of independence?

9 A. I came to believe that there was a

10 perception, and my friendship with Jim Dondero

11 precluded my -- my independence.

12 Q. Perception by whom?

13 A. The judge in the case.

14 (Reporter clarification.)

15 A. The judge in the bankruptcy case.

16 Q. Was there a specific reason or instance

17 that caused you to have that belief?

18 A. Yes. When I spoke with you about the --

19 Q. Well, I don't want to go into any

20 attorney-client communications.

21 A. I am sorry.

22 Q. So let me ask you a different question.

23 Were you provided a transcript of the Court's ruling

24 on the escrow hearing for the registry dispute?

25 A. I believe so.

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1 Grant Scott

2 EXAMINATION

3 BY MR. MORRIS:

4 Q. Did you ever testify before Judge Jernigan?

5 A. I have not.

6 Q. So is it fair to say that you had no reason

7 to believe that she could ever access your credibility

8 as a witness?

9 MR. BRIDGES: I'm going to object.

10 That calls for a legal conclusion.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. From -- from what I understand from the

14 transcript of that hearing, a number of comments were

15 made by the judge regarding my independence, that sort

16 of thing, that made me -- that made me think that

17 maybe I could just remove that as an issue in the case

18 by resigning. That is essentially, what my conclusion

19 was from that hearing.

20 Q. But you didn't resign at the time that the

21 judge made those statements, did you?

22 MR. BRIDGES: Objection.

23 Argumentative.

24 BY MR. MORRIS:

25 Q. You can answer.

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1 Grant Scott

2 A. I did not at that time.

3 Q. In fact, you didn't resign for probably

4 seven months after, correct?

5 MR. BRIDGES: Objection. Asked and

6 answered. Really?

7 THE WITNESS: Yes.

8 BY MR. MORRIS:

9 Q. And you continued to actively participate

10 in the bankruptcy case, correct?

11 A. That is correct.

12 Q. And months later, you made the decision to

13 amend CLO HoldCo's proof of claim, correct?

14 A. Correct.

15 Q. And months later, you made the decision to

16 file an objection to the HarbourVest settlement,

17 correct?

18 A. Correct.

19 Q. And months after this hearing, you made the

20 decision to withdraw that objection, correct?

21 MR. BRIDGES: Objection to repeating

22 the same questions from the last two hours

23 over and over again. Are we going to keep

24 going all the way to the end.

25 BY MR. MORRIS:

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1 Grant Scott

2 you is -- let's just be clear here since I think the

3 point is -- is being missed. The issue of when I

4 wanted to resign or when I first thought about

5 resigning has been raised. It was raised during my

6 first deposition with you as well. And what I'm

7 saying is -- is that after I heard about the hearing,

8 and what was said, I don't remember the exact

9 language. My first reflection was, hey, maybe that

10 is -- maybe that is -- if I'm going to be in this

11 court having to make a claim, maybe it would be best

12 if it wasn't being made by me. That is all.

13 Q. And I appreciate that. And I am just

14 trying to test the credibility of that statement.

15 Okay?

16 MR. BRIDGES: Objection to the

17 sidebar.

18 BY MR. MORRIS:

19 Q. Did Judge Jernigan ever issue a ruling

20 against you personally?

21 MR. BRIDGES: Asked and answered.

22 Objection.

23 MR. MORRIS: It is not asked and

24 answered.

25 BY MR. MORRIS:

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1 Grant Scott

2 Q. Only -- only if people keep opening the

3 door.

4 Can you please answer my question?

5 A. Yes, I removed the objection.

6 Q. And -- and you remained in the case, and

7 you remained active in the case, and you filed on

8 behalf of your -- withdrawn.

9 You stayed in the case even after

10 CLO HoldCo was sued by the debtor, correct?

11 A. Yes.

12 Q. And you stayed in the case long enough to

13 negotiate a settlement on behalf of CLO HoldCo with

14 the debtor, correct?

15 A. Correct.

16 Q. And you can't identify anything that the

17 judge said following the escrow hearing that had

18 anything to do with you personally, correct?

19 MR. KANE: Objection. Form.

20 MR. MORRIS: Withdrawn.

21 BY MR. MORRIS:

22 Q. Can you identify anything that the judge

23 said following the escrow hearing that had to do with

24 your independence?

25 A. I don't remember -- I'm -- what I'm telling

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1 Grant Scott

2 Q. But go ahead, sir.

3 A. Not against me personally.

4 Q. Did Judge Jernigan ever issue a ruling

5 against CLO HoldCo Limited?

6 A. Well, to my --

7 MR. BRIDGES: Objection. Objection.

8 Calls for legal conclusion as to the

9 meaning of "against."

10 (Reporter clarification.)

11 THE WITNESS: The denial of the

12 escrow motion created a fairly big headache

13 for CLO HoldCo in the remainder of 2020.

14 So I believe that was a ruling

15 against CLO HoldCo, to answer your

16 question.

17 BY MR. MORRIS:

18 Q. Okay. Are you aware of any others?

19 MR. BRIDGES: Objection. Calls for a

20 legal conclusion as to the meaning of

21 "against."

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know that she's made any other

25 rulings except to approve the settlement.

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1 Grant Scott

2 Q. Which settlement are you referring to?

3 A. The -- the TRO settlement.

4 Q. And were you on the -- did you listen in to

5 the hearing during that hearing when -- when the judge

6 approved the settlement?

7 A. I did not.

8 Q. Did you read the transcript?

9 A. I did not.

10 Q. Did anybody ever tell you that the judge

11 said anything during that hearing to question your

12 independence?

13 MR. KANE: Objection to the extent it

14 calls for attorney/client privileged

15 information.

16 THE WITNESS: No. No, I think you

17 misunderstand. I had one data point to go

18 on, and that's what made me start the

19 process of thinking of resigning. That's

20 all.

21 BY MR. MORRIS:

22 Q. I appreciate that.

23 A. The issue -- the issue has been raised

24 repeatedly, whether it was my idea or somebody else's

25 idea, that's all I'm saying. If you can, it was my

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1 Grant Scott

2 REPORTER'S CERTIFICATE

3 I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR,

4 Registered Professional Reporter, certify that the

5 foregoing proceedings were taken before me at the time

6 and place therein set forth, at which time the witness

7 was put under oath by me;

8 That the testimony of the witness, the questions

9 propounded, and all objections and statements made at

10 the time of the examination were recorded

11 stenographically by me and were thereafter

12 transcribed;

13 That the foregoing is a true and correct

14 transcript of my shorthand notes to taken.

15 I further certify that I am not a relative or employee

16 of any attorney or the parties, nor financially

17 interested in the action.

18 I declare under penalty of perjury under the laws

19 of North Carolina that the foregoing is true and

20 correct.

21 Dated this June 1, 2021.

22

23 *Lashaunda Byrd*

24 LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

25

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1 Grant Scott

2 idea.

3 Q. Okay. And I'm asking you if you have any

4 other data points after that hearing to support the

5 notion that Judge Jernigan questioned your

6 independence?

7 A. No.

8 MR. MORRIS: I have no further

9 questions.

10 MR. BRIDGES: Me either.

11 MR. KANE: I'm done. Thank you.

12 Mr. Scott.

13 (Deposition adjourned at 4:42 p.m.)

14

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	6 No.	7 Now Reads	8 Should Read	9 Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____

21 _____

22 Signature of Deponent

23 SUBSCRIBED AND SWORN BEFORE ME

24 THIS ____ DAY OF _____, 2021.

25 (Notary Public) MY COMMISSION EXPIRES: _____

EXHIBIT 18

AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT

THIS AMENDED AND RESTATED INVESTMENT ADVISORY AGREEMENT (this "*Agreement*"), dated to be effective from July 1, 2014 is entered into by and between **Charitable DAF Fund, L.P.**, a Cayman Islands exempted limited partnership (the "*Fund*"), **Charitable DAF GP, LLC**, a limited liability company organized under the laws of the State of Delaware (the "*General Partner*"), the general partner of the Fund, and **Highland Capital Management, L.P.**, a limited partnership organized under the laws of the State of Delaware (the "*Investment Advisor*").

RECITALS

WHEREAS, the Fund, the General Partner and the Investment Advisor are parties to that certain Investment Advisory Agreement dated January 1, 2012 (the "*Original Agreement*");

WHEREAS, the parties desire to amend and restate the Original Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Investment Advisory Services. Subject to Section 7, the Investment Advisor shall act as investment advisor to the Fund, the General Partner with respect to the Fund and its subsidiaries and shall provide investment advice with respect to the investment and reinvestment of the cash, Financial Instruments and other properties comprising the assets and liabilities of the Fund and its subsidiaries.

2. Custody. The Financial Instruments shall be held in the custody of Jefferies & Company, Inc. or one or more banks selected by the General Partner (each such bank, a "Custodian"). The General Partner will notify the Investment Advisor promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the General Partner. At no time shall the Investment Advisor have possession of or maintain custody over any of the

Financial Instruments. The Investment Advisor shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

3. Authority of the Investment Advisor. Subject to Section 7 of this Agreement, the Investment Advisor shall advise the General Partner on behalf of the Fund and/or its subsidiaries with respect to:

(a) investing, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in

real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "*Financial Instruments*"), and the sale of Financial Instruments short and covering such sales.

- (b) engaging in such other lawful Financial Instruments transactions;
- (c) research and analysis;
- (d) purchasing Financial Instruments and holding them for investment;
- (e) entering into contracts for or in connection with investments in Financial Instruments;
- (f) investing in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;
- (g) possessing, transferring, mortgaging, pledging or otherwise dealing in, and exercising all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Fund and/or its subsidiaries;
- (h) lending, either with or without security, any Financial Instruments, funds or other properties of the Funds, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Fund;
- (i) opening, maintaining and closing accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;
- (j) opening, maintaining and closing accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combining purchase or sale orders on behalf of the Fund with orders for other accounts to which the Investment Advisor or any of its affiliates provides investment services (“*Other Accounts*”) and allocating the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts;

(l) entering into arrangements with brokers to open “average price” accounts wherein orders placed during a trading day are placed on behalf of the Fund and Other Accounts and are allocated among such accounts using an average price;

(m) organizing one or more corporations and other entities formed to hold record title, as nominee for the Fund and/or its subsidiaries (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Fund and/or its subsidiaries;

(n) causing the Fund and/or its subsidiaries to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Investment Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engaging personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants and investment bankers); and

(p) voting of Financial Instruments, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

4. Policies of the Fund. The activities engaged in by the Investment Advisor on behalf of the Fund and/or its subsidiaries shall be subject to the policies and control of the General Partner.

The Investment Advisor shall submit such periodic reports to the General Partner regarding the Investment Advisor’s activities hereunder as the General Partner may reasonably request and a representative of the Investment Advisor shall be available to meet with the

General Partner and/or any other representative of the Fund or its subsidiaries as reasonably requested by the General Partner.

In furtherance of the foregoing, the General Partner hereby appoints the Investment Advisor as the Fund's attorney-in-fact, with full power of authority to act in the Fund's name and on its behalf with respect to the Fund, as follows:

(a) to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner;

(b) to execute and combine purchase or sale orders on behalf of the Fund with orders for Other Accounts and allocate the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts; *provided, however*, that such purchase or sale orders shall be market rates;

(c) to direct the Custodian to deliver funds or the Financial Instruments, but only in the course of effecting trading and investment transactions for the Fund and subject to such restrictions as may be contained in the custody agreement between the Custodian and the Fund;

(d) to enter into contracts, provide certifications or take any other actions necessary to effect any of the foregoing transactions; and

(e) to select brokers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker-dealer's expertise in the relevant market or sector; the extent to which the broker-dealer makes market in the security or has an access to such market; the broker-dealer's skill in positioning the relevant market; the broker-dealer's facilities, reliability, promptness and financial stability; the broker-dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; and other factors deemed appropriate by the Investment Advisor.

5. Valuation of Financial Instruments. Financial Instruments will be valued in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided to the General Partner upon request.

6. Status of the Investment Advisor. The Investment Advisor shall, for all purposes, be an independent contractor and not an employee of the General Partner or the Fund or its subsidiaries, nor shall anything herein be construed as making the Fund or its subsidiaries or the General Partner, a partner, member or co-venturer with the Investment Advisor or any of its affiliates or clients. The Investment Advisor shall have no authority to act for, represent, bind or obligate the Fund or its subsidiaries or the General Partner except as specifically provided herein.

7. Investments. ALL ULTIMATE INVESTMENT DECISIONS WITH RESPECT TO THE FUND AND ITS SUBSIDIARIES SHALL AT ALL TIMES REST SOLELY WITH THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY, IT BEING EXPRESSLY UNDERSTOOD THAT THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY SHALL BE FREE TO ACCEPT AND OR REJECT ANY OF THE ADVICE RENDERED BY THE INVESTMENT MANAGER HEREUNDER FOR ANY REASON OR FOR NO REASON.

8. Reimbursement by the General Partner. The Investment Advisor may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the General Partner with respect to the Fund and/or its subsidiaries (any such appointee, a "*Sub-Advisor*"), including, but not limited to, any affiliate of the Investment Advisor, but payment for any such services shall be assumed by the Investment Advisor, and, therefore, neither the General Partner nor the Fund or any of its subsidiaries shall have any liability therefor; *provided, however*, that the Investment Advisor, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the General Partner with respect to the Fund and/or its subsidiaries

hereunder, and the Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

9. Expenses.

(a) The Fund shall pay or reimburse the Investment Advisor and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Fund, any taxes imposed upon the Fund (including, but not limited to, collateralized debt obligations managed by the Investment Advisor or its affiliates), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Investment Advisor. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Investment Advisor's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Fund are paid by the Investment Advisor or by any Sub-Advisor, the Fund shall reimburse the Investment Advisor (or Sub-Advisors, as applicable) for such expenses so long as such expenses are at market rates.

10. Fees. Without limiting the expense reimbursements set forth above, the Investment Advisor shall provide the Fund with the services described herein for 100 bps per annum (25 bps per quarter) of the market value of the Equity Investments (defined below) and 50 bps per annum (12.5 bps per quarter) of the market value of the Debt Investments (defined

below), calculated as of the last business day of each calendar quarter (the "**Calculation Date**"), payable quarterly in arrears by the 45th business day following the end of each quarter, provided that the Investment Advisor shall deliver to the General Partner on or before the 30th business day following the end of each calendar quarter a statement showing the calculation of the fee for such quarter. For purposes hereof, the "**Equity Investments**" shall mean those Financial Instruments which are equity investments held by the Fund (either directly or indirectly through a subsidiary vehicle) on the Calculation Date, and "**Debt Investments**" shall mean those Financial Instruments which are debt investments held by the Fund (either directly or indirectly through a subsidiary vehicle) on the Calculation Date. For the avoidance of doubt, the Financial Instruments shall be valued as of each Calculation Date in accordance with the then current valuation policy of the Investment Advisor. Notwithstanding the foregoing, neither the term "Equity Investments" nor the term "Debt Investments" shall include any Financial Instruments with respect to which the Investment Advisor or any affiliate thereof already receives management fees.

11. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Investment Advisor, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the General Partner or the Fund or any of its subsidiaries or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the General Partner or the Fund, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the General Partner or the Fund, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the General Partner or the Fund or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on

behalf of the General Partner or the Fund or any of its subsidiaries, (iii) any act or omission by the General Partner or the Fund or any of its subsidiaries, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the General Partner or the Fund or any of its subsidiaries selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the General Partner or the Fund or any of its subsidiaries or in furtherance of the business of the General Partner or the Fund or any of its subsidiaries in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the General Partner and the Fund and its subsidiaries shall indemnify and hold harmless Covered Persons (the "***Indemnified Party***"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnified Party and arise out of or in connection with the business of the General Partner or the Fund or any of its subsidiaries, any investment made under or in connection with this Agreement, or the performance by the Indemnified Party of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnified Party in connection with the General Partner or the Fund or any of its subsidiaries, provided that an Indemnified Party shall not be entitled to indemnification hereunder to the extent the Indemnified Party's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Party's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnified Party in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the General Partner prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnified Party is not entitled to be indemnified hereunder.

(f) The right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnified Party's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Investment Advisor and each Indemnified Party will generally not be liable to the General Partner or the Fund for any act or omission (or alleged act or omission), absent bad faith, willful misconduct, fraud or gross negligence, and the General Partner and the Fund will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the General Partner, the Fund or its subsidiaries, absent bad faith, willful misconduct, fraud or gross negligence. As a result of these provisions, the General Partner, the Fund and its subsidiaries, as applicable (not the Investment Advisor or any other Indemnified Party) will be responsible for any Losses resulting from trading errors and similar human errors, absent bad faith, willful misconduct,

fraud or gross negligence or the ability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Investment Advisor and its affiliates on behalf of the Fund and/or its subsidiaries, the General Partner acknowledges that trading errors (and similar errors) will occur and that the General Partner will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Investment Advisor or its affiliates.

12. Activities of the Investment Advisor and Others. The Investment Advisor, and its affiliates may engage, simultaneously with their investment management activities on behalf of the Fund, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Fund. Notwithstanding the foregoing, the Investment Advisor and its affiliates shall devote as much time to provide advisory service to the General Partner with respect to the management of the Fund's assets as the Investment Advisor deems necessary and appropriate. In addition, the Investment Advisor or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, the investment advice provided by the Investment Advisor to the General Partner with respect to the Fund. The Investment Advisor may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from advice given to, or securities recommended or bought for, the Fund, even though their investment objectives may be the same or similar. The Investment Advisor may recommend transactions in securities and other assets in which the Investment Advisor has an interest, including securities or other assets issued by affiliates of the Investment Manager. Each of the General Partner and the Fund acknowledges that it has received a copy of Part 2 of the Investment Advisor's Form ADV, which further describes conflicts of interest, including the Investment Advisor, its affiliates and their respective advised accounts.

13. Term. This Agreement shall remain in effect through an initial term concluding December 31, 2014 and shall be automatically extended for additional one-year

terms thereafter, except that it may be terminated by the Investment Advisor, on the one hand, or by the General Partner and the Fund, on the other hand, upon at least 90 days' prior written notice to the General Partner or the Investment Advisor, as the case may be, prior to General Partner's fiscal year-end.

14. Miscellaneous.

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Investment Advisor, to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Telephone Number: (972) 628-4100
Facsimile Number: (972) 628-4147

If to the General Partner or the Fund, to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Telephone Number: (919) 854-1407
Facsimile Number: (919) 854-1401

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Fund. The failure of a party to insist upon strict adherence to any term of this Agreement on

any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the General Partner, the Fund, the Investment Advisor, each Indemnified Party and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (e.g., officers, partners and personnel of the Investment Advisor and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; provided; however, that the Investment Advisor may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(e) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed in that State.

(f) Arbitration. (i) Any controversy or claim or dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (a "**Disputed Matter**") shall be handled exclusively pursuant to the following procedures. In the event of any Disputed Matter, the parties agree that upon written notice of such Disputed Matter sent by one party to the party, the parties shall arbitrate the Disputed Matter pursuant to this Section 14(f) unless the parties expressly agree in writing to resolve the Disputed Matter in another manner through mediation or otherwise. The arbitration shall be conducted pursuant to the commercial arbitration rules of the American Arbitration Association in Dallas, Texas. Any arbitration pursuant to this Agreement unless otherwise agreed to by the parties shall be conducted by a panel of three (3) arbitrators mutually selected by the parties from a list of

arbitrators determined in accordance with the American Arbitration Association's arbitrator selection procedure.

(ii) The judgment upon the award rendered in any such arbitration shall be final and binding upon the parties and may be entered in any court having jurisdiction thereof. All fees and expenses of the arbitrator and all other expenses of the arbitration shall be paid by the non-prevailing party in such arbitration. The arbitrator shall have no authority to impose any punitive or consequential damages.

(iii) Nothing in this Section 14(f) shall be construed to limit either party's right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10, 11 and 14 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons' firm or company may require in the context thereof.

(k) Arm's-Length Agreement. The General Partner and the Fund have approved this Agreement and reviewed the activities described in Section 12 and in the Investment Advisor's Form ADV and the risks related thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: August 26, 2014

CHARITABLE DAF GP, LLC

By:  _____

Name: Grant J. Scott

Title: Managing Member

Date: August 26, 2014

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By:  _____

Name: Grant J. Scott

Title: Managing Member

Date: August 26, 2014

EXHIBIT 19

AMENDED AND RESTATED SERVICE AGREEMENT

THIS AMENDED AND RESTATED SERVICE AGREEMENT (this "*Agreement*") entered into to be effective from the 1st day of July, 2014 (the "*Effective Date*") by and among Highland Capital Management, L.P., a Delaware limited partnership ("*HCMLP*"), Charitable DAF Fund, L.P., a Cayman Islands exempted limited partnership (the "*Fund*"), Charitable DAF GP, LLC, a Delaware limited liability company (the "*General Partner*"), and any affiliate of the General Partner that becomes a party hereto. Each of the signatories hereto is individually a "*Party*" and collectively, the "*Parties*".

RECITALS

A. HCMLP, the Fund and the General Partner are parties to that certain Shared Services Agreement dated January 1, 2012 (the "*Original Agreement*");

B. The Parties desire to amend and restate the Original Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

C. Since the inception of the Fund, the Parties have intended that the Fund and the General Partner would incur reasonable arm's-length fees in connection with the operation of the Fund and management and reporting activities with respect to Fund assets;

D. HCMLP has incurred substantial expenses on behalf of the Fund and the General Partner in performing the Services (as defined below) during the term of the Original Agreement for which HCMLP has not been compensated;

E. The Parties agree that it is in their mutual best interests for HCMLP to continue to provide the Services to the General Partner, the Fund and other Recipients (as defined below) and for HCMLP to be provided sufficient financial incentives to continue to provide the Services;

F. The General Partner and the Fund desire to provide HCMLP sufficient compensation for performing the Services and to reimburse HCMLP for expenses incurred on their behalf;

G. During the Term (as defined below), HCMLP will provide to the General Partner, on behalf of the Fund and/or its subsidiaries, certain services as more fully described herein, subject to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I DEFINITIONS

"*Affiliate*" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"*Agreement*" has the meaning set forth in the preamble.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“*Effective Date*” has the meaning set forth in the preamble.

“*Fee*” has the meaning set forth in Section 3.01.

“*Governmental Entity*” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“*Liabilities*” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“*Loss*” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term “*Loss*” will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“*Net Assets*” has the meaning set forth in Section 3.01.

“*New Service*” has the meaning set forth in Section 2.03.

“*Party*” or “*Parties*” has the meaning set forth in the preamble.

“*Person*” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“*Recipient*” means the General Partner, the Fund, and any of the Fund’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Services.

“*Service Provider*” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Services.

“*Service Standards*” has the meaning set forth in Section 4.01.

“*Services*” shall have the meaning set forth in Section 2.01.

“*Subsidiary*” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“*Tax*” or “*Taxes*” means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the

Services; and (ii) tax-related surcharges or fees that are related to the Services identified and authorized by applicable tariffs.

“*Term*” has the meaning set forth in Section 5.01.

ARTICLE II SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Services, each as requested by Recipient and as described more fully on Annex A attached hereto (the “*Services*”).

Section 2.02 Changes to the Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Service in order to reflect new procedures, processes or other methods of providing such Service, including modifying the applicable fees for such Service to reflect the then current fair market value of such service (a “*Change*”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “*Change Request*”).

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Service in any material respect or increase Recipient’s cost for such Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Services not otherwise specifically listed in Section 2.01 (a “*New Service*”). Any agreement between the Parties on the terms for a New Service must be in accordance with the provisions of Article III and Article IV hereof, will be deemed to be an amendment to this Agreement and such New Service will then be a “*Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III PAYMENT OF FEES; TAXES

Section 3.01 Fees.

(a) The Fund shall pay the Service Provider a one-time continuation fee in the amount of \$ \$947,171.51, plus for the calendar quarter beginning July 1, 2014, and each calendar quarter thereafter during the term, a quarterly fee (the "*Fee*") equal to 18 bps per annum (4.5 bps per quarter) of the Net Assets, payable in arrears at the end of each calendar quarter. The "*Net Assets*" at any date shall mean the excess of the fair value of securities owned, cash, receivables, and other assets over the liabilities of the Fund calculated on an accrual basis in accordance with accounting principles generally accepted in the United States. The Fee shall be prorated for partial periods and any applicable excess fees should be returned to the Fund by the Service Provider.

(b) Payments due to the Service Provider shall be made by wire transfer to:

Bank Name: Compass Bank
ABA #: 113010547
FBO: Highland Capital Management, L.P. (Master Operating Account)
Acct #: 0025876342

Section 3.02 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Services provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Services as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Services, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 7.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 3.02 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE IV
SERVICE PROVIDER RESPONSIBILITIES

Section 4.01 Service Provider General Obligations. Service Provider will provide the Services to Recipient, subject to the requirements under Sections 3.01 and 3.02 herein and subject to reimbursement of permitted expenses in accordance with the Investment Advisory Agreement entered into concurrently herewith, on a non-discriminatory basis and will provide the Services in the same manner as if it were providing such services on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 4.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records with respect to the Services in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Services, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 4.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 7.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
LIMITED WARRANTY

Section 6.01 Limited Warranty. Service Provider will perform the Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Services under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Services for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Service, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or Recipient or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. No Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. Subject to Section 7.14, this Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Chief Legal Officer
Fax: (972) 628-4147

If to the General Partner or the Fund, addressed to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Fax: (919) 854-1401

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

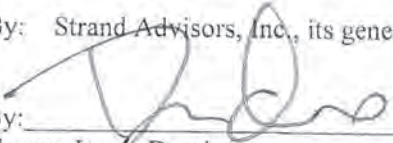
Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to," "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

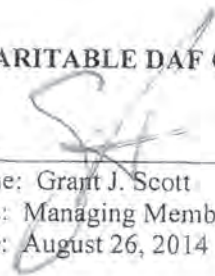
IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

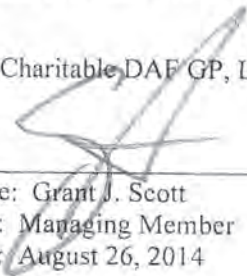
By: 
Name: James Dondero
Title: President
Date: August 26, 2014

CHARITABLE DAF GP, LLC

By: 
Name: Grant J. Scott
Title: Managing Member
Date: August 26, 2014

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: 
Name: Grant J. Scott
Title: Managing Member
Date: August 26, 2014

Annex A

Services

Finance & Accounting

- Book keeping
- Cash management
- Cash forecasting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management
- Valuation

Tax

- Tax audit support
- Tax planning
- Tax prep and filing

Legal

- Document review and preparation

Trading

- Trade execution
- Risk management
- Trade settlement
- General operations

Facilities

Public Relations Support

Information Technology Infrastructure Support

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 11**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
§
Debtor. §
_____ §

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

*Vol. 1
000001*

000004

000006

*Vol. 2
000401*

000501

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

Vol. 2

000505

000510

000543

000555

000568

000578

			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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

NOTICE OF PROPOSED ORDER

PLEASE TAKE NOTICE that Highland Capital Management, L.P. (the “Debtor”), hereby submits the proposed order attached hereto as **Exhibit A** (the “Proposed Order”).

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

1. Based upon footnote 6 of the DAF Reply (defined below), the Proposed Order should resolve the *Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248] (the “Seery Order Motion”) filed by The Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (collectively, the “DAF”) on April 23, 2021.

2. The Seery Order Motion sought to modify that certain *Order Approving Debtor’s Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] (the “July Order”).

3. On May 14, 2021, the Debtor objected to the Seery Order Motion [Docket No. 2311] (the “Debtor’s Objection”). The Debtor’s Objection was joined by the Official Committee of Unsecured Creditors [Docket No. 2315].

4. On May 21, 2021, the DAF filed the *Reply in Support of Motion for Modification of Order Regarding Governance of the Debtor and Retention of James P. Seery, Jr.* [Docket No. 2347] (the “DAF Reply”). Footnote 6 of the DAF Reply states as follows:

The Debtor’s insistence that the Order not be modified is a bit perplexing. To Movant’s knowledge, the Debtor raised no fuss about the addition this Court made to the similar provision of the Confirmation Order. ***Merely adding the phrase “to the extent legally permissible,” as the Court did in that order, would remove the jurisdictional overreach and resolve the dispute.***

DAF Reply at n. 6 (emphasis added).²

5. A hearing on the Seery Order Motion is scheduled for June 8, 2021.

6. The Proposed Order would amend the July Order in the manner requested by the DAF Reply by adding the phrase “to the extent legally permissible.” To be consistent, the

² As the Court will recall, the Debtor, not the Court, modified Article X.F of the Plan prior to the confirmation hearing. See *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1809], Art. X.F.

Proposed Order would also amend a similar provision contained in the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “January Order”, and collectively with the July Order, the “Orders”).

7. Pursuant to the Proposed Order:

a. Paragraph 10 of the January Order would be revised as reflected in the following redlined provision:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have ~~sole~~ jurisdiction, to the extent legally permissible, to adjudicate any such claim ~~for which approval of the Court to commence or pursue has been granted~~ or cause of action.

b. Paragraph 5 of the July Order would be revised as reflected in the following redlined provision:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have ~~sole~~ jurisdiction, to the extent legally permissible, to adjudicate any such claim ~~for which approval of the Court to commence or pursue has been granted~~ or cause of action.

c. The Seery Order Motion would be deemed withdrawn with prejudice.

8. On June 3, 2021, the Debtor provided the DAF with a draft of the Proposed Order and a proposed Stipulation that would have resolved the Seery Order Motion. *See* Exhibit 1 to the *Declaration of Jeffrey N. Pomerantz* filed concurrently herewith (the “Pomerantz Decl.”).

9. The Stipulation (a) contemplated the revisions to the January Order and July Order in the manner set forth above; (b) provided that, notwithstanding the change, the requirement in both the January Order and the July Order that parties seek a determination from this Court as to the colorability of a claim before commencing or pursuing claims remained;³ and (c) provided that the *Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket No. 2235] (the "Contempt Motion") would proceed to hearing on June 8, 2021.

10. Rather than agreeing to the *Stipulation and Proposed Order*, the DAF provided the Debtor with a redlined version of the Stipulation which (a) narrowed the protections in the Orders such that they would apply only in connection with "alleged injuries to the Debtor"; (b) made the Bankruptcy Court's ability to serve the "gatekeeping role" subject to the qualification "to the extent legally permissible"; and (c) eliminated any reference to the Contempt Motion not being resolved by the resolution. *See* Exhibit 2 to the Pomerantz Declaration.

11. These changes materially exceeded the DAF's representation in footnote 6 of the DAF Reply that "merely adding the phrase to the extent legally permissible" would resolve the Motion.

12. The Debtor has rejected the DAF's revisions to the Stipulation.

13. As communicated to the DAF, and as discussed herein, the Debtor will agree to the revisions to the January Order and July Order in the Proposed Order to resolve the Seery Order Motion.

³ The Debtor's proposed language in the Stipulation with respect to this issue provided as follows: "notwithstanding the amendment of the January Order and the July Order as provided for in the Proposed Order, such amendment will not constitute a waiver of any party's rights, remedies, or obligations and any party seeking to commence or pursue a claim or cause of action of any kind against the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action." *See* Exhibit B.

Dated: June 7, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Case No. 19-34054
L.P.,	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

ORDER

This matter having come before the Court on the *Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248] (the “Seery Order Motion”) filed by The Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (collectively, the “DAF”), on April 23, 2021, in the above-captioned chapter 11 case (the “Bankruptcy Case”); and this Court having considered the (i) Seery Order Motion; (ii) the arguments and law cited in (a) the Seery Order Motion, (b) the *Debtor’s Objection to Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2311], (c) *Joinder of the Official Committee of Unsecured Creditors to Debtor’s Objection to Motion for Modification of Order Authorizing*

Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Docket No. 2315], and (d) the *Reply in Support of Motion for Modification of Order Regarding Governance of the Debtor and Retention of James P. Seery, Jr.* [Docket No. 2347]; (iii) the testimonial and documentary evidence admitted into evidence during the hearing held on June 8, 2021 (the “Hearing”), including assessing the credibility of the witnesses; and (iv) the arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and this Court having found that venue of this proceeding and the Seery Order Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Seery Order Motion and the opportunity for a hearing on the Seery Order Motion were appropriate under the circumstances and that no other notice need to be provided; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. Paragraph 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “January Order”) is deemed deleted and replaced in its entirety with the following:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

2. The following shows the changes to paragraph 10 of the January Order:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have ~~sole~~ jurisdiction, ~~to the extent legally permissible, to adjudicate any such claim for which approval of the Court to commence or pursue has been granted~~ or cause of action.

3. Paragraph 5 of the *Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket, No. 854] (the "July Order") is deemed deleted and replaced in its entirety with the following:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

4. The following shows the changes to paragraph 5 of the July Order:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have ~~sole~~ jurisdiction, ~~to the extent legally permissible, to adjudicate any such claim for which approval of the Court to commence or pursue has been granted~~ or cause of action.

5. The Seery Order Motion is deemed withdrawn with prejudice.

6. Notwithstanding amendment of the January Order and the July Order as provided for above, such amendment will not constitute a waiver of any party's rights, remedies, or

obligations, and any party seeking to commence or pursue a claim or cause of action of any kind against the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action.

7. This Order does not resolve the *Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket No. 2255], which is scheduled for hearing on June 8, 2021.

8. This Court will retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

END OF ORDER

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

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

DECLARATION OF JEFFREY N. POMERANTZ

I, Jeffrey N. Pomerantz, declare as follows:

1. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the

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

above-captioned chapter 11 case (the “Bankruptcy Case”). I submit this declaration in support of the Debtor’s *Notice of Proposed Order* filed concurrently herewith. This declaration is based on my personal knowledge of the facts set forth herein and my review of the documents identified below.

2. Attached as **Exhibit 1** is a true and correct copy of the proposed Stipulation and Proposed Order that were sent to counsel to The Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (collectively, the “DAF”) on June 3, 2021.

3. Attached as **Exhibit 2** is a true and correct copy of the revised draft of the proposed Stipulation and Proposed Order that I received from counsel to the DAF on June 4, 2021.

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

Executed on June 7, 2021, in Los Angeles, California.

/s/ Jeffrey N. Pomerantz

Jeffrey N. Pomerantz

EXHIBIT 1

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	
	§	

**STIPULATION AND AGREED ORDER TO RESOLVE MOTION FOR
RECONSIDERATION**

This stipulation (the “Stipulation”) and agreed order (“Agreed Order”) is entered into between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and The Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (collectively, the “DAF), on the other.

PRIVILEGED AND CONFIDENTIAL

ATTORNEY WORK PRODUCT

RECITALS

WHEREAS, On April 23, 2021, the DAF filed the *Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2241] (the “Motion for Reconsideration”) seeking to modify that certain *Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket, No. 854] (the “July Order”).

WHEREAS, the Debtor objected to the Motion for Reconsideration on May 14, 2021 [Docket No. 2311] (the “Debtor Objection”). The Debtor Objection was joined by the Official Committee of Unsecured Creditors [Docket No. 2315].

WHEREAS, on May 21, 2021, the DAF filed the *Reply in Support of Motion for Modification of Order Regarding Governance of the Debtor and Retention of James P. Seery, Jr.* [Docket No. 2347].

WHEREAS, a hearing on the Motion for Reconsideration is scheduled for June 8, 2021.

WHEREAS, in order to resolve the Motion for Reconsideration, the Debtor and the DAF have agreed, among other things, to amend the July Order and the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “January Order”) as set forth herein.

STIPULATION

Now, therefore, the Debtor and the DAF agree and stipulate as follows:

002339

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ATTORNEY WORK PRODUCT

1. If approved by this Court, paragraph 10 of the January Order would be deleted in its entirety and replaced with the following:¹

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

2. If approved by this Court, paragraph 5 of the July Order would be deleted in its entirety and replaced with the following:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

3. The Motion for Reconsideration will be deemed withdrawn with prejudice.

4. Notwithstanding the parties' agreement to resolve the Motion for Reconsideration by amending the January Order and the July Order as provided for above, such amendment will not constitute a waiver of any party's rights, remedies, or obligations and any party seeking to commence or pursue a claim or cause of action of any kind against the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action

¹ A redline showing the proposed amendments to the January Order and July Order are included in the Agreed Order.

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regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action.

5. Neither this Stipulation nor the Agreed Order resolve the *Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket No. 2235], which is scheduled for hearing on June 8, 2021.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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IT IS SO STIPULATED

Dated: June [redacted], 2021

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Zachery Z. Annable

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

SBAITI & COMPANY PLLC

[INSERT SIGNATURE BLOCK]

*Counsel for The Charitable DAF Fund, L.P., and CLO Holdco,
Ltd.*

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EXHIBIT A

Agreed Order

002343

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

**AGREED ORDER APPROVING STIPULATION AND AGREED ORDER TO
RESOLVE MOTION FOR RECONSIDERATION**

Upon consideration of the Stipulation and Agreed Order to Resolve Motion for Reconsideration [Docket No. ____] (the “Stipulation”)¹ in the above-captioned case, **IT IS HEREBY ORDERED THAT:**

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.
2. Paragraph 10 of the January Order is deemed deleted and replaced in its entirety

with the following:

¹ All terms not otherwise defined herein will have the meanings ascribed to them in the Stipulation.

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No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

3. The following shows the changes to paragraph 10 of the January Order.

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have ~~sole~~ jurisdiction, ~~to the extent legally permissible,~~ to adjudicate any such claim ~~for which approval of the Court to commence or pursue has been granted~~ or cause of action.

4. Paragraph 5 of the July Order is deemed deleted and replaced in its entirety with the following:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

5. The following shows the changes to paragraph 5 of the July Order.

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have ~~sole~~ jurisdiction, ~~to the extent legally permissible,~~ to adjudicate any

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such claim ~~for which approval of the Court to commence or pursue has been granted~~ or cause of action.

6. The Motion for Reconsideration is deemed withdrawn with prejudice.

6. Notwithstanding the parties' agreement to resolve the Motion for Reconsideration by amending the January Order and the July Order as provided for above, such amendment will not constitute a waiver of any party's rights, remedies, or obligations and any party seeking to commence or pursue a claim or cause of action of any kind against the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action.

7. Neither this Stipulation nor the Agreed Order resolve the *Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket No. 2235], which is scheduled for hearing on June 8, 2021.

7. This Court will retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

END OF ORDER

EXHIBIT 2

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL	§	Case No. 19-34054
MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	
	§	

**STIPULATION AND AGREED ORDER TO RESOLVE MOTION FOR
RECONSIDERATION**

This stipulation (the “Stipulation”) and agreed order (“Agreed Order”) is entered into between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and The Charitable DAF Fund, L.P., and CLO Holdco, Ltd. (collectively, the “DAF”), on the other.

RECITALS

WHEREAS, On April 23, 2021, the DAF filed the *Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2241] (the “Motion for Reconsideration”) seeking to modify that certain *Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket, No. 854] (the “July Order”).

WHEREAS, the Debtor objected to the Motion for Reconsideration on May 14, 2021 [Docket No. 2311] (the “Debtor Objection”). The Debtor Objection was joined by the Official Committee of Unsecured Creditors [Docket No. 2315].

WHEREAS, on May 21, 2021, the DAF filed the *Reply in Support of Motion for Modification of Order Regarding Governance of the Debtor and Retention of James P. Seery, Jr.* [Docket No. 2347].

WHEREAS, a hearing on the Motion for Reconsideration is scheduled for June 8, 2021.

WHEREAS, in order to resolve the Motion for Reconsideration, the Debtor and the DAF have agreed, among other things, to amend the July Order and the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “January Order”) as set forth herein.

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ATTORNEY WORK PRODUCT

STIPULATION

Now, therefore, the Debtor and the DAF agree and stipulate as follows:

1. If approved by this Court, paragraph 10 of the January Order would be deleted in its entirety and replaced with the following:¹

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors arising from an alleged injury to the Debtor, and relating in any way to the Independent Director's role as an independent director of Strand without the Court, to the extent legally permissible, (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

2. If approved by this Court, paragraph 5 of the July Order would be deleted in its entirety and replaced with the following:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery arising from an alleged injury to the Debtor, and relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court, to the extent legally permissible, (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

3. ~~The Motion for Reconsideration will be deemed withdrawn with prejudice.~~

4. ~~Notwithstanding the parties' agreement to resolve the Motion for Reconsideration by amending the January Order and the July Order as provided for above, such amendment will not constitute a waiver of any party's rights, remedies, or obligations and any party seeking to commence or pursue a claim or cause of action of any kind against~~

¹ A redline showing the proposed amendments to the January Order and July Order are included in the Agreed Order.

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~~the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action.~~

5. ~~Neither this Stipulation nor the Agreed Order resolve the Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders [Docket No. 2235], which is scheduled for hearing on June 8, 2021.~~

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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IT IS SO STIPULATED

Dated: June [], 2021

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
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10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomertantz@pszjlaw.com
ikharasch@pcszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Zachery Z. Annable

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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SBAITI & COMPANY PLLC

[INSERT SIGNATURE BLOCK]

*Counsel for The Charitable DAF Fund, L.P., and CLO
Holdco, Ltd.*

EXHIBIT A

Agreed Order

002354

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

**AGREED ORDER APPROVING STIPULATION AND AGREED ORDER TO
RESOLVE MOTION FOR RECONSIDERATION**

Upon consideration of the Stipulation and Agreed Order to Resolve Motion for Reconsideration [Docket No. ____] (the “Stipulation”)² in the above-captioned case, **IT IS HEREBY ORDERED THAT:**

² All terms not otherwise defined herein will have the meanings ascribed to them in the Stipulation.

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.
2. Paragraph 10 of the January Order is deemed deleted and replaced in its entirety with the following:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

3. The following shows the changes to paragraph 10 of the January Order.

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4. Paragraph 5 of the July Order is deemed deleted and replaced in its entirety with the following:

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have jurisdiction, to the extent legally permissible, to adjudicate any such claim or cause of action.

5. The following shows the changes to paragraph 5 of the July Order.

No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first

determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court will have ~~sole~~ jurisdiction, to the extent legally permissible, to adjudicate any such claim ~~for which approval of the Court to commence or pursue has been granted~~ or cause of action.

6. The Motion for Reconsideration is deemed withdrawn with prejudice.

6. Notwithstanding the parties' agreement to resolve the Motion for Reconsideration by amending the January Order and the July Order as provided for above, such amendment will not constitute a waiver of any party's rights, remedies, or obligations and any party seeking to commence or pursue a claim or cause of action of any kind against the parties covered by the January Order and the July Order will be required to obtain the determination from the Bankruptcy Court required therein before commencing or pursuing such claim or cause of action regardless of whether the Bankruptcy Court would have jurisdiction to adjudicate any such claim or cause of action.

7. Neither this Stipulation nor the Agreed Order resolve the *Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket No. 2235], which is scheduled for hearing on June 8, 2021.

7. This Court will retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

END OF ORDER

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
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Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:)
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹)
) Case No. 19-34054-sgj11
)
Debtor.)
)
)

**DEBTOR’S AMENDED WITNESS AND EXHIBIT LIST WITH
RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JUNE 8, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following amended witness and exhibit list with respect to the *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248],

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

which the Court has set for hearing at 9:30 a.m. (Central Time) on June 8, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James P. Seery, Jr.;
2. Grant Scott (by deposition designation);
3. James Dondero (by deposition designation);
4. Any witness identified by or called by any other party; and
5. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Transcript of January 9, 2020 Hearing		
2.	Transcript of February 2, 2021 Hearing		
3.	Debtor’s Motion for an Order to Enforce the Order of Reference [Docket 2351-4]		
4.	DAF/CLO Holdco Structure Chart (GScott000007) [Dondero June 1, 2021 Deposition Exhibit 1]		
5.	CLO Holdco, Ltd.’s Notice of Appearance and Request for Copies [Docket No. 152]		
6.	Certificate of Service [Docket No. 296]		
7.	Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures For Operations in the Ordinary Course [Docket No. 339]		
8.	Certificate of Service [Docket No. 345]		

Letter	Exhibit	Offered	Admitted
9.	Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 774]		
10.	Certificate of Service [Docket No. 779]		
11.	Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 854]		
12.	Redline of Fifth Amended Plan of Highland Capital Management, L.P. (AS MODIFIED) [Docket No. 1809]		
13.	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Docket No. 1943]		
14.	Transcript Designations from the January 21, 2021 Deposition of Grant Scott		
15.	Transcript Designations from the June 1, 2021 Deposition of Grant Scott		
16.	James Dondero June 1, 2021 Deposition Transcript		
17.	Transcript of January 21, 2020 Hearing		
18.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
19.	All exhibits necessary for impeachment and/or rebuttal purposes		
20.	All exhibits identified by or offered by any other party at the Hearing		

Dated: June 7, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 16

1 Dondero - 6-1-2021

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

4	In Re:)	
)	
5	HIGHLAND CAPITAL	)	Case No.
	MANAGEMENT, LP,	)	19-34054 L.P.
6		)	Chapter 11
	Debtor,)	
7	-----))	
	HIGHLAND CAPITAL MANAGEMENT,)	
8	LP,)	
)	
9	Plaintiff,	)	Adversary No.
		)	21-03003-sgi
10	vs.)	
)	
11	JAMES D. DONDERO,)	
)	
12	Defendant.)	

13
14 REMOTE DEPOSITION OF

15 JAMES DONDERO

16 Volume 3

17 Pages 283 - 385

18 Dallas, Texas

19 Tuesday, 1st day of June, 2021
20
21
22

23 Reported by:

24 Daniel J. Skur, Notary Public and CSR

25 Job No. 194691

1 Dondero - 6-1-2021

2

3

4

5

6

7 1st day of June, 2021

8 9:34 a.m. - 12:01 p.m.

9

10

11 Remote Deposition of JAMES DONDERO,
12 located in Dallas, Texas before Daniel J.
13 Skur, Notary Public and Certified Shorthand
14 Reporter in and for the State of Texas
15 located in Waxahachie, Texas.

16

17

18

19

20

21

22

23

24

25

1 Dondero - 6-1-2021

2 R E M O T E A P P E A R A N C E S :

3 Pachulski Stang Ziehl & Jones
4 Attorney(s) for Debtor
5 780 Third Avenue

6 New York, New York 10017

7 BY: John Morris, Esq.

8 Gregory Demo, Esq.

9 Sidley Austin
10 Attorney(s) for The Committee
11 2021 McKinney Avenue

12 Dallas, Texas 75201

13 BY: Paige Montgomery, Esq.

14 Juliana Hoffman, Esq.

15 Matthew Clemente, Esq.

16 Alyssa Russell, Esq.

17 Kelly Hart & Pitre
18 Attorney(s) for Mark Patrick
19 400 Poydras Street

20 New Orleans, Louisiana 70130

21 BY: Amelia Hurt, Esq.

22 Bonds Ellis Eppich Schafer Jones
23 Attorney(s) for The Witness
24 420 Throckmorton Street

25 Fort Worth, Texas 76102

BY: Clay Taylor, Esq.

1 Dondero - 6-1-2021

2

3 R E M O T E A P P E A R A N C E S (continued)

4 Sbaiti & Company
5 Attorney(s) for Charitable DAF, CLO HoldCo
6 and Sbaiti & Company
7 2200 Ross Avenue

8 Dallas, Texas 75201

9 BY: Mazin Sbaiti, Esq.

10

11

12 ALSO PRESENT:

13 La Asia Canty, Paralegal

14 Debra Dandeneau, Baker & McKenzie

15 J. Pomerantz

16 Lauren Drawhorn, Wick Phillips

17 Mark Patrick

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2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the respective
4 parties herein, that filing and sealing be and
5 the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to and
12 signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.

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2 P R O C E E D I N G S
3 REMOTE ORAL DEPOSITION OF
4 JAMES DONDERO

5 (REPORTER NOTE: This deposition is
6 being conducted remotely in accordance with
7 the Current Emergency Order regarding the
8 COVID-19 State of Disaster.

9 Today's date is the 1st day of
10 June, 2021. The time is 9:34 a.m. Daylight
11 Savings Time. The witness is located in
12 Dallas, Texas.)

13 JAMES DONDERO,
14 having been duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, testified as follows:

17 (9:33 A.M.)

18 EXAMINATION

19 BY MR. MORRIS:

20 Q. Good morning, Mr. Dondero. Can you
21 hear me?

22 A. Yes.

23 Q. Your microphone is a little soft as
24 well.

25 Can you tell me where you're located

1 Dondero - 6-1-2021

2 right now?

3 A. 4940 Chase Tower.

4 (Interruption by reporter.)

5 (Pause.)

6 BY MR. MORRIS:

7 Q. Good morning, Mr. Dondero.

8 (Audio distortion.)

9 (Interruption by reporter.) 00:-01

10 BY MR. MORRIS: 00:-01

11 Q. Good morning, Mr. Dondero.

12 Can you hear me now?

13 A. Yes.

14 Q. You understand we're here today for
15 your deposition in connection with next week's
16 contempt proceeding; is that right?

17 A. Yes.

18 Q. Okay. We have a few documents to
19 put up on the screen today; and as usual, if
20 there's anything that you need to see, will you
21 let me know that?

22 A. Yes.

23 Q. All right. I want to start with
24 some background.

25 MR. MORRIS: Can we please put up

1 Dondero - 6-1-2021

2 the first exhibit, the organizational
3 chart?

4 MR. TAYLOR: John, before we start,
5 I just wanted to note that this is going to
6 be limited to two hours.

7 MR. MORRIS: I'm not sure where you
8 get that from, but let's just proceed.

9 MR. TAYLOR: You specifically asked
10 for two hours of time, and I told you we'd
11 give two hours of time, and so we're
12 limiting it to two hours.

13 MR. MORRIS: You do whatever you
14 need to do, Clay.

15 (Exhibit 1 introduced.)

16 BY MR. MORRIS:

17 Q. Mr. Dondero, have you seen this
18 document before, sir?

19 A. Yes.

20 Q. Do you know what it is?

21 A. It's the org chart of the DAF and
22 CLO HoldCo.

23 Q. Do you know why this structure was
24 set up the way it was?

25 MR. TAYLOR: Objection, form.

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2 A. Only generally.

3 BY MR. MORRIS:

4 Q. Can you tell me your general
5 understanding of why this structure was set up
6 the way it was?

7 A. To be compliant for tax purposes.

8 Q. Was this structure set up at your
9 request?

10 MR. TAYLOR: Objection, form.

11 A. Set up at my request. No.

12 BY MR. MORRIS:

13 Q. Who decided to set up this
14 structure; do you know?

15 A. Mark Patrick.

16 Q. And do you know if anybody asked
17 Mark Patrick to set up this structure?

18 A. The -- he was tasked with setting up
19 a charitable entity for Highland at that time,
20 for Highland and my -- for Highland and the
21 partners to -- to foster charitable giving and
22 provide the appropriate tax deductions for
23 such.

24 Q. And who gave him that task, if you
25 know?

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2 A. I believe I did.

3 Q. Okay. So, you tasked Mr. Patrick
4 with setting up an organizational structure to
5 carry out the charitable giving on behalf of
6 Highland Capital Management, L.P., and its
7 partners?

8 Do I have that right?

9 A. Yes.

10 Q. Okay. Looking at the top line, do
11 you see that there's four foundations that are
12 identified as third parties?

13 A. Yes.

14 Q. Are you familiar with those
15 foundations?

16 A. Yes.

17 Q. And do you serve as an officer or
18 director of any of those foundations?

19 A. I -- I believe I have or I could be
20 with regard to Dallas Foundation, but I'm not
21 certain.

22 Q. Okay. Do you know if you have any
23 role with any of the other three foundations
24 that are on there?

25 A. I do not believe so.

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2 Q. Okay. Looking at the next row,
3 there's four incorporated or there's four
4 entities that are identified as supporting
5 organizations.

6 Do you see that?

7 A. Yes.

8 Q. Do you have an understanding of what
9 a "supporting organization" is?

10 A. No, and I don't know the difference
11 between that first line and the second line,
12 and I don't know if my involvement with Dallas
13 Foundation was at the first line or the second
14 line.

15 Q. Do you know when Mr. Patrick set up
16 this structure?

17 A. Many years ago at the beginning of
18 the -- I don't think it's changed over the
19 years. As far as I know, the general -- or
20 this -- this structure was put in place at the
21 beginning, I believe, sometime in the late
22 2000s.

23 Q. Do you know what the Donor Advised
24 Funds are, the DAF funds?

25 MR. SBAITI: I'm going to object to

1 Dondero - 6-1-2021

2 the form of the question.

3 John, if you could be clear as to
4 which line -- are you talking about
5 charitable DAF HoldCo, or are you talking
6 about charitable DAF Fund, L.P.?

7 MR. TAYLOR: If you could be as
8 specific as possible, and he'll try to
9 answer as specifically as possible. I'm
10 not sure which box you're talking about.

11 MR. MORRIS: All right, Clay. Thank
12 you.

13 BY MR. MORRIS:

14 Q. Mr. Dondero, are you familiar with
15 the phrase "DAF"?

16 A. Yes.

17 Q. Have you used that phrase before?

18 A. Yes.

19 Q. When you refer to -- when you use
20 the phrase "DAF," what are you referring to?

21 A. It would depend.

22 Q. On what?

23 A. What the question is.

24 Q. What's -- do you have an
25 understanding of what the Charitable DAF GP,

1 Dondero - 6-1-2021

2 LLC, is?

3 A. The exact structural differences,
4 I -- I -- I -- I don't know.

5 Q. So when you use the phrase "DAF,"
6 what are you referring to?

7 A. In general, when I use the
8 expression, it's the -- the overall entity, the
9 overall pool of capital and/or the overall
10 entity that makes the donations from the pool
11 of capital.

12 Q. And which entity -- withdrawn.
13 Do you have an understanding as to
14 which entity holds the pool of capital?

15 A. No. It's -- no, I don't know for
16 sure.

17 Q. Do you know if it's CLO HoldCo,
18 Ltd.?

19 MR. SBAITI: Objection, asked and
20 answered.

21 A. I don't know.

22 BY MR. MORRIS:

23 Q. Do you know if Charitable DAF Fund,
24 L.P., holds any assets?

25 MR. SBAITI: Objection, relevance,

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2 no foundation.

3 A. I -- I don't know which entities
4 hold which of the assets.

5 BY MR. MORRIS:

6 Q. Did you -- did you approve of the
7 organizational structure that Mr. Patrick
8 created at your request?

9 A. Yes.

10 MR. TAYLOR: Objection, vague.

11 BY MR. MORRIS:

12 Q. I'm sorry. Did -- did you answer,
13 sir?

14 A. Yes.

15 Q. Okay. Who is Grant Scott?

16 A. I understand he was the trustee of
17 the DAF for a number of years.

18 Q. When you say "he was the trustee of
19 the DAF," what are you referring to?

20 A. I always refer to him as "trustee,"
21 but I see it's labeled here as "managing
22 member."

23 Q. Do you know how he came to be
24 appointed the trustee of the DAF?

25 A. I believe it was on my

1 Dondero - 6-1-2021

2 recommendation.

3 Q. Who did you make the recommendation
4 to?

5 A. It would have been Mark Patrick.

6 Q. Did Mark Patrick have the authority
7 to appoint Mr. Scott as the trustee of the DAF?

8 MR. SBAITI: Objection, vague.

9 Object to the extent it calls for a legal
10 conclusion.

11 A. Yeah, I don't know.

12 BY MR. MORRIS:

13 Q. Well, you've known Mr. Scott since
14 high school; isn't that right?

15 A. Yes.

16 Q. You went to UVA together; isn't that
17 right?

18 A. Yes.

19 Q. You were housemates together in
20 college; isn't that right?

21 A. Yes.

22 Q. He was the best man at your wedding;
23 isn't that right?

24 A. Yes.

25 Q. You picked Mr. Scott to serve as the

1 Dondero - 6-1-2021

2 trustee of the DAF; isn't that right?

3 MR. TAYLOR: Objection. That's not
4 what he stated.

5 A. I -- on the original formation, I
6 recommended Grant Scott.

7 BY MR. MORRIS:

8 Q. And you recommended Mr. Scott to
9 Mr. Patrick?

10 A. That's my recollection, I believe,
11 but I don't remember specifically.

12 Q. Do you remember if Mr. Patrick held
13 any role in any entity on the chart that stands
14 before you?

15 Withdrawn.

16 Do you know if Mr. Patrick held any
17 role with any entity prior to January 1st,
18 2021?

19 MR. SBAITI: Objection, vague.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. Why did you make the recommendation
23 to Mr. Patrick?

24 A. Initially? You're saying the
25 initial recommendation when it was set up?

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2 Q. Correct.

3 A. 13, 14, 15 years ago.

4 The -- it -- we thought -- I thought
5 at the time he would be suitable.

6 Q. But why did you select Mr. Patrick
7 as the person to whom to make your
8 recommendation?

9 A. Because he was responsible for
10 setting up the overall structure.

11 Q. Did he -- were you seeking his
12 approval when you made the recommendation to
13 him?

14 A. I -- I don't know the roles he was
15 playing at the -- at that moment, so I -- I
16 don't know.

17 Q. At the time that you recommended
18 Mr. Scott to serve as the trustee of the DAF,
19 did you have any understanding as to who had
20 the authority to actually appoint Mr. Scott?

21 A. I did not specifically.

22 Q. Did you ever learn who had the power
23 to appoint the trustee of the DAF?

24 A. I did not.

25 Q. As you sit here today, do you have

1 Dondero - 6-1-2021

2 any understanding as to who has the power to
3 appoint the trustee of the DAF?

4 MR. TAYLOR: I'll instruct the
5 witness not to answer to the extent it
6 would require him to reveal privileged
7 communications with counsel.

8 MR. MORRIS: I'm not asking him for
9 any communications, to be clear.

10 MR. TAYLOR: Or anything he heard
11 from counsel.

12 (Audio distortion.)

13 MR. MORRIS: Please don't -- Clay,
14 you're a very good lawyer, please don't
15 coach the witness. He's a very
16 sophisticated witness.

17 BY MR. MORRIS:

18 Q. Do you have any understanding, as
19 you sit here today, sir, as to who has the
20 authority to appoint the trustee of the DAF?

21 A. I know it's complicated. I know it
22 has to do with shares. I know it's -- I know
23 it's multiple levels, but I don't have specific
24 knowledge.

25 Q. Do you know if Mr. Patrick ever

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2 considered appointing -- withdrawn.

3 MR. MORRIS: Could we please put up
4 the next exhibit, Patrick File 6,
5 Document 1?

6 (Exhibit 2 introduced.)

7 MR. SBAITI: John, is that document
8 you put up a labeled exhibit for the, like
9 Exhibit 1 or something, the one you have up
10 right here.

11 MR. MORRIS: Yeah, that will be
12 marked as Exhibit 1, thank you.

13 So, now we're going to put up
14 Exhibit 2.

15 BY MR. MORRIS:

16 Q. Do you see that that's the Amended
17 and Restated Limited Liability Company
18 Agreement of the Charitable DAF GP, LLC?

19 A. Yes.

20 Q. And do you see that it's dated
21 effective as of January 1st, 2012?

22 A. Yes.

23 Q. So, that's approximately nine plus
24 years ago.

25 Do I have that right?

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2 A. Yes.

3 Q. Okay.

4 MR. MORRIS: Can we go to the last
5 page, please?

6 BY MR. MORRIS:

7 Q. Is that your signature on that page,
8 sir?

9 A. Yes.

10 Q. And do you understand that, pursuant
11 to this agreement, Mr. Scott replaced you as
12 the managing member of the DAF GP, LLC?

13 A. I -- I don't have a recollection of
14 that.

15 Q. Do you remember that you served as
16 the managing member of the DAF GP, LLC?

17 A. I don't -- I don't recall that.

18 Q. Now, Mr. Scott is a lawyer, correct?

19 A. Yes.

20 Q. He's a patent lawyer. Do I have
21 that right?

22 A. Yes.

23 Q. He has no experience or expertise in
24 finance, does he, to the best of your
25 knowledge?

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2 A. I would not say he has expertise. I
3 wouldn't say he's an expert in it, but I -- I'd
4 say he's more sophisticated than the average
5 layperson.

6 Q. Well, at the time that you
7 recommended him to Mr. Patrick, did you do so
8 because you thought he had valuable experience
9 and expertise in finance or investment?

10 MR. SBAITI: Objection, assumes
11 facts not in evidence before the witness.

12 BY MR. MORRIS:

13 Q. That wasn't one of the reasons you
14 recommended Mr. Scott, is it?

15 A. He wasn't going to be the investment
16 advisor. DAF had a separate investment
17 advisor.

18 Q. And who was going to be the
19 investment advisor?

20 A. Highland.

21 Q. And you owned and controlled
22 Highland at the time, correct?

23 MR. TAYLOR: Objection.

24 BY MR. MORRIS:

25 Q. Withdrawn.

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2 You controlled Highland at the time,
3 correct?

4 A. Yes.

5 Q. Did Mr. Scott have any experience or
6 expertise running charitable organizations, to
7 the best of your knowledge?

8 A. No.

9 Q. Had he ever, to the best of your
10 knowledge, made any decisions concerning
11 collateralized loan obligations?

12 A. No.

13 Q. Can you tell me why you recommended
14 to Mr. Patrick that Mr. Scott serve as the
15 trustee of DAF?

16 MR. TAYLOR: Objection, asked and
17 answered.

18 A. I -- I thought he would be a good
19 fit for the position.

20 BY MR. MORRIS:

21 Q. Why?

22 A. It required -- I don't -- in my
23 mind -- or I believed it would require a lawyer
24 and someone with legal skills, and I thought he
25 would be good at the position.

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2 Q. And you trusted him; is that right?

3 A. I -- yes.

4 Q. And you had a life-long relationship
5 with him; isn't that right? Isn't that one of
6 the reasons why you recommended him for this
7 position?

8 A. Yes.

9 Q. Do you know whether Mr. Patrick --
10 withdrawn.

11 Is Mr. -- do you believe that
12 Mr. Patrick is the person who appointed
13 Mr. Scott as your successor as managing member
14 in 2012?

15 MR. SBAITI: Objection, asked and
16 answered, calls for speculation; and object
17 to the extent it calls for a legal
18 conclusion.

19 A. I could -- I could repeat the answer
20 again.

21 I don't know the formal process, but
22 I do remember recommending to Mark Patrick that
23 Grant would be a good candidate. Now, how --
24 what mechanism and how the process works and
25 who actually approved that, I -- I don't know.

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2 BY MR. MORRIS:

3 Q. Did you recommend anybody else, or
4 was Mr. Scott the only person that you
5 recommended?

6 A. I don't -- I don't remember. I
7 don't remember. I don't remember recommending
8 anybody else or if the process required it. I
9 don't remember the process.

10 Q. Was anybody involved in the process
11 other than you and Mr. Patrick?

12 MR. TAYLOR: Objection to the extent
13 it calls for speculation.

14 BY MR. MORRIS:

15 Q. Withdrawn.

16 Do you know -- do you know if
17 anybody was in the process -- involved in the
18 process other than you and Mr. Patrick?

19 A. Again, I don't know the process and
20 the mechanism, if there were offshore boards
21 involved or if the four underlying charities
22 were involved. It was -- it was complicated,
23 and I delegated the process to Mark Patrick.

24 Q. Okay. I'm not asking you to
25 speculate. I'm just asking for your knowledge.

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2 Can you identify any person or
3 entity who was involved in the appointment of
4 Mr. Scott as your successor as managing member
5 of the DAF GP, LLC, other than yourself and
6 Mr. Patrick?

7 MR. SBAITI: Objection, assumes
8 facts.

9 A. Yeah, I don't -- I don't have
10 specific knowledge.

11 BY MR. MORRIS:

12 Q. Okay. Do you understand that in
13 addition to becoming the managing member of the
14 Charitable DAF GP, LLC, that Mr. Scott also
15 became the sole director of the Charitable DAF
16 HoldCo, Ltd., Charitable DAF Fund, L.P., and
17 CLO HoldCo, Ltd.?

18 MR. TAYLOR: Objection, assumes
19 facts not before the witness.

20 A. No.

21 BY MR. MORRIS:

22 Q. Do you know if he ever held the
23 directorship of any of those entities?

24 MR. SBAITI: Objection, vague.

25 A. I -- I don't know what his exact

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2 role is now, but I -- I thought I was informed
3 that that's -- his role now has something to do
4 with directorship.

5 BY MR. MORRIS:

6 Q. Can we put the chart back up,
7 Exhibit 1, please?

8 (Exhibit 1 on screen.)

9 BY MR. MORRIS:

10 Q. Do you know whether Mr. Scott held
11 any position at all with Charitable DAF HoldCo,
12 Ltd., at any time?

13 A. I don't know.

14 Q. Can you identify any person who's
15 ever -- who you believe had the authority to
16 act on behalf of the Charitable DAF HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. SBAITI: Objection, assumes
19 facts not in evidence.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. You can't name anybody in the world
23 who was authorized on behalf of -- who was
24 authorized to act on behalf of the Charitable
25 DAF HoldCo, Ltd., prior to March 1st, 2021?

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2 MR. TAYLOR: Objection, asked and
3 answered.

4 MR. SBAITI: Objection, calls for a
5 legal opinion.

6 A. I don't know.

7 BY MR. MORRIS:

8 Q. How about the Charitable DAF Fund,
9 L.P.; can you identify anybody in the world who
10 was authorized to act on behalf of that entity
11 prior to March 1st, 2021?

12 MR. SBAITI: Objection, calls for a
13 legal opinion.

14 A. I mean, other than Grant Scott, the
15 org chart seems to roll up back up to him.

16 BY MR. MORRIS:

17 Q. Okay. So, you're willing to say
18 that Grant Scott acted on behalf of that
19 entity?

20 Do I have that right?

21 MR. TAYLOR: That's not --
22 mischaracterizes his statements. He's
23 giving you his general --

24 MR. MORRIS: Just object to the form
25 of the question. Please, no speaking

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2 objections. It's very simple.

3 MR. TAYLOR: So, John, I'm going to
4 make my record. If you don't like it, then
5 bring it up with the Judge.

6 BY MR. MORRIS:

7 Q. Mr. Dondero, do you understand that
8 Mr. Scott was authorized to act on behalf of
9 the Charitable DAF Fund, L.P., prior to
10 March 1st, 2021?

11 MR. TAYLOR: Objection, calls for a
12 legal conclusion.

13 A. I -- I don't know.

14 BY MR. MORRIS:

15 Q. Okay. Do you know if anybody was
16 authorized to act on behalf of CLO HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. TAYLOR: Objection, calls for a
19 legal conclusion.

20 A. I -- I don't know the specifics on
21 how this operated.

22 BY MR. MORRIS:

23 Q. But you can't identify any person,
24 do I have that right, you don't know the
25 identity of any person who was ever authorized

1 Dondero - 6-1-2021

2 to act on behalf of CLO HoldCo, Ltd., prior to
3 March 1st, 2021; is that right?

4 MR. TAYLOR: Objection, calls for a
5 legal conclusion.

6 MR. MORRIS: I'm not asking for a
7 legal conclusion. I'm asking for
8 Mr. Dondero's knowledge of the facts or his
9 understanding of the facts.

10 MR. TAYLOR: With all due respect,
11 it calls for a legal conclusion.

12 MR. MORRIS: I cannot wait -- I
13 cannot wait until next Tuesday. This is
14 going to be brilliant.

15 BY MR. MORRIS:

16 Q. Mr. Dondero, let me try one last
17 time.

18 Can you identify any person who you
19 believed was authorized to act on behalf of CLO
20 HoldCo, Ltd., prior to March 1st, 2021?

21 A. I need to answer the question this
22 way: My knowledge begins and ends with Grant
23 as the trustee, or on this org chart, managing
24 member; and his control, it looks like it flows
25 down through all those entities. Now -- or --

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2 or ownership, at least, or maybe control or
3 agreement.

4 Now, what other people or boards or
5 trustees or -- or entity he had to go through,
6 whether US Cayman Guernsey, et cetera, to get
7 things done and where the assets were held, I
8 do not have specific knowledge and I don't know
9 the names of the people or the entities that
10 were on those boards or -- supervisory or
11 holders of shares, or whatever. I wasn't
12 specifically involved in the operation of this
13 structure.

14 Q. Did the Charitable DAF Fund, L.P.,
15 and Highland Capital Management, L.P., enter
16 into an Amended and Restated Investment
17 Advisory Agreement, to the best of your
18 knowledge?

19 A. There was an Investment Advisory
20 Agreement, as far as I knew.

21 Q. And what is your understanding of
22 the purpose of the Investment Advisory
23 Agreement?

24 A. Excuse me.

25 To provide portfolio management to

1 Dondero - 6-1-2021

2 achieve adequate returns on the portfolio to
3 support the charitable giving of the DAF.

4 Q. Did Mr. Scott lack the capability to
5 provide portfolio management services to the
6 Charitable DAF Fund, L.P., to the best of your
7 knowledge?

8 A. I would not say that.

9 Q. So why -- why did -- withdrawn.

10 Was the -- did you participate in
11 the negotiation -- withdrawn.

12 Can we please put up the next
13 exhibit? We'll call it Exhibit 3.

14 (Exhibit 3 introduced.)

15 BY MR. MORRIS:

16 Q. Do you see this is an Amended and
17 Restated Investment Advisory Agreement between
18 the Charitable DAF Fund, L.P.; the Charitable
19 DAF, GP, LLC; and Highland Capital Management,
20 L.P.?

21 A. Yes.

22 Q. Is this the agreement you were just
23 referring to?

24 A. Unless there was another amended
25 one. I believe there was always one -- best

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2 practice is to have an investment advisory
3 group.

4 Q. And do you know who prepared this
5 document?

6 A. No.

7 Q. Do you know if it was the subject of
8 any negotiation?

9 A. I don't know.

10 Q. Do you know if the Charitable DAF
11 Fund, L.P., or the Charitable DAF GP, LLC, had
12 independent counsel in connection with the
13 negotiation and execution of this Amended and
14 Restated Investment Advisory Agreement?

15 A. I don't know.

16 Q. Do you know if the Charitable DAF
17 Fund, L.P., or the Charitable DAF GP, LLC, ever
18 hired independent counsel prior to the
19 commencement of Highland's bankruptcy in
20 October 2019?

21 A. I don't know.

22 Q. Did those entities also enter into a
23 Shared Services Agreement with Highland Capital
24 Management?

25 A. I believe there was a Shared

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2 Services Agreement. I don't know which DAF
3 entities entered it.

4 Q. Before we get to that, pursuant to
5 the Investment and Advisory Agreement, did
6 Highland Capital Management, L.P., manage the
7 assets of the DAF and CLO HoldCo?

8 MR. TAYLOR: Objection, vague.

9 A. Can you repeat the question again?

10 BY MR. MORRIS:

11 Q. Sure. Is it your understanding that
12 pursuant to this agreement, HCMLP managed the
13 assets of the DAF and CLO HoldCo?

14 A. This agreement discusses the DAF,
15 right?

16 This disagreement doesn't discuss
17 CLO HoldCo, right?

18 Q. Do you know whether HCMLP ever had
19 any agreement of any kind with CLO HoldCo
20 pursuant to which it managed CLO HoldCo's
21 assets?

22 A. I don't know for certain.

23 Q. Do you have any understanding at all
24 as to whether such an agreement existed?

25 A. I -- I don't know for certain. I'm

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2 willing to be refreshed.

3 Q. Do you know who provides --
4 withdrawn.

5 Do you know whether anybody provides
6 independent -- withdrawn.

7 Do you know whether anybody has an
8 agreement with the Charitable DAF Fund, L.P.,
9 or the Charitable DAF GP, LLC, today similar to
10 the type that had been previously entered into
11 with HCMLP?

12 MR. TAYLOR: Objection, vague.

13 A. I believe Skygate has a similar --
14 similar agreements in place.

15 BY MR. MORRIS:

16 Q. Is it your understanding that
17 Skygate effectively replaced HCMLP as the
18 investment advisor to the DAF?

19 A. Let me clarify that for a second.

20 I believe Skygate has the Shared
21 Services Agreement. I don't know whether it's
22 Skygate or NexPoint has the Investment Advisory
23 Agreement or if it was another entity. I
24 don't -- I don't know. I -- I don't know the
25 specifics.

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2 Q. Okay. While Mr. Scott served -- I
3 think you said as the trustee of the DAF, can
4 you identify any investment decision that HCMLP
5 had recommended that Mr. Scott rejected?

6 A. No.

7 Q. Can you think of any investment that
8 Mr. Scott made on behalf of the DAF that didn't
9 originate with HCMLP?

10 A. He wasn't the investment advisor,
11 but, no, I don't -- I don't recall.

12 Q. Let's just speed this up a bit.

13 Do you recall that in October 2019,
14 the debtor filed for bankruptcy?

15 A. Yes.

16 Q. And do you recall that after the
17 debtor filed for bankruptcy, CLO HoldCo, Ltd.,
18 retained John Kane to act as counsel on its
19 behalf?

20 A. I -- I know he was retained. I
21 don't know which entities in particular.

22 Q. Do you have any understanding as to
23 who Mr. Kane represented?

24 A. My understanding was that he
25 represented the DAF. Now, whether it included

1 Dondero - 6-1-2021
2 all entities, CLO HoldCo, the offshore
3 entities, which entities, I -- I don't know.

4 Q. Do you know if -- do you know how
5 Mr. Kane came to be retained by the DAF?

6 MR. SBAITI: Objection to the extent
7 it calls for the DAF's confidential
8 privileged information (inaudible.)

9 A. I -- I don't remember. I know the
10 lawyers -- I let the legal department or
11 lawyers find and identify good -- I let them go
12 through the process of identifying and vetting
13 law firms.

14 BY MR. MORRIS:

15 Q. And are the lawyers that you're
16 referring to in-house counsel at HCMLP?

17 A. I -- I don't know which lawyers were
18 involved.

19 Q. Well, you just said that you let the
20 lawyers do the vetting. Which lawyers were you
21 referring to?

22 A. It could have been the HCMLP
23 lawyers, it could have been NexPoint lawyers.
24 I don't know.

25 Q. Could it have been any other lawyers

1 Dondero - 6-1-2021

2 besides the HCMLP lawyers and the NexPoint
3 lawyers?

4 A. I mean -- yes. I mean, sometimes we
5 get recommendations from outside counsel
6 regarding other outside counsel. The
7 recommendation could have come from one of the
8 other bankruptcy attorneys involved in the
9 case. I don't know.

10 Q. Do you recall that in October 2020,
11 Mr. Scott caused CLO HoldCo to amend its proof
12 of claim?

13 MR. TAYLOR: Objection, assumes
14 facts not before the witness.

15 A. Yeah, I don't -- I don't know.

16 BY MR. MORRIS:

17 Q. Let me take it out of the --
18 (Simultaneous conversation.)

19 BY MR. MORRIS:

20 Q. Okay. Let me take it out of the
21 time frame.

22 Do you recall that there came a
23 moment in time when Mr. Scott caused CLO HoldCo
24 to amend its proof of claim by reducing the
25 value of the claim to zero dollars?

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2 A. I -- I know there was ultimately a
3 settlement agreement. I don't know how that
4 manifested itself.

5 Q. Okay. So, just to be clear, you
6 don't have any memory of CLO HoldCo --
7 withdrawn.

8 Do you have a memory of CLO HoldCo
9 filing its original proof of claim in the
10 amount of approximately \$11 million?

11 A. I -- I don't recall the amount. I
12 do remember that the DAF was overbilled by
13 Highland and there was a claim. Whether it was
14 a POC or an administrative claim or -- I don't
15 know how that manifested itself in the
16 bankruptcy. It's -- yeah.

17 Q. Okay. And regardless of the form of
18 the claim, do you remember that there came a
19 point in time when Mr. Scott amended the claim
20 to reduce the value to zero?

21 A. I -- I heard a hundred thousand
22 dollars, but it's essentially zero, I guess.

23 Q. And did you know that Mr. Scott was
24 going to amend the proof of claim in that
25 manner prior to the time that he actually did

1 Dondero - 6-1-2021

2 so?

3 MR. TAYLOR: Objection to the extent
4 it calls for him to invade the
5 attorney-client privilege.

6 A. I don't -- I don't have knowledge of
7 what you just said. I -- my recollection is
8 there was a legitimate overbilling that
9 Highland did to multiple parties who have
10 pursued multiple -- those multiple claims
11 against the estate, but I don't have -- I don't
12 have specific knowledge of why the 11 was
13 reduced to zero, but --

14 BY MR. MORRIS:

15 Q. Did you ever discuss with Mr. Scott
16 his decision to reduce the claim to zero?

17 A. Not -- not before he did it.

18 Q. At any time, did you ever discuss
19 with Mr. Scott his decision to reduce the claim
20 to zero?

21 A. I believe afterwards.

22 Q. And what do you recall about your
23 discussions with Mr. Scott afterwards?

24 A. That he had given up bona fide
25 claims against the debtor, and I didn't

1 Dondero - 6-1-2021

2 understand why.

3 Q. Did he explain to you why he thought
4 he was not giving up bona fide claims --
5 withdrawn.

6 What did he say in response?

7 MR. SBAITI: Objection, calls
8 for legal --

9 (Audio distortion.)

10 BY MR. MORRIS:

11 Q. If anything?

12 A. I don't remember him having an
13 explanation.

14 Q. Was anybody else -- did anybody else
15 participate in this discussion?

16 A. No.

17 Q. Did this discussion occur in a
18 singular phone call, or was it in multiple --
19 during multiple conversations?

20 A. A couple, one or two.

21 Q. Do you remember anything about your
22 discussions with Mr. Scott concerning his
23 decision to amend CLO HoldCo's proof of claim
24 by reducing it to zero, other than what you've
25 testified to so far?

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2 MR. TAYLOR: Objection, vague.

3 A. No, but I'm willing -- I'm willing
4 to be refreshed or answer more questions, but
5 those are the only things that come to mind.

6 BY MR. MORRIS:

7 Q. Okay. So, I think what you've told
8 me--and I just want to make sure that I have
9 this right--that after the amendment was filed,
10 you had several conversations with Mr. Scott in
11 which you told him that you believed he had
12 given up bona fide claims against the debtor,
13 but that you don't recall what, if anything, he
14 said in response.

15 Have I missed anything?

16 A. You used "several." It's -- I said
17 "a couple."

18 Q. Okay.

19 A. But otherwise, that's -- that's my
20 testimony.

21 Q. Do you recall that sometime after
22 that, CLO HoldCo had filed an objection to the
23 proposed HarbourVest Settlement?

24 A. Yes.

25 Q. And did you subsequently learn that

1 Dondero - 6-1-2021

2 CLO HoldCo withdrew its objection to the
3 HarbourVest Settlement?

4 A. Yes.

5 Q. Do you recall if you learned that
6 before or after CLO HoldCo withdrew its
7 objection -- withdrawn.

8 That wasn't a good question.

9 Did you know, prior to the time that
10 CLO HoldCo announced that it was withdrawing
11 its objection, that it intended to do so; or
12 did you learn about that after -- you know, as
13 the announcement was being made?

14 MR. SBAITI: Objection, compound.

15 MR. TAYLOR: Objection, compound.

16 BY MR. MORRIS:

17 Q. You can answer.

18 A. I learned about it at the hearing.

19 BY MR. MORRIS:

20 Q. Were you surprised?

21 A. Yes.

22 Q. And why were you surprised?

23 A. It was inappropriate.

24 Q. Why did you believe it was
25 inappropriate?

1 Dondero - 6-1-2021

2 A. The night before, Counsel had
3 confirmed with other counsel.

4 MR. TAYLOR: Instruct the witness
5 not to reveal any privileged information.

6 THE WITNESS: Okay.

7 BY MR. MORRIS:

8 Q. Mr. Dondero, you and I have done
9 this many, many times. I hope that you
10 understand that I'm never, ever asking or
11 hoping that you'll mistakenly divulge
12 attorney-client communications.

13 A. Yeah. Let me rephrase.

14 Q. Yeah. So, having said that, you
15 said that you believed it was inappropriate;
16 and the question is really simple: Why did you
17 believe it was inappropriate?

18 A. There was legal basis or legal
19 interpretation, I believed, in the governing
20 partnership agreement justifying the objection;
21 and I also believed there were duties under the
22 Advisors Act to -- for the DAF to continue with
23 its -- or to argue its objections.

24 Q. And after you learned that Mr. Scott
25 instructed his attorneys to withdraw CLO

1 Dondero - 6-1-2021

2 HoldCo's objection to the HarbourVest
3 Settlement, did you have a conversation with
4 Mr. Scott about his decision?

5 MR. TAYLOR: Objection, assumes
6 facts not in evidence.

7 A. Yeah, I don't agree with the first
8 part of that question, so I need you to
9 rephrase it, please.

10 BY MR. MORRIS:

11 Q. After you -- after you learned that
12 CLO HoldCo withdrew the objection, did you
13 speak with Mr. Scott about that?

14 A. Yes.

15 Q. Okay. Did you have one conversation
16 or more than one conversation with Mr. Scott
17 concerning CLO HoldCo's withdrawal of its
18 objection to the HarbourVest Settlement?

19 A. I -- I only recall one.

20 Q. Did anybody participate in that
21 conversation besides the two of you?

22 A. No.

23 Q. Did that conversation take place on
24 the telephone or in some other form?

25 A. I -- I don't know.

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2 Q. Do you know how long after the
3 conclusion of the hearing the conversation took
4 place? Was it the same day? Was it
5 afterwards?

6 A. I believe it was the same day or
7 shortly thereafter.

8 Q. And what do you recall -- please
9 tell me everything you recall about the
10 conversation, everything that you said and
11 everything that he said.

12 A. The only two points I remember was
13 that it was inappropriate for the DAF to change
14 direction an hour before the hearing without
15 informing anybody else when it was -- yeah,
16 when it was a reversal of the direction he had
17 been going in for weeks and that it was also
18 inappropriate to -- well, no, that's -- that
19 was -- that was really -- that was really it, I
20 guess.

21 Q. Do you recall what, if anything,
22 Mr. Scott said in response?

23 MR. SBAITI: Objection calls --
24 (inaudible.)

25 MR. MORRIS: What's the basis for

1 Dondero - 6-1-2021

2 the objection?

3 MR. TAYLOR: Objection, calls for

4 hearsay.

5 MR. SBAITI: Calls for hearsay.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. That he had done it based on advice

9 of counsel.

10 Q. Did you have any reason to doubt

11 that?

12 A. It -- it didn't -- it didn't make

13 sense that counsel would change their opinion

14 between the night before and the morning of the

15 hearing, but I guess that -- that is a reason

16 to doubt it.

17 Q. Do you think -- do you think

18 Mr. Scott acted in good faith when he made the

19 decision to withdraw CLO HoldCo's objection to

20 the HarbourVest Settlement?

21 A. Can you ask that question -- ask

22 that question again, please?

23 Q. Sure. Do you believe that Mr. Scott

24 acted in good faith when he made the decision

25 to withdraw the CLO HoldCo objection to the

1 Dondero - 6-1-2021

2 HarbourVest Settlement?

3 A. I don't believe he operated in the
4 best interest of the DAF or CLO HoldCo by
5 withdrawing the claims or withdrawing the
6 objectives -- objections.

7 Q. Did you -- did the subject of the
8 Advisors Act come up during this conversation?

9 A. I don't -- I don't remember if it
10 specifically came up.

11 Q. Do you recall if the subject of
12 "fiduciary duties" came up in this
13 conversation?

14 A. Not using those words, but reminding
15 him he needed to do what was in the best
16 interest of the DAF was definitely part of the
17 conversation.

18 Q. Earlier you said -- and I -- if I
19 miss -- if I don't get this right, please feel
20 free to correct me; but I believe you said that
21 it was inappropriate for the DAF to change
22 direction without informing anybody else.

23 Do I have that right?

24 A. Yes.

25 Q. And who do you believe Mr. Scott

1 Dondero - 6-1-2021

2 needed to inform of his decision?

3 A. There was some coordination and
4 cooperation among lawyers representing
5 different parties and I believe there was some
6 obligation -- some professional obligation as
7 part of that to inform and keep people abreast
8 of it.

9 Q. And would the lawyers at Bonds
10 Ellis, your personal counsel, be among those
11 lawyers that you believed he had the
12 professional obligation to inform?

13 MR. SBAITI: Objection --

14 A. I don't know.

15 MR. SBAITI: -- lacks foundation.

16 A. I don't know who was in the
17 coordination group.

18 BY MR. MORRIS:

19 Q. Do you believe that he had an
20 obligation to inform you in advance?

21 MR. SBAITI: Objection, vague.

22 A. I don't know if I would use the word
23 "obligation," but, again, as the founder or the
24 primary donor and continued donor to the DAF
25 and as the investment advisor fighting for

1 Dondero - 6-1-2021
2 above-average returns on a daily basis for the
3 fund, significant decisions that affect the
4 finances of the fund would be something I would
5 expect typically a trustee to discuss with a
6 primary donor.

7 BY MR. MORRIS:

8 Q. And which primary donor are you
9 referring to?

10 A. Highland, prior to bankruptcy, and
11 myself or NexPoint post-bankruptcy.

12 Q. Is Dugaboy -- The Dugaboy Investment
13 Trust a donor to the DAF?

14 MR. SBAITI: Objection, relevance.

15 A. I -- I believe it's been a donor
16 over the years. It wasn't the initial donor, I
17 don't believe.

18 BY MR. MORRIS:

19 Q. How about the Get Good Trust? Is
20 the Get Good Trust a donor to the DAF?

21 MR. SBAITI: Objection, relevance.

22 A. I don't know.

23 BY MR. MORRIS:

24 Q. Do you know if either the Get Good
25 Trust or the Dugaboy Trust has any beneficial

1 Dondero - 6-1-2021

2 interest in any of the DAF entities?

3 A. It does not -- or they do not.

4 Q. Do you know if either of the Get
5 Good or Dugaboy trusts have an interest in the
6 CLO HoldCo, Ltd., entity?

7 A. They -- they do not. They do not.

8 Q. Do you recall that a short while
9 later or -- or maybe even within the same
10 month, the debtor commenced a lawsuit against
11 the entities that we've referred to previously
12 as the Advisors, the Funds, and CLO HoldCo,
13 Ltd.?

14 A. Which litigation is that?

15 Q. That was the one where the debtor is
16 seeking injunctive relief; and there was a
17 hearing in late January on the debtor's motion
18 for preliminary injunction against the Funds,
19 the Advisors, and CLO HoldCo?

20 A. There's -- there's -- which
21 specifically?

22 Q. Do you remember that there came a
23 point in time when -- when Mr. Scott, on behalf
24 of CLO HoldCo, reached a settlement with the
25 debtor that resolved the debtor's claim against

1 Dondero - 6-1-2021

2 CLO HoldCo, Ltd.?

3 A. I'm aware there was a settlement
4 that resolved most of his -- the -- most of the
5 issues with the debtor.

6 Q. Okay. And do you recall how you
7 learned about that settlement?

8 MR. TAYLOR: Objection to the extent
9 it invades any attorney-client privilege.

10 A. I learned about it after it was
11 done.

12 BY MR. MORRIS:

13 Q. Okay. And do you have an
14 understanding of the basic terms of the
15 settlement?

16 A. I think that was the hundred
17 thousand I spoke of earlier that the -- as the
18 11 or \$12 million of overbilling that every
19 other entity has pursued, you know, for -- the
20 overbilling was traded for a hundred thousand
21 dollars, and the -- I think Grant agreed to not
22 pursue some historic actions and not pursue
23 replacement of HCMLP as manager, regardless of
24 whether it was in the best interest of the DAF
25 or not.

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2 Q. And did you ever have a conversation
3 with Mr. Scott about his decision to enter into
4 that settlement on behalf of CLO HoldCo, Ltd.?

5 A. Yes.

6 Q. And did that -- did the
7 communications take place in one conversation,
8 more than one conversation, or in some other
9 form?

10 A. It was a couple times.

11 Q. Do you recall if anybody --
12 (Simultaneous conversation.)

13 BY MR. MORRIS:

14 Q. I'm sorry, were you finished?

15 A. It might have been just once, but
16 either one or two times.

17 Q. Okay. And did anybody participate
18 in that conversation other than the two of you?

19 A. No.

20 Q. Can you recall everything that was
21 discussed during that conversation, everything
22 that you recall saying in sum or substance and
23 everything that you can recall Mr. Scott
24 saying?

25 A. My message was what I just

1 Dondero - 6-1-2021

2 articulated, that -- that the compromise or the
3 settlement wasn't in the best interest of the
4 DAF, it wasn't in the best interest of the
5 investments in the DAF.

6 Q. Do you recall how long the
7 conversation lasted?

8 A. No. It wasn't that long.

9 Q. Do you recall that shortly after
10 Mr. Scott reached the settlement on behalf of
11 CLO HoldCo, that he gave notice of his intent
12 to resign from his positions with the DAF
13 entities and CLO HoldCo, Ltd.?

14 A. Yes.

15 Q. And do you recall that there was a
16 telephone conversation between and among you
17 and Mr. Scott and certain lawyers at around the
18 same time?

19 A. I don't -- I don't remember that
20 specifically with the lawyers.

21 MR. MORRIS: Can we please put up
22 the next exhibit, which I think we're
23 marking as Exhibit 4, which is Scott Bates
24 No. 11?

25 (Exhibit 4 introduced.)

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2 BY MR. MORRIS:

3 Q. So, I'll represent to you,
4 Mr. Dondero, that the hearing at which the CLO
5 HoldCo, Ltd., settlement was presented took
6 place on January 26th. And so, this is the
7 following Sunday.

8 And do you see there's a list of
9 people who were going to participate in a
10 conference call on Sunday, January 31st?

11 A. Yes.

12 Q. And you and Mr. Scott are among
13 those people?

14 A. Yes.

15 Q. Do you recall if this phone call
16 took place?

17 A. Yes.

18 Q. Do you recall the purpose of the
19 phone call?

20 A. Yes. It didn't have anything to do
21 with his resignation, this phone call.

22 Q. So, what was the purpose of this
23 call?

24 A. Earlier, I stated that to make -- to
25 pivot the plans or what he was -- or to

1 Dondero - 6-1-2021

2 withdraw without telling anybody, to reach
3 settlements without telling anybody that had a
4 material negative impact on the DAF was
5 inappropriate. And I believe the purpose of
6 this call was his representation that John Kane
7 had, in fact, told everybody, so -- but when I
8 spoke with everybody else, everybody said he
9 hadn't talked to them, and so to figure out --
10 to try and figure out what the truth was, we
11 had a conference call with everybody.

12 Q. Did you figure out what the truth
13 was during that conference call?

14 MR. TAYLOR: Objection. I'm going
15 to have to instruct the client not to
16 answer. This was a conversation with
17 attorneys that were acting in concert under
18 joint-defense agreement, or at least had a
19 common interest in litigation at that point
20 in time.

21 MR. MORRIS: I think it's a little
22 late for that.

23 BY MR. MORRIS:

24 Q. And there's no lawyer for you on
25 this call, at least that's identified on this

1 Dondero - 6-1-2021

2 email string, correct?

3 MR. TAYLOR: That's incorrect.

4 You'll see -- note that Judge Lynn's -- why
5 it was his email, I don't know, but Judge
6 Lynn's email address is on there.

7 MR. MORRIS: Okay. I think having
8 told me the purpose of the call, I think he
9 ought to be able to disclose what the
10 result of the call was. So I'm going to
11 ask my question again.

12 BY MR. MORRIS:

13 Q. And that is, did you learn the truth
14 as to whether or not Mr. Kane had given advance
15 notice to any of the lawyers on this email
16 string about any of the decisions you're
17 referring to?

18 MR. TAYLOR: I'm going to renew my
19 objection. You can answer the question,
20 but I do want to state for the record we
21 believe it's inappropriate and if brought
22 up in later proceedings, we'll move to
23 strike.

24 A. None of the lawyers on this email or
25 that participated in the call acknowledged any

1 Dondero - 6-1-2021

2 advanced conversations with Kane.

3 BY MR. MORRIS:

4 Q. Do you remember anything else about
5 the phone call that's referred to on this
6 exhibit?

7 MR. TAYLOR: I'm just going to renew
8 my objection.

9 A. No.

10 BY MR. MORRIS:

11 Q. And do you recall that Mr. Scott
12 gave notice of his intent to resign on the same
13 day?

14 A. I -- I didn't know it was exactly
15 the same day, but I knew it was on or around
16 that time.

17 Q. Okay.

18 MR. MORRIS: Can we pull up the next
19 exhibit, please, Exhibit Number 5, which is
20 Bates stamped Scott 18 and start at the
21 bottom.

22 (Exhibit 5 introduced.)

23 BY MR. MORRIS:

24 Q. Do you recall receiving this email
25 from Mr. Scott on January 31st, in the

1 Dondero - 6-1-2021

2 afternoon?

3 A. Yes.

4 Q. Do you know why Mr. Scott gave
5 notice of his resignation at that time?

6 MR. TAYLOR: Objection, calls for
7 speculation.

8 A. No. It -- you would have to
9 answer -- I have my own speculation, but you
10 would have to ask him.

11 BY MR. MORRIS:

12 Q. Did you ever have a conversation
13 with Mr. Scott where he informed you of the
14 reasons for his decision to give notice of his
15 resignation?

16 MR. TAYLOR: Objection, calls for
17 hearsay.

18 A. I knew he was suffering from anxiety
19 and health issues regarding the challenges and
20 the confrontation.

21 MR. MORRIS: I move to strike.

22 I just want you to listen carefully
23 to my question, sir.

24 BY MR. MORRIS:

25 Q. Did Mr. Scott tell you why he had

1 Dondero - 6-1-2021

2 decided to give notice of his intent to resign?

3 MR. TAYLOR: Objection, calls for

4 hearsay.

5 A. He told me he was suffering from

6 health and anxiety issues regarding the

7 confrontation and the challenges of

8 administering the DAF, given the bankruptcy.

9 BY MR. MORRIS:

10 Q. I'm sorry, did you use the word

11 "confrontation"?

12 A. Yes.

13 Q. Do you have an understanding as to

14 what confrontation he was referring to?

15 MR. TAYLOR: Objection, calls for

16 speculation.

17 A. I believe it was the interaction,

18 challenges of dealing with your firm.

19 BY MR. MORRIS:

20 Q. Did you have any advanced notice

21 that Mr. Scott would be sending this email to

22 you?

23 A. Not exactly. But a couple days

24 beforehand, he did propose it, that he was

25 considering resigning.

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2 Q. Did you ever ask him to reconsider?

3 A. No.

4 Q. You'll see in the third paragraph,
5 he states, quote: My resignation will not be
6 effective until I approve of the
7 indemnification provisions and obtain any and
8 all necessary releases.

9 Do you see that?

10 A. Yes.

11 Q. Did he ever explain to you why his
12 release wouldn't become -- his resignation
13 wouldn't become effective until those things
14 happened?

15 MR. TAYLOR: Objection, calls for
16 hearsay.

17 A. No.

18 BY MR. MORRIS:

19 Q. Did he ever tell you who he wanted a
20 release from?

21 MR. TAYLOR: Objection, calls for
22 hearsay.

23 A. No.

24 BY MR. MORRIS:

25 Q. Do you know if there is any

1 Dondero - 6-1-2021
2 agreement today that relates to the
3 indemnification and release provisions cited in
4 Mr. Scott's email?

5 MR. SBAITI: Objection, calls for a
6 legal conclusion, lacks foundation, lacks
7 relevance.

8 A. There's no new agreement that I'm
9 aware of. There's an existing agreement from
10 when he was originally put in place.

11 BY MR. MORRIS:

12 Q. Did you ask for Mr. Scott's
13 resignation?

14 A. No.

15 Q. Did Mr. Scott or anybody acting on
16 his behalf ever explain to you or anybody
17 acting on your behalf why he wanted the
18 indemnification and release provisions?

19 MR. TAYLOR: Objection, hearsay.

20 A. No.

21 BY MR. MORRIS:

22 Q. Did you ever say or suggest to
23 Mr. Scott that he had breached his fiduciary
24 duties to anybody at any time?

25 A. I -- I don't -- I don't remember if

1 Dondero - 6-1-2021

2 I spoke to anybody else about it.

3 Q. I'm just asking if you ever -- if
4 you or anybody on your behalf ever told that to
5 Mr. Scott or anybody acting on Mr. Scott's
6 behalf, like Mr. Kane.

7 MR. SBAITI: Objection, compound.

8 A. I -- I believe I testified already
9 that I told him he didn't do what was in the
10 best interest of the fund.

11 BY MR. MORRIS:

12 Q. And did you ever tell him, in sum or
13 substance, that you believed he had breached
14 his fiduciary duties to anybody in the world by
15 not acting in the best interest of the fund?

16 MR. SBAITI: Objection, vague.

17 A. I don't recall if I had those
18 discussions with somebody else. I mean -- no,
19 that's -- I don't -- I don't recall if I've had
20 those conversations with anybody else.

21 BY MR. MORRIS:

22 Q. Did you ever threaten to sue
23 Mr. Scott?

24 A. Did I -- no.

25 Q. Did you ever tell Mr. Scott that you

1 Dondero - 6-1-2021

2 were considering suing him?

3 A. I remember telling him he needed to
4 do what was in the best interest of the funds.
5 That's -- that's as far as I remember.

6 Q. Did you ever tell Mr. Scott that you
7 believed that the fund had claims against him?

8 A. I believe anytime you're a trustee
9 and you don't do what's in the best interest of
10 the funds, you leave yourself open for that,
11 potentially.

12 Q. I appreciate that that's your
13 perspective, but I'm asking you whether you
14 ever told Mr. Scott that you believed that the
15 fund could assert claims against him.

16 A. I don't recall that.

17 Q. Do you recall if you ever told
18 Mr. Scott that you believed the fund should
19 assert claims against him?

20 A. No, I don't recall that.

21 Q. Okay. Did you ever tell Mr. Scott
22 that you believed anybody in the world had
23 potential causes of action against him for
24 actions or inactions taken on behalf of the DAF
25 or CLO HoldCo?

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2 MR. SBAITI: Objection, vague.

3 A. I don't recall that.

4 BY MR. MORRIS:

5 Q. What did you do after you received
6 this email?

7 Withdrawn.

8 Did you do anything in response to
9 receiving this email?

10 MR. TAYLOR: For the record, we're
11 talking about Exhibit 5?

12 MR. MORRIS: Yes, I believe so.

13 Is that right, La Asia?

14 MR. TAYLOR: For that -- sorry, 4.

15 MS. CANTY: I'm sorry, John. Repeat
16 that.

17 MR. MORRIS: Is this document on the
18 screen Exhibit 5?

19 MS. CANTY: It's going to be
20 Exhibit 5, but what we had -- we had
21 premarked them. So, we skipped one in
22 sequence. So, when I upload it, it will be
23 5.

24 MR. MORRIS: Okay. Thank you.

25 MS. CANTY: You're welcome.

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2 MR. MORRIS: Yes, Clay, we're going
3 to -- ultimately, this will be marked as
4 Exhibit 5.

5 MR. TAYLOR: Thank you.

6 MR. MORRIS: Yeah.

7 BY MR. MORRIS:

8 Q. So, the question, Mr. Dondero, is:
9 Do you recall doing anything after receiving
10 this email?

11 MR. TAYLOR: Objection, vague.

12 A. I don't remember doing anything with
13 it. I -- I didn't know what to do with it. I
14 didn't know how the DAF structure worked when
15 there was a resignation.

16 BY MR. MORRIS:

17 Q. Did you ask Mr. Scott why he chose
18 to send it to you?

19 A. No.

20 Q. Did you forward it to anybody?

21 A. I don't recall.

22 Q. Did you notify anybody that you had
23 received this?

24 A. I -- I don't remember.

25 MR. MORRIS: Can we scroll up to

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2 Mr. Dondero's response?

3 (Scrolling.)

4 BY MR. MORRIS:

5 Q. You can see --

6 MR. MORRIS: That's perfect right

7 there.

8 BY MR. MORRIS:

9 Q. You can see in the first sentence of
10 Mr. Scott's email there's a reference to
11 resigning and divesting. Do you see that? I'm
12 summarizing.

13 A. Yes.

14 Q. And you responded, and you requested
15 clarification that -- the next morning; is that
16 fair?

17 That's the first question.

18 A. Yes.

19 Q. And then you tried to explain to
20 Mr. Scott what your view was of the phrase
21 "divestment" or "divest."

22 Do I have that right?

23 A. Yes. Divest has a different meaning
24 in investments than it does, I guess, in legal
25 structuring; and I just wanted to make sure

1 Dondero - 6-1-2021

2 you -- you didn't mean liquidation of the
3 assets.

4 Q. Okay. That's what I'm getting to.

5 MR. MORRIS: So can we scroll up to
6 Mr. Scott's response?

7 (Scrolling.)

8 BY MR. MORRIS:

9 Q. And Mr. Scott tried to clarify why
10 he -- he used the word "divest." Do you see
11 that?

12 A. Yes.

13 Q. Okay.

14 MR. MORRIS: And then if we can
15 scroll up to your response.

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see your response says: What
19 does that mean? Quote, you need to tell me
20 ASAP that you have no intent to divest assets.

21 Do you see that?

22 A. Yes.

23 Q. Why did you write that?

24 A. It was unpredictable -- some of his
25 behavior was unpredictable at this point. I

1 Dondero - 6-1-2021

2 just wanted to make sure he wasn't liquidating
3 or intending to liquidate the portfolio.

4 Q. What interest did you have in making
5 sure that Mr. Scott didn't liquidate the
6 portfolio?

7 A. It could materially damage the value
8 of the DAF and its ability to continue its
9 mission as a charitable entity.

10 Q. Had Mr. Scott ever divested assets
11 before?

12 MR. TAYLOR: Objection, vague.

13 A. Well, by giving up the
14 11 million-dollar disclaim against the debtor,
15 he divested an 11 million-dollar asset.

16 BY MR. MORRIS:

17 Q. Anything else?

18 A. Not that I can recall.

19 Q. When was the last time you
20 communicated with Mr. Scott?

21 A. I sent him a Happy Birthday text a
22 couple days ago.

23 Q. And when was the last time you spoke
24 with him?

25 A. It's been a couple months.

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2 Q. Is the last time you spoke to him at
3 around the time that he gave notice of his
4 intent to resign?

5 A. No. It was about a month after
6 that.

7 Q. Mr. Patrick replaced Mr. Scott as
8 the managing member of the DAF GP and as the
9 director of the affiliated DAF entities and CLO
10 HoldCo, correct?

11 MR. SBAITI: Objection --
12 (Audio distortion.)

13 A. Ultimately, yes.

14 BY MR. MORRIS:

15 Q. Do you know how Mr. Patrick came to
16 replace Mr. Scott?

17 MR. TAYLOR: Objection to the extent
18 it calls for a legal conclusion.

19 A. I -- I found out about it after it
20 happened, you know, only from things that Mark
21 Patrick told me.

22 BY MR. MORRIS:

23 Q. Did you know that it was going to
24 happen before the event occurred, before the
25 actual replacement occurred?

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2 MR. TAYLOR: Objection, relevance.

3 A. No.

4 BY MR. MORRIS:

5 Q. Do you know who -- who gave

6 Mr. Patrick -- withdrawn.

7 Do you know anything about the
8 circumstances by which Mr. Patrick replaced
9 Mr. Scott?

10 A. I -- only from conversations with
11 Mark Patrick after the fact.

12 Q. What did Mr. Patrick tell you?

13 MR. TAYLOR: Objection, hearsay.

14 A. He had struggled to -- he had
15 struggled to find other candidates or entities.
16 He had struggled with D&O insurance around some
17 of the alternative candidates.

18 And one day, when he was talking to
19 Grant Scott, they came to some -- I don't know
20 who said what to who, but that -- why doesn't
21 Mark Patrick do it and he has knowledge of the
22 structure, he enjoys the charitable giving
23 part.

24 And unbeknownst to me, they agreed,
25 and he sent over the appropriate documentation

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2 or transfer of shares of voting--again, I don't
3 know how it works specifically--and Grant
4 signed it, and Mark Patrick became the trustee.

5 BY MR. MORRIS:

6 Q. So, it's your testimony that, prior
7 to the time they signed the documentation
8 pursuant to which Patrick replaced Scott, you
9 had no knowledge that there were discussions
10 underway pursuant to which that would occur?

11 A. Correct.

12 Q. You mentioned that Mr. Patrick told
13 you that they had trouble getting D&O
14 insurance.

15 Do I have that right?

16 A. That was -- yeah, that was one of
17 the factors with a couple of the candidates.

18 Q. And did he tell you who those
19 candidates were?

20 MR. TAYLOR: Objection, hearsay.

21 A. He did at the time. I can't
22 remember who they were. One was -- one was a
23 former Dean Foods executive, I believe; and the
24 other was an offshore sole practitioner.

25 BY MR. MORRIS:

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2 Q. Did he tell you what the
3 difficulties were in obtaining D&O insurance?

4 A. No.

5 Q. Did you ask?

6 A. No.

7 Q. Do you know where Mr. Patrick got
8 the authority to -- withdrawn.

9 Do you know who determined to
10 replace Mr. Scott with Mr. Patrick?

11 MR. TAYLOR: Objection to the extent
12 it calls for a legal conclusion.

13 A. As I testified, I believe it was the
14 two of them together.

15 BY MR. MORRIS:

16 Q. And do you have any understanding as
17 to what authority they had to designate
18 Mr. Scott's successor?

19 MR. TAYLOR: Objection, calls for a
20 legal conclusion.

21 A. I -- I believed, between the two of
22 them, they knew how the structure worked, and I
23 believed between the two of them, they had
24 authority -- believed they had authority, and
25 that's why they effectuated it.

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2 BY MR. MORRIS:

3 Q. Okay. Was Mr. Patrick ever employed
4 by HCMLP?

5 A. Yes.

6 Q. Do you know what period of time he
7 was employed by HCMLP?

8 A. He's been there for quite a while.
9 I mean, he was there for quite a while. I
10 believe over a decade.

11 Q. And what positions did he hold, if
12 you recall?

13 A. He headed up our tax department. I
14 don't remember him having any position other
15 than that or before that.

16 Q. Is he a lawyer, to the best of your
17 knowledge?

18 A. He's -- he's a tax lawyer, yeah.

19 Q. And do you know if he's employed
20 today?

21 A. I -- yes.

22 Q. Do you know where he's employed?

23 A. Yes.

24 Q. Where do you understand Mr. Patrick
25 is employed?

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2 A. At SkyBridge.

3 Q. Do you know where SkyBridge's
4 offices are located?

5 A. Yes.

6 Q. Where are they located?

7 A. On McKinney Avenue. I believe it's
8 2515.

9 Q. Is that the same suite of offices
10 where your office is located?

11 MR. SBAITI: Objection, vague.

12 A. It's not the same floor. We -- we
13 left, as you know, the Highland offices
14 suddenly, and so until we establish permanent
15 office locations, they're located there, but I
16 expect they will be relocating in the
17 not-too-distant future.

18 BY MR. MORRIS:

19 Q. Did you have any discussions with
20 Mr. Patrick concerning the positions he was
21 inheriting from Mr. Scott before he agreed to
22 accept them?

23 A. No.

24 Q. Do you have any written or oral
25 agreements with Mr. Patrick of any kind?

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2 MR. SBAITI: Objection --

3 MR. TAYLOR: Objection, vague.

4 A. Yeah, not that I know of, but I'm
5 not sure what you're asking.

6 BY MR. MORRIS:

7 Q. All right. Do you have any written
8 oral agreements of any kind with Mr. Patrick
9 pertaining to his role as an authorized
10 representative of any of the DAF entities or
11 CLO HoldCo, Ltd.?

12 MR. TAYLOR: Objection, vague.

13 A. I do not, no.

14 BY MR. MORRIS:

15 Q. Do you know if Mr. Patrick has any
16 agreement with any of the DAF entities or CLO
17 HoldCo, Ltd., other than those set forth in the
18 limited partnership agreement and the Amended
19 and Restated Limited Liability Company
20 Agreement for the general partnership?

21 A. I don't know of any.

22 Q. Okay. So, there was almost a
23 two-year period between the date that Mr. Scott
24 sent his notice to you of his intent to resign
25 and Mr. Patrick's replacement of Mr. Scott at

1 Dondero - 6-1-2021

2 the end of March. Do I have that right?

3 MR. TAYLOR: Objection. I think you
4 said two-year period.

5 MR. MORRIS: If I did, let me
6 restate it.

7 BY MR. MORRIS:

8 Q. There was approximately a two-month
9 period between the time that Mr. Scott sent his
10 notice to you of his intention to resign and
11 Mr. Patrick's replacement at the end of
12 March 2021. Do I have that right?

13 A. Yes.

14 Q. Okay. Are you aware that during
15 that interim period, Mr. Patrick gave certain
16 instructions to Mr. Scott?

17 MR. TAYLOR: Objection, calls for
18 hearsay.

19 MR. SBAITI: Lacks foundation.

20 A. I -- I don't know specifically.

21 BY MR. MORRIS:

22 Q. Do you know generally? Are you
23 aware of any instructions that Mr. --
24 withdrawn.

25 Can I call that period between

1 Dondero - 6-1-2021

2 January 31st and the time that Mr. Patrick
3 formally replaced Mr. Scott as "the interim
4 period"? Is that okay?

5 A. Sure.

6 Q. Okay. Did you ever learn at any
7 time during the interim period that Mr. Patrick
8 was giving Mr. Scott instructions with respect
9 to the duties and responsibilities concerning
10 the DAF and CLO HoldCo?

11 MR. SBAITI: Objection, assumes
12 facts not in evidence.

13 A. Not that I recall.

14 BY MR. MORRIS:

15 Q. Okay. Did you communicate with
16 Mr. Scott at all during the interim period
17 other than the birthday text that you
18 mentioned?

19 MR. SBAITI: Objection, misstates
20 testimony.

21 A. I don't -- I don't recall. I mean,
22 I know I've had some conversations with him,
23 yeah, about that -- I have a house in Aspen
24 but -- and we had some conversations about
25 Aspen and skiing and stuff like that, but I

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2 don't remember -- I don't remember
3 specifically --

4 BY MR. MORRIS:

5 Q. Did -- did --

6 A. -- anything else.

7 Q. -- Mr. Patrick --

8 I apologize, Mr. Dondero. Were you
9 finished?

10 A. Yeah, I'm done.

11 Q. Okay. Did Mr. Patrick inform you of
12 any issues that were being raised that needed
13 to be addressed with Mr. Scott during the
14 interim period?

15 A. Not that I recall.

16 Q. Did you ever instruct Mr. Patrick on
17 what to tell Mr. Scott with respect to any
18 matter concerning any of the DAF entities or
19 CLO HoldCo during the interim period?

20 A. Not that I recall.

21 Q. Are you familiar with the phrase
22 "adherence agreement"?

23 A. No.

24 MR. MORRIS: Can we please put up
25 the next exhibit, which we'll mark as

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2 Exhibit 6, Grant Scott, beginning at Bates
3 No. 85.

4 (Exhibit 6 introduced.)

5 MR. MORRIS: And if we could --

6 BY MR. MORRIS:

7 Q. Did you ever learn that there was a
8 point in time when the debtor was requesting
9 that CLO HoldCo, Ltd., enter into an adherence
10 agreement?

11 A. No.

12 MR. MORRIS: Can we scroll up a
13 little bit, please?

14 (Scrolling.)

15 MR. MORRIS: And just a little
16 further.

17 (Scrolling.)

18 BY MR. MORRIS:

19 Q. And do you see that Grant Scott
20 forwards it to Mark Patrick and says, "This
21 relates to the second issue from the debtor"?

22 A. Yes.

23 MR. MORRIS: And can you scroll up a
24 little more?

25 (Scrolling.)

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2 BY MR. MORRIS:

3 Q. And you see Mr. Patrick's
4 instruction, "Do not sign the adherence
5 agreement from the debtor. The successor will
6 address this"?

7 A. Yes.

8 Q. Do you have any knowledge that
9 Mr. Patrick instructed Mr. Scott on March 2nd,
10 2001, not to sign an adherence agreement from
11 the debtor?

12 A. I have no knowledge prior to this.

13 Q. Okay.

14 MR. MORRIS: Can you scroll to the
15 top?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see Mr. Patrick further
19 instructed Mr. Scott on March 2nd to, quote,
20 "Stand down on any communication," close quote?

21 A. Yes.

22 Q. Were you aware that Mr. Patrick had
23 instructed Mr. Scott to stand down?

24 A. No.

25 Q. Did you ever tell Mr. Patrick to

1 Dondero - 6-1-2021

2 instruct Mr. Scott to stand down?

3 A. No.

4 Q. Do you have any understanding as to
5 where Mr. Patrick obtained the authority to
6 instruct Mr. Scott to stand down?

7 MR. SBAITI: Objection, vague,
8 assumes facts not in evidence.

9 A. I -- I wouldn't view it as an
10 authority issue. I think they had a long-term
11 relationship, friendship, working relationship
12 with regard to the DAF; and I think Mark was
13 giving him advice.

14 MR. MORRIS: Okay. It's 12:20 New
15 York time. I'd like to just take a short
16 break until 12:30, and I shouldn't have too
17 much more left.

18 MR. TAYLOR: Okay.

19 (Recess held 11:19a-11:31a.)

20 MR. MORRIS: Okay. Hopefully just
21 15 or 20 minutes more. A half hour at
22 most, I promise.

23 BY MR. MORRIS:

24 Q. Are you ready to proceed,
25 Mr. Dondero?

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2 A. Yes.

3 Q. You've told me that you expressed to
4 Mr. Scott--and I'm, you know,
5 paraphrasing--that you expressed to Mr. Scott
6 your concerns with respect to his -- certain of
7 the decisions that he made during the course of
8 the bankruptcy.

9 Do I have that right? Is that fair?

10 A. Yes.

11 Q. Do you know whether anybody else
12 besides yourself expressed any concerns to
13 Mr. Scott concerning any of the decisions that
14 he made during the post-petition period?

15 MR. SBAITI: Objection, vague.

16 A. I -- I don't recall.

17 BY MR. MORRIS:

18 Q. Are you aware of anybody other than
19 yourself telling Mr. Scott, in sum or
20 substance, that any of the decisions he made
21 post-petition were inappropriate or not in the
22 best interests of the DAF or CLO HoldCo, Ltd.?

23 A. I don't know.

24 Q. Okay. You're not aware of anybody;
25 is that fair?

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2 A. Not as I sit here today.

3 Q. Okay. We talked earlier about the
4 suggestion -- and again, if I get this wrong,
5 just correct me.

6 But I think you testified that
7 implicit in your conversations with Mr. Scott
8 was your belief that he wasn't acting in the
9 best interests of the DAF and CLO HoldCo, Ltd.,
10 and had breached his fiduciary duties; is that
11 fair?

12 A. I think I testified that I didn't
13 use the word "fiduciary duties" but -- I don't
14 recall using those words, but I do recall
15 stating that he was making decisions that
16 weren't in the best interest of the fund.

17 Q. Okay. And I appreciate the
18 clarification and -- I appreciate the
19 clarification.

20 Do you have your own personal belief
21 as to whom Mr. Scott owed fiduciary duties to?

22 MR. SBAITI: Objection, vague.

23 MR. MORRIS: Withdrawn.

24 I'm going to try and do this a
25 different way.

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2 Ms. Canty, can we please put back up
3 on the screen Exhibit 1?

4 (Exhibit 1 on the screen.)

5 BY MR. MORRIS:

6 Q. Can you see that, sir?

7 A. Yes.

8 Q. Is there any entity on this
9 Exhibit 1 that you do not believe Mr. Scott
10 owed a fiduciary duty to prior to the time of
11 his resignation in late March 2021?

12 MR. SBAITI: Object to the extent it
13 calls for a legal conclusion.

14 A. Yeah. I -- I can't answer that
15 question.

16 BY MR. MORRIS:

17 Q. Well, do you believe that Mr. Scott
18 owed a fiduciary duty to the three entities
19 that have in their name "Charitable DAF"?

20 MR. SBAITI: Same objection.

21 A. Again, regardless of where the
22 assets are held, he has a responsibility, in my
23 mind, as the trustee or the managing member, to
24 optimize those assets and protect those assets
25 and to efficiently, effectively administer

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2 expenses.

3 BY MR. MORRIS:

4 Q. I appreciate that. I'm just asking
5 you to whom he owes the duty to do those
6 things, if you have an understanding. I'm
7 just -- I'm not asking for a legal conclusion.
8 I'm asking you if you have an understanding as
9 to whom he owes those duties.

10 A. Not specifically.

11 Q. Okay. Did you ever discuss at any
12 time with Mr. Patrick your views concerning
13 Mr. Scott's decision to withdraw the objection
14 to the HarbourVest Settlement?

15 MR. SBAITI: Objection, vague, lacks
16 foundation.

17 A. I don't -- I don't specifically
18 recall. It's -- I'm willing to be refreshed,
19 but I -- I don't specifically recall, but
20 that's -- yeah, I don't specifically recall.
21 It's not -- I don't want to speculate.

22 BY MR. MORRIS:

23 Q. I don't want you to speculate,
24 either.

25 Do you have any recollection of --

1 Dondero - 6-1-2021

2 at all of ever discussing with Mr. Patrick your
3 views as to Mr. Scott's decision to withdraw
4 the objection to the HarbourVest Settlement?

5 MR. TAYLOR: Objection, asked and
6 answered.

7 A. Yeah, I don't recall.

8 BY MR. MORRIS:

9 Q. Did you -- do you have any
10 recollection at all of ever discussing with
11 Mr. Patrick your views concerning Mr. Scott's
12 decision to enter into the settlement agreement
13 on behalf of CLO HoldCo?

14 A. I don't recall.

15 Q. I'm sorry. Are you -- yeah, are you
16 aware that CLO HoldCo and the DAF, Ltd.,
17 commenced the lawsuit against the debtor and
18 others in the United States District Court for
19 the Northern District of Texas?

20 A. Yes.

21 Q. Okay.

22 MR. MORRIS: Can we put that
23 complaint up on the screen and mark it as
24 Exhibit 7, I believe?

25 (Exhibit 7 introduced.)

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2 BY MR. MORRIS:

3 Q. I'll just represent to you that this
4 is the first page of the complaint. If you
5 need to refer to it for any purpose, just let
6 me know.

7 But I'm going to start with the
8 question of, have you ever seen a copy of the
9 complaint that was filed by the Charitable DAF
10 Fund, L.P., and CLO HoldCo, Ltd., against the
11 debtor and certain other entities?

12 A. Yes.

13 Q. When did you see the complaint for
14 the first time, that you recall?

15 MR. TAYLOR: Objection, vague.

16 A. Near final versions before it was
17 filed.

18 BY MR. MORRIS:

19 Q. So you saw -- you saw versions of
20 the complaint before it was filed. Do I have
21 that right?

22 A. Yes.

23 Q. Okay. Did you participate in any
24 discussions concerning the substance of the
25 complaint before it was filed?

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2 MR. TAYLOR: I'm just going to
3 caution the witness: You can tell him if
4 you participated in any conversations; but
5 to the extent that you had conversations
6 with any attorneys who were acting as
7 lawyers, please do not go into the
8 substance of those conversations.

9 A. Yeah. I mean, yes, I had
10 conversations with attorneys.

11 BY MR. MORRIS:

12 Q. Which attorneys did you speak with
13 about this complaint before it was filed?

14 A. Mazin. I can't remember -- I can't
15 remember -- I talked to a lot of attorneys. I
16 can't remember -- I can't remember besides
17 Mazin.

18 Q. Okay. Now, Mazin doesn't represent
19 you personally, does he?

20 A. No.

21 Q. Can you please tell me everything
22 you discussed with Mazin concerning this
23 complaint?

24 MR. TAYLOR: Objection,
25 attorney-client privilege.

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2 MR. SBAITI: Well, I'm also -- DAF
3 is asserting work-product privilege and
4 joint-interest privilege regarding
5 communication through DAF with us.

6 MR. MORRIS: I'm sorry. I'm sorry.
7 I'm having a little trouble hearing you. I
8 think I heard attorney work product. What
9 over privileges are being asserted here?

10 MR. SBAITI: Joint interest. As
11 advisor to the DAF, he provided us some
12 information that we used and helped us
13 identify information that we were using.
14 So, helping his advisee's counsel perform
15 their duties falls under the work-product
16 privilege. We're claiming work-product
17 privilege over the content of his
18 conversation.

19 MR. MORRIS: Okay. Did I hear
20 somebody say attorney-client privilege,
21 too?

22 MR. TAYLOR: I had said that, but I
23 was just making sure that Mazin jumped in
24 with his objections --

25 (Whereupon, the court reporter's

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2 computer crashed, calls were made, and an
3 iPad was engaged to finish the deposition.)

4 MR. MORRIS: All right.

5 Mr. Dondero, can you hear me?

6 THE WITNESS: Yes.

7 MR. MORRIS: Mr. Court Reporter, can
8 you hear me?

9 THE REPORTER: Yes, sir.

10 BY MR. MORRIS:

11 Q. Mr. Dondero, did you provide any
12 comments to the Sbaiti firm on any draft of the
13 complaint before it was filed?

14 MR. SBAITI: You can answer that
15 question yes or no. I'll just instruct the
16 witness not to answer with any content of
17 any kind on the basis -- and we're
18 instructing him not to answer on the basis
19 of work-product privilege and
20 joint-interest privilege.

21 A. Some.

22 BY MR. MORRIS:

23 Q. Can you disclose for me all of the
24 information and comments you provided that --
25 to the draft complaints?

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2 MR. SBAITI: Instruct the witness
3 not to answer on the basis of work-product
4 privilege and joint-interest privilege.

5 BY MR. MORRIS:

6 Q. Are you going to follow Counsel's
7 advice, Mr. Dondero?

8 A. Yes.

9 Q. Did you provide any conceptual or
10 strategic ideas about what claims to pursue to
11 the Sbaiti firm prior to the time the complaint
12 was filed?

13 MR. SBAITI: Can you repeat the
14 question?

15 BY MR. MORRIS:

16 Q. Did you provide any thoughts or
17 ideas as to what claims should be pursued in
18 this complaint prior to the time it was filed?

19 MR. TAYLOR: I'm going to first
20 lodge an objection as to vague, and I
21 believe Mazin has some other objection.

22 MR. SBAITI: Yeah. I would -- I
23 will say the same objection, and we will
24 object to any content of the -- within the
25 attorney-client work-product and

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2 joint-interest privilege.

3 A. Not that I recall.

4 BY MR. MORRIS:

5 Q. Did you provide any facts that are
6 set forth in the complaint?

7 Withdrawn.

8 Did you -- did you provide to the
9 Sbaiti firm any facts that are reflected in the
10 final version of the complaint?

11 MR. SBAITI: Mr. Dondero, you can
12 answer that question yes or no; otherwise,
13 we instruct you not to answer on the basis
14 of -- the content on the basis of
15 attorney-client, work-product and
16 joint-interest privilege.

17 A. Not that I recall.

18 BY MR. MORRIS:

19 Q. You don't recall providing any facts
20 at all?

21 A. Not specifically.

22 Q. Did you provide any general facts or
23 ideas to the Sbaiti firm in connection with
24 your review of the drafts of the complaint?

25 MR. SBAITI: Same instruction, same

1 Dondero - 6-1-2021

2 objections.

3 A. Maybe some.

4 BY MR. MORRIS:

5 Q. Okay. Can you describe those for
6 me, please?

7 MR. SBAITI: I'll instruct you not
8 to answer that on the basis of
9 attorney-client work-product privilege and
10 joint-interest privilege.

11 BY MR. MORRIS:

12 Q. Are you going to follow Counsel's
13 advice, Mr. Dondero?

14 A. Yes.

15 Q. Did you have any discussions with
16 the Sbaiti firm concerning whether or not to
17 name James Seery as a defendant in the original
18 complaint?

19 MR. SBAITI: I'll instruct the
20 witness not to answer on the basis of
21 attorney-client, work-product and
22 joint-interest privilege as doing so would
23 reveal the contents of such communication.

24 BY MR. MORRIS:

25 Q. Can you just answer yes or no?

1 Dondero - 6-1-2021

2 A. No.

3 Q. You didn't have -- that wasn't part
4 of any of the discussions you had prior to the
5 time the complaint was filed?

6 MR. SBAITI: Same instruction. Just
7 don't answer.

8 THE WITNESS: So please don't
9 answer, right, or don't answer --

10 MR. SBAITI: Don't answer.

11 THE WITNESS: Okay.

12 BY MR. MORRIS:

13 Q. Are you going to follow Counsel's
14 advice?

15 A. Yes.

16 Q. Did you -- did you suggest that
17 Mr. Seery should be named as a defendant in
18 this lawsuit to the Sbaiti firm prior to the
19 time it was filed?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of
22 attorney-client work product and
23 joint-interest privilege, as doing so would
24 reveal the contents of those
25 communications.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advice?

5 A. Yes.

6 Q. Did you know, prior to the time the
7 complaint was filed, that the Sbaiti firm
8 intended to file a motion for leave to amend
9 their complaint to add Mr. Seery as a
10 defendant?

11 MR. SBAITI: You can answer that
12 question yes or no, but, otherwise, it will
13 reveal the content of any underlying
14 communication on the basis of
15 attorney-client work product, or
16 joint-interest privilege.

17 A. No.

18 BY MR. MORRIS:

19 Q. When did you learn that the Sbaiti
20 firm filed a motion for leave to amend their
21 complaint to add Mr. Seery as a defendant?

22 A. I don't -- I don't recall.

23 Q. Do you recall whether you had any
24 conversations with anybody in the world at any
25 time prior to the time that motion was filed

1 Dondero - 6-1-2021
2 regarding the possibility of filing a motion
3 for leave to amend the pleading to add
4 Mr. Seery as a defendant?

5 MR. SBAITI: Objection, vague, lacks
6 foundation; and instruct the witness not to
7 reveal the content of any communications on
8 the basis protected under the
9 attorney-client, work-product,
10 common-interest privilege.

11 A. I don't recall.

12 BY MR. MORRIS:

13 Q. Okay. Did you ever discuss with
14 Mr. Patrick the topic of whether or not
15 Mr. Seery should be sued?

16 A. No.

17 Q. Did you ever discuss with the Sbaiti
18 firm the topic of whether Mr. Seery should be
19 sued?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of attorney work
22 product -- attorney-client, and
23 common-interest privilege as answering
24 would reveal the contents of such
25 communications, if they occurred.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advise?

5 A. Yes.

6 MR. MORRIS: I think I may be done.

7 Can we just take a three-minute
8 break and let me just check my notes?

9 MR. SBAITI: Sure.

10 (Recess held.)

11 MR. MORRIS: All right. I have no
12 further questions. I would request the
13 production of a privilege log reflecting
14 the communications, if any, between
15 Mr. Dondero and the Sbaiti firm; but,
16 otherwise, I have nothing further at this
17 time.

18 MR. SBAITI: Okay.

19 MR. MORRIS: Again, I appreciate
20 your time, Mr. Dondero.

21 MR. SBAITI: We'll reserve our
22 questions.

23 MR. MORRIS: Okay. Thank you,
24 everybody.

25 MR. SBAITI: Thank you. Take care.

1 Dondero - 6-1-2021

2 THE REPORTER: Mr. Sbaiti, do you
3 guys need a copy of this deposition?

4 MR. SBAITI: Yeah, we would just
5 need a PTX of the deposition transcript and
6 soft copies of the exhibits. Are you going
7 to send something to the witness to read
8 and sign? I think you could send it to him
9 either directly or to Mr. Taylor on his
10 behalf.

11 (Time Noted: 12:01 p.m.)

12

13

14

JAMES DONDERO

15

16 Subscribed and sworn to before me
17 this _____ day of _____, 2021.

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1 Dondero - 6-1-2021

2 C E R T I F I C A T E
3 STATE OF TEXAS)
4 COUNTY OF ELLIS)

5 I, Daniel J. Skur, a Notary Public
6 within and for the State of Texas, do
7 hereby certify:

8 That JAMES DONDERO, the witness whose
9 deposition is hereinbefore set forth, was
10 duly sworn by me and that such deposition
11 is a true record of the testimony given by
12 such witness.

13 That pursuant to Rule 30 of the Federal
14 Rules of Civil Procedure, signature of the
15 witness was reserved by the witness or
16 other party before the conclusion of the
17 deposition;

18 I further certify that I am not
19 related to any of the parties to this
20 action by blood or marriage; and that I am
21 in no way interested in the outcome of this
22 matter.

23 IN WITNESS WHEREOF, I have hereunto
24 set my hand this 1st day of June, 2021.



25
26 Daniel J. Skur
27 Notary Public, State of Texas.
28 My Commission Expires 7/7/2022
29 TSG Reporting, Inc.
30 228 East 45th Street, Suite 810
31 New York, New York
32 (877) 702-9580

1 Dondero - 6-1-2021

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name:

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

7 In re:)
 8 HIGHLAND CAPITAL) Case No.
 9 MANAGEMENT, LP,) 19-34054 L.P.
 10 Debtor,) Chapter 11
 11 -----)
 12 HIGHLAND CAPITAL MANAGEMENT,)
 13 LP,)
 14)
 15 Plaintiff,) Adversary No.
 16 vs.) 21-03003-sgi
 17 JAMES D. DONDERO,)
 18 Defendant.)

19 Dep. Date: 06/01/2021
 20 Deponent: JAMES DONDERO

- 21 Reason codes:
 22 1. To clarify the record.
 23 2. To conform to the facts.
 24 3. To correct transcription errors.

25 CORRECTIONS:

26	Pg.	LN.	Now Reads	Should Read	Reason
27	---	---	_____	_____	_____
28	---	---	_____	_____	_____
29	---	---	_____	_____	_____
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1 Dondero - 6-1-2021

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JAMES DONDERO

19 _____

20 _____

21 SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____, 2021.

22 _____

23 _____

24 (Notary Public) MY COMMISSION EXPIRES: _____

25 _____

1 Dondero - 6-1-2021

2 -----I N D E X-----

3 WITNESS: EXAMINATION BY PAGE:

4 JAMES DONDERO

5 Mr. Morris 288

6

7 *****

8 -----EXHIBITS-----

9 Deposition Exhibits PAGE/LINE

10 Exhibit 1 DAF/CLO Holder Structure 290/15
Chart
11 Bates No. GScott000007

12 Exhibit 2 Amended and Restated 301/6
Limited Liability Company
13 Agreement of Charitable
DAF GP, LLC
14 Bates No. PATRICK_000031
through 000035

15 Exhibit 3 Amended and Restated 313/14
Investment Advisory
16 Agreement
17 Bates No. GScott000325
through 000340

18 Exhibit 4 Phone Conference 335/25
19 Invitation For 1/31/2021
Bates No. GScott000011

20 Exhibit 5 January/February 2021 339/22
21 Email String Regarding
22 Notice of Intent to Resign
and Divest From CLO
23 HoldCo, Ltd., and Related
Entities
24 Bates No. GScott000018
through 000019

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Dondero - 6-1-2021

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-----EXHIBITS-----

Deposition Exhibits	PAGE/LINE
Exhibit 6 March 2021 Email String Regarding Highland Adherence Agreement (Highland CLO Funding) in Connection With Transfer of HarbourVest Shares Bates No. GScott000085 through 000088	361/4
Exhibit 7 Original Complaint in Re: Charitable DAF Fund, L.P. and CLO HoldCo, Ltd., V Highland Capital Management, L.P. and Others Bates No. GScott000389 through 000414	368/25

EXHIBIT 17

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

3 In Re:) **Case No. 19-34054-sgj-11**
4)
4 HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 21, 2020
5) 9:30 a.m.
6 Debtor.)
7) MOTIONS

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

11 APPEARANCES:

12 For the Debtor: Jeffrey N. Pomerantz
13 PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd., 13th
14 Floor
Los Angeles, CA 90067
(310)_277-6910

15 For the Debtor: John A. Morris
16 PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

17 For the Debtor: Maxim B. Litvak
18 PACHULSKI STANG ZIEHL & JONES, LLP
150 California Street, 15th Floor
San Francisco, CA 94111-4500
(415) 263-7000

19 For the Debtor: Melissa S. Hayward
20 Zachery Z. Annable
21 HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
22 Suite 106
Dallas, TX 75231
23 (972) 755-7104

24
25

1 APPEARANCES, cont'd.:

2 For the Official Committee of Unsecured Creditors: Dennis M. Twomey
3 SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7438

5 For the Official Committee of Unsecured Creditors: Penny Packard Reid
6 Juliana Hoffman
7 SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
8 Dallas, TX 75201
(214) 981-3413

9 For ACIS Capital Management GP, LLC, et al.: Rakhee V. Patel
10 WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
11 Dallas, TX 75201
(214) 745-5250

12 For the Issuer Group: Amy K. Anderson
13 JONES WALKER, LLP
811 Main Street, Suite 2900
14 Houston, TX 77002
(713) 437-1866

15 For the Issuer Group: James T. Bentley
(Telephonic) SCHULTE ROTH & ZABEL, LLP
16 919 Third Avenue
New York, NY 10022
17 (212) 756-2000

18 For Redeemer Committee of the Highland Crusader Fund: Mark A. Platt
19 FROST BROWN TODD, LLC
100 Crescent Court, Suite 350
20 Dallas, TX 75201
(214) 580-5852

21 For Redeemer Committee of the Highland Crusader Fund: Marc B. Hankin
22 JENNER & BLOCK, LLP
919 Third Avenue
(Telephonic) New York, NY 10022-3098
23 (212) 891-1600

24
25

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert
3 OFFICE OF THE UNITED STATES
4 TRUSTEE
5 1100 Commerce Street, Room 976
6 Dallas, TX 75242
7 (214) 767-8967 Ext. 1080

8 For UBS AG London Branch, Kimberly A. Posin
9 et al.: LATHAM & WATKINS, LLP
10 355 South Grand Avenue
11 Los Angeles, CA 90071-1560
12 (213) 485-1234

13 For UBS AG London Branch, Asif Attarwala
14 et al.: LATHAM & WATKINS, LLP
15 330 N. Wabash Avenue, Suite 2800
16 Chicago, IL 60611
17 (312) 876-7700

18 Recorded by: Michael F. Edmond
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 21, 2020 - 9:35 A.M.

2 THE COURT: Counsel in the courtroom first in
3 Highland.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz, John Morris, and Max Litvak from Pachulski Stang
6 Ziehl & Jones, counsel for the Debtor.

7 THE COURT: Good morning.

8 MR. POMERANTZ: Also in the courtroom are the members
9 of the independent board: John Dubel, Jim Seery, and Russell
10 Nelms.

11 THE COURT: Good morning.

12 MS. HAYWARD: Good morning, Your Honor. Melissa
13 Hayward and Zachery Annable on behalf of the Debtor.

14 THE COURT: Good morning.

15 MS. LAMBERT: Lisa Lambert with the U.S. Department
16 of Justice representing William Neary, the United States
17 Trustee. I believe Ms. Kippes will also be joining later this
18 morning.

19 THE COURT: Okay. Good morning.

20 MS. LAMBERT: Thank you.

21 MR. TWOMEY: Good morning, Your Honor. Dennis
22 Twomey, Penny Reid, and Juliana Hoffman on behalf of the
23 Unsecured Creditors' Committee from Sidley Austin. Thank you.

24 THE COURT: Good morning.

25 MS. PATEL: Good morning, Your Honor. Rakhee Patel

1 of Winstead, P.C. on behalf of ACIS Capital Management, LP and
2 ACIS Capital Management, GP, LLC.

3 THE COURT: Good morning.

4 MS. PATEL: Thank you.

5 MR. PLATT: Good morning, Your Honor. Mark Platt.

6 I'm here on behalf of the Redeemer Committee of the Highland
7 Crusader Fund. And Mark Hankin, I believe, is on the phone as
8 well.

9 THE COURT: Okay. Good morning.

10 MS. POSIN: Good morning, Your Honor. Kim Posin of
11 Latham & Watkins. Also here is Asif Attarwala from Latham.
12 We represent creditor UBS Securities, LLC and UBS AG London
13 Branch.

14 THE COURT: Good morning.

15 MS. ANDERSON: Good morning, Your Honor. Amy
16 Anderson with Jones Walker on behalf of the Issuer Entities.
17 And with me on the phone is Mr. James Bentley with Schulte
18 Roth.

19 THE COURT: Okay. Thank you.

20 All right. That's all the courtroom appearances. If
21 you're on the phone and wish to appear, you may go ahead. I
22 think we heard at least Mr. Bentley, you're on the phone,
23 correct?

24 MR. BENTLEY: Yes, Your Honor. Thank you.

25 THE COURT: All right. And we heard Mr. Mark Hankin

1 should be on the phone, correct?

2 MR. HANKIN: Yes, Your Honor.

3 THE COURT: All right. Anyone else wishing to
4 appear?

5 All right. Well, we originally had quite a few things on
6 the calendar, and it looks like we're down just to four or
7 five maybe at this point, correct?

8 MR. POMERANTZ: That is correct, Your Honor. Again,
9 Jeff Pomerantz; Pachulski Stang Ziehl & Jones.

10 There has been a flurry of paperwork. I have either
11 inserts or replacements to things in your binders, or I have
12 completely new binders. What would Your Honor prefer?

13 THE COURT: Well, by the way, you had a very helpful
14 binder, whoever was responsible for that. I think just the
15 inserts will do.

16 MR. POMERANTZ: Okay. May I approach?

17 THE COURT: You may. And I assume we're talking
18 about the pleadings binder that you sent over Friday-ish?

19 MR. POMERANTZ: Correct.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Okay. Very good. Thank you.

23 MR. POMERANTZ: Your Honor, I thought I would take
24 Your Honor through the agenda. And if the agenda that we
25 provided today was helpful, we would propose to do it for all

1 hearings, if that would be acceptable.

2 THE COURT: That would be great, yes.

3 MR. POMERANTZ: Thank you, Your Honor.

4 So, Your Honor, number one on the agenda was the DSI
5 retention motion. Your Honor has already entered an order
6 approving that motion.

7 THE COURT: Uh-huh.

8 MR. POMERANTZ: Number two is the ordinary course of
9 business protocol motion, which was rendered moot by Your
10 Honor's approval of the settlement, so a notice of withdrawal
11 of that motion has been filed on the docket.

12 THE COURT: Okay.

13 MR. POMERANTZ: The number three and four, the
14 retentions of Foley Gardere and Lynn Pinker, we have agreed
15 with the Committee and ACIS to continue those hearings. At the
16 conclusion of this hearing, I will be asking perhaps for a
17 couple of hearing dates --

18 THE COURT: Okay.

19 MR. POMERANTZ: -- over the next couple of months so
20 that --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- we can set these for the next one.
23 Number five is the PensionDanmark relief from stay motion.
24 That also by agreement has been continued until the next date.

25 Number six is the settlement motion. The only trailing

1 issue, if Your Honor may recall, the CLO Issuers had raised
2 some concerns that the ordinary course of business protocols
3 would somehow impact the ability of the Debtor and the CLO
4 Funds to operate in accordance with their contractual
5 documents. We have been engaged with them and with the
6 Creditors' Committee in discussions on how to address their
7 concerns. We are still working on that, and we would ask that
8 that matter continue to trail to the next hearing.

9 THE COURT: Okay. All right.

10 MR. POMERANTZ: Your Honor, number seven and number
11 eight and number nine, we are -- we were -- they were --
12 they're unopposed. There have been some discussions, both in
13 connection with the cash management motion and on the bonus
14 motion, of the Committee and others. We would propose to hear
15 those after the contested matters. So we would prefer to trail
16 them until after the three contested matters.

17 THE COURT: All right.

18 MR. POMERANTZ: And Your Honor, the three contested
19 matters remaining, we would propose to take them in the order
20 of argument on the agreed protective order. There is
21 opposition by the Trustee's Office. Then an argument on the
22 Committee seal motion, and then followed by the United States
23 Trustee's motion to appoint a trustee.

24 THE COURT: All right. I am good with that sequence.
25 Anyone want to comment?

1 All right. So we'll start with the protective order.

2 MR. POMERANTZ: Your Honor, and I will cede the
3 podium to my partner, John Morris, who will be handling
4 argument on that.

5 THE COURT: All right. Thank you. Mr. Morris?

6 MR. MORRIS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. MORRIS: John Morris; Pachulski Stang Ziehl &
9 Jones; for the Debtor.

10 Your Honor, the Committee and the Debtor have agreed upon
11 the terms of a protective order. The protective order really
12 is a garden-variety protective order. And if I may, I would
13 just like to spend a couple of minutes giving the Court some
14 background as to how we got here.

15 THE COURT: Okay.

16 MR. MORRIS: This case has been going on for three
17 months, and obviously there's been a substantial exchange of
18 information during the interim. The case was filed in mid-
19 October. Almost immediately, the Debtor received substantial
20 requests from the Committee's professionals, both the lawyers
21 as well as the financial advisors. Under the leadership of
22 Brad Sharp, who was acting at that point as the CRO, the Debtor
23 acted very quickly to provide the information that it could.

24 Given that it was asked to produce documents on a very
25 expedited basis, given that it was asked to produce information

1 on a wide variety of issues that didn't concern an adversary
2 proceeding, that didn't concern a contested matter, some of
3 which related to, for example, transactions that were being
4 contemplated and we wanted to give the Committee visibility,
5 for all those reasons, the documents were produced initially on
6 a professional-eyes-only basis.

7 From time to time, the Committee sought the Debtor's
8 consent to share certain of that information with the Committee
9 members in order to enable the Committee members to fulfill
10 their duties. And I won't go into detail, but most of the time
11 we agreed. Sometimes we didn't.

12 The fact is, Your Honor, the parties worked very
13 cooperatively throughout the fall, notwithstanding the
14 adversarial nature of the proceedings, to provide information.
15 And we continued on that basis until late December, when the
16 Committee and the Debtor finally reached an agreement on the
17 terms of a protective order, and that's what we filed I think
18 on December 27th.

19 And the flow of information continued. The parties, I
20 think it's fair to say, have relied upon the terms of that
21 order. Under the guidance of the newly-appointed independent
22 directors, the Debtor has continued to provide information to
23 the Debtor as well as to other parties.

24 What information has been provided during this time? I
25 think it's important for Your Honor to understand the

1 magnitude of just what the Debtor has done here. I think the
2 Committee has made over 30 -- no, let me state it differently.
3 The Debtor has made over 30 separate document productions. It
4 covers more than 10,000 pages of material. It covers the
5 laundry list of issues that the Committee is interested in,
6 again, both with respect to contested matters and stuff that
7 has absolutely nothing to do with anything that's on the
8 Court's calendar today.

9 We've engaged in depositions. The Committee took three
10 very extensive depositions of Mr. Sharp, the CRO, of Mr.
11 Caruso, his partner at DSI, and they took a more-than-seven-
12 hour deposition of Frank Waterhouse, the CFO of the Debtor. I
13 defended each of those depositions. I didn't direct any of my
14 witnesses not to answer a single question. So there's been
15 full transparency here. I think there was maybe one question
16 that I asked to be marked confidential because it pertained to
17 the identity of investors in a nondebtor entity, and the
18 Committee didn't object to that.

19 So there's been that free flow of information.

20 Of course, Your Honor, the Debtor has filed its schedules,
21 its SOFAs. The Debtor sat for an almost-two-hour examination
22 before the United States Trustee and creditors, answering
23 questions about those documents at a 341 meeting that is going
24 to be continued tomorrow morning.

25 The point here, Your Honor, is that the agreed-upon rules

1 as reflected in the protective order haven't hindered the flow
2 of information. In fact, it's enhanced the ability of the
3 Creditors' Committee to gain information.

4 In the absence of the cooperation between the Committee
5 and the Debtor, Your Honor, I believe it's hard to imagine how
6 we could have reached an agreement on things like corporate
7 governance and the bonus motion, which includes information
8 relating to personnel matters, salaries and things of that
9 nature. And so this flow of information I think is helping
10 the Debtor's estate, it's helping the process, and I think it
11 ought to be encouraged, frankly.

12 As I mentioned earlier, another very critical component of
13 the information-sharing is sharing with the Committee
14 information relating to proposed transactions. That has
15 nothing, again, to do with an adversary proceeding, has
16 nothing to do with a contested matter, but it would really
17 hinder the Debtor's ability to operate if it was in a
18 contentious situation with the Committee over its day-to-day
19 business. And so, again, this protective order enables the
20 Debtor to carry forth its business.

21 I think it's important, Your Honor, to look at what the
22 consequences of this have been. Neither the Committee nor
23 anybody else has ever filed a motion to compel the Debtor to
24 provide information. Neither the Committee nor any other
25 party in interest has ever even requested a conference with

1 this Court or the Court in Delaware on matters relating to
2 discovery.

3 No one has objected to the protective order except the
4 United States Trustee. And we do appreciate the perspective
5 and the position that the United States Trustee is in, but
6 it's got to be taken into the context of this case. And in
7 the context of this case, where the Committee is on board,
8 where nobody else is objecting, the Court ought to ask itself
9 why. And I think the reason why is because the process is
10 really working, and it's working very well.

11 The people and the entities that are mentioned in the
12 United States Trustee's objection, whether it's ACIS or the
13 SEC or the PBGC or investors, they're all very sophisticated
14 parties, they're all well aware of what's happening, they all
15 have notice, and nobody is here objecting. And I think that's
16 very important.

17 The good news, Your Honor, I think the good news, anyway,
18 is the Committee and the Debtor have agreed to amend its form
19 of protective order in a way that we hope and we believe goes
20 a long way to addressing the United States Trustee's concerns.
21 In particular, what we've done is we've added the United
22 States Trustee as one of the parties who will receive
23 everything. Okay. So we've amended that. And Your Honor, I
24 have both clean and blacklines of the revised protective
25 order, if you'd like me to hand it up.

1 THE COURT: All right. You may approach.

2 MR. MORRIS: And I can just show you exactly where
3 these changes have been made.

4 THE COURT: Okay. Thank you. Thank you.

5 MR. MORRIS: So, Your Honor, you'll see in the
6 blackline at Paragraph 2 on Page 7 that we've added in
7 Subparagraph 2(f) the United States Trustee's Office. So
8 they're now one of the people or entities --

9 THE COURT: Uh-huh.

10 MR. MORRIS: -- who will receive everything. And
11 then on Page 11 in Paragraph 10, we've tried to make it very
12 clear that the protective order is not intended to prevent the
13 U.S. Trustee from disclosing discovery material in compliance
14 with a subpoena or court order or a FOIA request, provided
15 that the Debtor and the Committee are given notice pursuant to
16 Paragraph 9 so that we have an opportunity to intervene if we
17 think that there's a reason not to engage in that process.

18 So, as long as we receive notice, you know, the U.S.
19 Trustee can be responsive in the way that I think, I think at
20 least to some degree, they want to.

21 This order now, Your Honor, and I think this is -- I'll
22 thank the Committee for pointing this out -- this order is now
23 really wholly consistent with a protective order that was
24 entered by Judge Hale in the *PHI* case. It was entered just
25 last April, and it's filed at Docket #316. And that's a

1 protective order that wasn't entered in connection with an
2 adversary proceeding or a contested matter. It was a
3 protective order that was for use to all parties who wanted to
4 participate in discovery at any stage of the case. It also
5 included the United States Trustee's Office as one of the
6 recipients of documents, and it specifically provided not only
7 for confidential information but for professional-eyes-only
8 designation. I have a copy of that order if it would be
9 helpful for the Court to see.

10 THE COURT: All right. You may approach.

11 (Pause.)

12 MR. MORRIS: To the extent that there's any party who
13 has not yet requested information or has not sought discovery,
14 if the Court enters this order they'll be able to do so
15 pursuant to this order. And to be clear, as soon as a party
16 either requests or produces information, discovery
17 information, they become a party to this document. And so
18 they'll have all of the rights and the abilities to seek
19 information, to challenge designations. So nobody's rights
20 are really being curtailed in their ability to gain discovery.
21 And at this point, Your Honor, we have both the Committee as
22 well as the United States Trustee's Office who are going to
23 see everything. And so if either the Committee or the
24 Trustee's Office believe that the Debtor has improperly
25 labeled or categorized any document as either confidential or

1 highly confidential, there's a process to be followed. And
2 that process, I think, is quite reasonable. It's pretty
3 standard, at least in my experience. They'll let us know that
4 they disagree. We'll have a conversation. We'll either --
5 the Debtor will either agree to redesignate the document or
6 we'll bring the matter to the Court for the Court's
7 determination.

8 Sealing issues. Again, the U.S. Trustee's Office and the
9 Committee will both be fully informed as to what's happening
10 here. And if either of them has an issue, they can bring that
11 to the Court's attention.

12 To the extent that there is a disputed matter before the
13 Court on a sealing motion, the rules of engagement remain the
14 same. There's nothing in this protective order that seeks to
15 shift the burden. There's nothing in this protective order
16 that seeks to change the burden. The only thing that it does
17 is it attempts to identify, through the agreement with the
18 Committee, the types of information that the Debtor reserves
19 the right to designate as highly confidential.

20 It doesn't mean that that's now the standard that the
21 Court has -- the Court will rule, employ whatever standard it
22 thinks is appropriate, frankly. But it's a description, I
23 think it's in Paragraph 12, of the type of information that we
24 would mark as highly confidential. And I think the Committee
25 would agree, if given the opportunity, to give the Court some

1 comfort that at this point the Debtor has been quite judicious
2 and limiting in terms of the amount of information that
3 they've designated for that particular category.

4 So, in summary, Your Honor, there's no dispute that it's
5 needed. Gratefully, even the U.S. Trustee isn't telling the
6 Court that a protective order is not needed. From the
7 Debtor's perspective, it's not only needed, I would -- I
8 daresay it's required. Because if you want the Debtor and the
9 Committee to continue to engage in a free flow of information
10 outside of an adversary proceeding, outside of a contested
11 matter, this is the only way to do it. And I know that's what
12 the Debtor wants. I believe that's what the Committee wants.
13 It's why we've entered into this agreement. So these are
14 matters that ought to be protected.

15 1102(b)(3) doesn't give all creditors a right to all
16 documents. It gives them the right to information. And we
17 believe that this agreement facilitates the Committee's
18 ability to get information and to share it, as they determine,
19 with their members.

20 Unless Your Honor has any questions, I have nothing
21 further.

22 THE COURT: I do not. All right. Ms. Reid, did you
23 -- it's a joint motion. Did you want to say something?

24 MS. REID: Yes, Your Honor. Penny Reid with Sidley
25 Austin on behalf of the Creditors' Committee.

1 Just briefly, I would agree with Mr. Morris that this
2 protective order was a heavily-negotiated protective order
3 that took quite a while to get the parties' agreement, and it
4 enabled the Creditors' Committee to get the documents it
5 needed.

6 What is very important to note is two things. It does
7 provide a mechanism for any party to object to the
8 designation. And it's the burden of the party designating it
9 to support the designation. And all disputes or anything
10 related to this order comes to Your Honor. It's the
11 jurisdiction of this Court to decide everything, which is also
12 very important to our client.

13 THE COURT: Okay. Thank you.

14 MS. REID: Thank you, Your Honor.

15 THE COURT: All right. Ms. Lambert? Have we at
16 least made some progress from your prospective with the added
17 language?

18 MS. LAMBERT: We're making some progress, but not
19 sufficient progress. May I approach the bench --

20 THE COURT: You may.

21 MS. LAMBERT: -- with the exhibit binders?

22 THE COURT: All right.

23 MS. LAMBERT: Your Honor, this is not, as the Debtor
24 characterized it, a garden-variety protective order. This is
25 not like the *PHI* order, which was a confidentiality order that

1 defined parameters for sharing information with the creditors.
2 This is a motion that prevents the sharing of matters.
3 Protective orders are granted in contested matters and in
4 adversaries, not in the case in chief. Rule 23 is not
5 available in the case in chief. Section 1102, the only
6 statute that they cite, presumes sharing, not failing to
7 disclose. And the reason --

8 THE COURT: Well, let me ask you this. I want to
9 really drill down on this, because, you know, he used the
10 words, counsel used the words garden-variety. And frankly,
11 when I read these pleadings back in chambers, I thought, I
12 think this is pretty standard fare, this protective order. I
13 think I've signed something like this many times before.

14 And I get what you're saying. Well, let me see if I get
15 what you're saying. It feels like your main issue is that we
16 don't have a contested matter or an adversary proceeding. But
17 what I will throw out is this: Had we had a motion for a 2004
18 exam, a gazillion times I have seen people come back with
19 okay, we, debtor, will produce, but we want this protective
20 order. And it ends up looking maybe almost identical to this
21 one.

22 Another context I thought of was back shortly after the
23 2005 amendments when these new provisions were added with
24 regard to creditors' committees and sharing in 1102(b), I very
25 often saw, in complex Chapter 11s, a protocol order, we

1 sometimes called it, where a creditors' committee sort of
2 wanted cover for their dos and don'ts, and it resulted in sort
3 of a protective order. You know, I haven't gone back and
4 looked and compared terms, but something like this.

5 MS. LAMBERT: Right.

6 THE COURT: So, --

7 MS. LAMBERT: And the *PHI* order is --

8 THE COURT: -- are we punishing -- is this a no good
9 deed goes unpunished sort of thing? They didn't make the
10 Creditors' Committee file a 2004 motion.

11 MS. LAMBERT: The difference --

12 THE COURT: They've produced. And then now they've
13 negotiated this. I mean, --

14 MS. LAMBERT: The difference is very important, Your
15 Honor. You have --

16 THE COURT: What is --

17 MS. LAMBERT: -- gone right to the crux. A motion
18 for 2004 exam defines the areas to be discovered. An
19 adversary proceeding defines the areas to be discovered. A
20 motion for contested matter defines the issues that are
21 subject to discovery. Here, --

22 THE COURT: They -- the Debtor --

23 MS. LAMBERT: -- no one --

24 THE COURT: -- didn't insist on that. The Debtor is
25 just like, fine. We're going to in good faith produce.

1 MS. LAMBERT: But it's not the Debtor's issue.

2 THE COURT: We just want this order.

3 MS. LAMBERT: It's also the parties' issues, the
4 other creditors. If you have some knowledge of what is at
5 issue, you have some opportunity to come to the Court and say
6 hey, I, the SEC, or I, Creditor X, also am interested in what
7 --

8 THE COURT: But nothing about this order would
9 prevent them from filing --

10 MS. LAMBERT: But they don't know --

11 THE COURT: -- a 2004 motion and seeking the
12 information themselves, correct?

13 MS. LAMBERT: Right. And then they're going to have
14 to fight the sealing provision. So -- or the fact that it's
15 been designated highly confidential, which they would not have
16 had to fight otherwise until an opportunity came and they knew
17 what the information was. But now they don't have the
18 information. See, the information would have been given to
19 them as highly confidential, --

20 THE COURT: Uh-huh.

21 MS. LAMBERT: -- maybe labeled that way, in a
22 protective order in connection with their litigation.

23 THE COURT: Uh-huh.

24 MS. LAMBERT: But now they don't even get to get it
25 because it's already protected from them. Already insulated.

1 This is the problem.

2 So the -- if the Court compares the *PHI* order -- and the
3 U.S. Trustee certainly understands that there must be sharing
4 protocols or some type of confidentiality in general. This is
5 not it, though. This goes way beyond that. There should be a
6 provision that creditors can get information under certain
7 circumstances.

8 If the Court looks at the orders that are typical in these
9 cases, there is such a provision. That does not exist. In
10 addition, the carve-out in the order for contested matters,
11 2004 exams, and adversaries is material. And they should be
12 carved out here, too.

13 So those are the substantive, big-parameter issues of why
14 this, as a matter of law, is problematic.

15 In addition, there are particular provisions that are
16 untenable. The first is the limitation on the Government.
17 And this goes all the way back to the *WorldCom* case, Your
18 Honor. In *WorldCom*, a court entered an order for the examiner
19 to be able to interview people under seal, basically, in
20 confidence. An examiner prepared various reports. Later, the
21 U.S. Attorney's Office sought to obtain those, and they were
22 not able to because they had been done under seal originally
23 and that was material to the disclosure of the information.
24 This Court should not modify the statutory obligations that
25 the parties have to refer matters, either for ethical or

1 criminal matters. The U.S. Trustee circulated the routine
2 language that we ask for in every order of this type, and they
3 declined to do it.

4 THE COURT: Show me that language.

5 MS. LAMBERT: I can -- I can provide the Court with a
6 -- the language. I emailed it to them. I don't have it here
7 right now, but I can provide it to the Court. But basically,
8 I'm sure the Court has seen it before, we put it in all of our
9 languages, and it says nothing in this order constrains the
10 obligations of any party under ethical or federal statute to
11 share information. But now what's required is, if the U.S.
12 Trustee wants --

13 THE COURT: I don't know if I've ever signed -- I
14 mean, that might be an exception that would swallow up the
15 rule. I feel like I have -- I've approved language before
16 that, you know, says kind of the sky is blue, nothing prevents
17 a party from seeking modification of this order on notice to
18 parties and a hearing.

19 MS. LAMBERT: Your Honor, --

20 THE COURT: I mean, --

21 MS. LAMBERT: -- the United States Trustee should not
22 be required to come to this Court to tell -- or to tell the
23 Debtor that they have a subpoena for information or that
24 they're sending a criminal referral.

25 THE COURT: No, no, no. There's already an exception

1 on there for a subpoena.

2 MS. LAMBERT: No. No. The issue is --

3 THE COURT: But you don't think you have to give them
4 notice if you did a subpoena?

5 MS. LAMBERT: I have to give them notice. If I have
6 a FOIA request --

7 THE COURT: I mean, but you don't think that's
8 appropriate?

9 MS. LAMBERT: No, Your Honor. I don't think it's
10 appropriate that the U.S. Trustee, who has an obligation
11 statutorily, and the Court has an obligation statutorily, to
12 send matters to the U.S. Attorney's Office, that we have to
13 disclose when we're doing that. No. And other parties in
14 interest should be free to do that, too. That's what the
15 statute says. We have an obligation to do that.

16 We don't have to tell them what our whole case is. It
17 will become apparent if the U.S. Attorney's Office pursues it.
18 They release the information, usually. But this is not
19 standard. It has never been --

20 THE COURT: Okay. I just want the language that you
21 --

22 MS. LAMBERT: All right.

23 THE COURT: -- you argue is standard, and you said
24 that --

25 MS. LAMBERT: That language is, Nothing in this order

1 constrains anybody --

2 THE COURT: I want to see it. I want to get -- see
3 examples.

4 MS. LAMBERT: All right. Well, I'm happy --

5 THE COURT: Because I don't remember -- maybe I've
6 signed it a million times and I just don't remember, but I
7 don't really remember that.

8 MS. LAMBERT: I'm happy to provide the Court with a
9 number of orders signed by a number of judges in this
10 district.

11 THE COURT: I would like to see it now.

12 MS. LAMBERT: Okay. Well, I will have Ms. Kippes
13 provide that. But --

14 THE COURT: She's sitting in the back of the
15 courtroom now.

16 MS. LAMBERT: I'm sure that she is.

17 So, the other thing is, Your Honor, --

18 THE COURT: Unless you can show me right now, look,
19 here, in fact, is the garden-variety form of order, here is
20 the language that time after time after time after time after
21 time courts insist upon, --

22 MS. LAMBERT: Your Honor has not required -- Your
23 Honor has not required them to provide any evidence that this
24 language is standard. And it's not. So, --

25 THE COURT: I have a form of order that the

1 Creditors' Committee is supportive of and has heavily
2 negotiated. And it just looks at first glance to me to be
3 somewhat garden-variety. So, --

4 MS. LAMBERT: Well, --

5 THE COURT: -- you as the objector need to, you know,
6 point out why it's not.

7 MS. LAMBERT: Your Honor, the appearance of this case
8 is that there's a desire to keep it from being public. This
9 Court routinely, all the time, says bankruptcy is an open
10 process.

11 THE COURT: But I also, routinely, all the time, sign
12 protective orders. And it's like, We'll have a hearing down
13 the road if something needs to get in the record. This is
14 about discovery outside the courtroom.

15 MS. LAMBERT: Correct. And the order in *PHI*, I think
16 the Court will find, is very different from the order in this
17 case. So -- and is useful for that reason. I anticipate the
18 --

19 THE COURT: Okay. Go through the protective order in
20 *PHI* and highlight for me provisions that it has --

21 MS. LAMBERT: It does not bar sharing with government
22 entities. It is not as limiting to professional eyes, though
23 it has some limitations. And it contemplates sharing with
24 creditors under defined provisions.

25 THE COURT: Okay. Again, lengthy order. Point out

1 which provision from *PHI* you would like to see in this order.

2 MS. LAMBERT: All right. If the Court gives me a
3 break, I will annotate the order.

4 The IRS, I anticipate the evidence will be, has an
5 estimated claim of \$8 million to \$9 million that's on appeal.
6 The SEC is involved in the oversight of this Debtor. The PBGC
7 is a creditor.

8 THE COURT: They can file motions for a 2004 or file
9 an adversary. Or they file a proof of claim, it's objected
10 to, we can have discovery.

11 MS. LAMBERT: That changes the --

12 THE COURT: They got notice of this motion --

13 MS. LAMBERT: The change --

14 THE COURT: -- for approval of a protective order.

15 Yes or no?

16 MS. LAMBERT: Yes. I'm not -- I question whether the
17 IRS has as a creditor. I think they received notice because
18 they're not really listed as a creditor, they're listed as
19 contested.

20 THE COURT: Okay. But they got notice. They have
21 able counsel that shows up all the time in cases.

22 MS. LAMBERT: So, Your Honor, the statute, 1102,
23 presumes the disclosure of information, not the constraining
24 of information.

25 THE COURT: But you would agree, would you not, that

1 many, many times courts have entered protective orders in
2 connection with a Committee's 1102(b) obligations?

3 MS. LAMBERT: No.

4 THE COURT: Again, I use the analogy back shortly
5 after the 2005 amendments, --

6 MS. LAMBERT: They're referred --

7 THE COURT: -- where people prospectively said hey,
8 we want -- we want to be clear we're doing things correct,
9 we'll share information with our constituency, we, the
10 Creditors' Committee, but there's certain confidential,
11 privileged items we may somehow get into our hands, and we
12 want to --

13 MS. LAMBERT: It is --

14 THE COURT: -- be clear about what we have to share
15 and what we should not.

16 MS. LAMBERT: It is true that the Court enters
17 confidentiality orders in cases. I'm well aware of that. The
18 issues of this one is different. It is not garden-variety.
19 The difference goes right to the language of confidential
20 versus protected.

21 Your Honor, another aspect of this case or this motion
22 that is not workable is the sealing provision being co-
23 extensive with those, the items that are designated as highly
24 protected. You heard at the Federal Bar Association meeting
25 only last week that the magistrate judges were talking about

1 striking these provisions routinely. The FJC's publication on
2 protective orders and sealing also says it should not be
3 coextensive, should be a separate motion to seal. The
4 standards are totally different and much higher for sealing
5 the documents. This is a public process, and it should be
6 maintained as a public process.

7 THE COURT: All right. Any --

8 MS. LAMBERT: The Court delegates under this motion
9 its responsibility to evaluate information to the Debtor
10 unilaterally. The Debtor gets to make the decisions, not the
11 Court. And nobody knows what those decisions are, except
12 maybe the party that is asking for the information. If you
13 don't know that the information exists and it's already
14 subject to protection, you never get that opportunity.

15 It's for these reasons that the motion should be denied or
16 tailored.

17 THE COURT: All right. Anything else?

18 You know, no one has mentioned this, but it danced through
19 my brain: Part of the settlement I approved with the
20 Committee contemplated sort of a common interest privilege on
21 some things, right? Or am I misremembering that?

22 MR. MORRIS: They will have access, Your Honor, to
23 information as part of their investigation. I can't tell you
24 off the top of my head --

25 THE COURT: Okay. No one --

1 MR. MORRIS: -- the precise parameters of it.

2 THE COURT: No one can immediately tell me?

3 MR. MORRIS: Yeah.

4 THE COURT: Okay. Anything else?

5 MS. LAMBERT: Your Honor, if the Court would like,
6 the U.S. Trustee is happy to annotate one of the orders and to
7 provide a supplement with the orders that contain the
8 language, both that the Court -- this Court has entered and
9 other courts have entered from the district.

10 THE COURT: All right. Well, --

11 MR. MORRIS: Your Honor, just very briefly. John
12 Morris, again. Pachulski Stang Ziehl & Jones.

13 THE COURT: This motion has been pending for a long
14 time. It was actually filed in Delaware?

15 MR. MORRIS: It has.

16 THE COURT: Okay.

17 MR. MORRIS: And it's -- and we've relied on it.

18 THE COURT: Okay.

19 MR. MORRIS: The reason that I went through the
20 background, Your Honor, is to give the Court the assurance
21 that it's working, it's not being abused. By bringing the
22 U.S. Trustee under the tent with the Creditors' Committee,
23 you're going to have two independent parties who are going to
24 review and challenge, if they think appropriate, the Debtor's
25 designations.

1 Nobody is being prevented here from filing a motion,
2 whether it's for a 2004 or another contested matter. Nobody
3 here is -- just because something is marked as highly
4 confidential doesn't mean that other people can't get access
5 to it. They just need to come and use a device pursuant to
6 which it's responsive. That's all it is. It is garden-
7 variety, Your Honor. Thank you.

8 THE COURT: All right. I'm going to overrule the
9 objections and approve the proposed agreed protective order as
10 amended in accordance with the mark-up that was shown and the
11 announcement made.

12 I am also, even though I think this is like saying the sky
13 is blue, I'm also going to direct that the Debtor and
14 Committee add a sentence at the very last paragraph that the
15 Court reserves the right to amend or -- amend this order upon
16 motion by any party in interest and notice and a hearing.

17 Again, I think that's probably a no-brainer, doesn't need
18 to be said, but I'm going to direct it to be said in there.
19 And, again, it would have to be on motion of a party in
20 interest and notice and a hearing, and we can all come and
21 argue whether some sort of amendment is needed to this order.
22 And, you know, you already have provisions in there that
23 contemplate, you know, someone may file a motion pursuant to
24 this order, but we'll just throw that in for good measure.

25 Again, I feel like this is an agreed order that is not

1 substantially different from forms of order this Court and
2 other courts have approved many times before. While the
3 timing and context may seem different, feel different to the
4 U.S. Trustee, I feel like, as we say in the law, it's a
5 difference -- a distinction without a difference, or whatever
6 the expression is.

7 Again, I allude to the many times in the past where a
8 creditors' committee, early in the case, before there were
9 contested matters, before there were adversary proceedings,
10 filed motion for approval of protocols under 1102(b) regarding
11 its obligation to share information, and by the time we showed
12 up for the hearing, there was an agreed protective order that
13 had been negotiated.

14 I compare it to the context of the committee or somebody
15 files a motion for a 2004 exam early in the case, and then we
16 come back with an agreed protective order.

17 I said before it's as though, to me, no good deed goes
18 unpunished. We have cooperation early on the case, and now,
19 you know, when this agreed protective order is proposed, the
20 argument is, well, there wasn't a 2004, there wasn't a
21 contested matter. Again, I don't think that distinction from
22 other cases makes any meaningful difference. I think there's
23 good cause pursuant to 1102(b), 105, and Rule 26. While maybe
24 not triggered yet with a contested matter or adversary
25 proceeding, I think there's good cause to approve this agreed

1 form of protective order.

2 All right. So, if you all could make those changes that
3 we discussed here on the record, and I'll sign it right away.

4 MR. MORRIS: Thank you, Your Honor.

5 THE COURT: All right. We now had the seal motion of
6 the Committee that I think you all proposed we go to second
7 today. And I'll tell you what floated through my head,
8 reading these pleadings. It almost felt like a moot issue by
9 this point. I don't know if anyone -- maybe I took your
10 thunder here, but --

11 MR. TWOMEY: You did somewhat steal my thunder, Your
12 Honor. I just wanted --

13 THE COURT: Okay.

14 MR. TWOMEY: Dennis Twomey again on behalf of the
15 Creditors' Committee.

16 THE COURT: I'm sure you're going to articulate it
17 much better than I just did.

18 MR. TWOMEY: If I might, Your Honor, maybe I'll take
19 a minute just to describe the genesis of the motion, which, --

20 THE COURT: Uh-huh.

21 MR. TWOMEY: -- just like the motion you heard, is
22 also about two months old and has been on ice for a while.
23 The Committee filed a motion to seal back in early December in
24 conjunction with, at the time, the Committee's objection, the
25 omnibus objection to the Debtor's second-day motions. As you

1 just noted, those objections were all resolved as part of the
2 governance settlement that you approved at the last hearing.
3 In terms of what was covered by the motion to seal as part of
4 that omnibus objection, which has now been resolved, the
5 Committee had attached as Exhibits C and D two orders that
6 were issued in the arbitration proceedings between the Debtor
7 and the Redeemer Committee, which, as Your Honor is aware, the
8 Redeemer Committee is a member of our Creditors' Committee
9 here. And at the time of the filing, the Committee sought to
10 seal the awards, primarily because the Debtor had previously
11 expressed to the Redeemer Committee that the Debtor believed
12 the rewards were subject to a protective order in that
13 litigation. And the Redeemer Committee at the time, while --

14 THE COURT: Now, let me ask you to repeat what you
15 just said, because I know this was brought up in the U.S.
16 Trustee's motion. You alluded to a protective order in your
17 motion. Are you saying now that you thought at the time there
18 was a protective order in place in the arbitration that you
19 might be running afoul of by disclosing it?

20 MR. TWOMEY: Correct.

21 THE COURT: Okay.

22 MR. TWOMEY: More specifically, Your Honor, we had to
23 get our omnibus objection, the Committee's omnibus objection
24 on file, and we wanted to include those awards as exhibits to
25 our omnibus objection. And the Redeemer Committee, who sits

1 on our Creditors' Committee, had indicated to the full
2 Committee that the Debtor had previously expressed the view
3 that these awards were subject to that separate protective
4 order in the other case.

5 And so, out of an abundance of caution, so that we could
6 get our omnibus objection on file, we sought -- we filed the
7 seal motion. And so that was sort of the genesis of the
8 motion.

9 So we filed it out of an abundance of caution in order to
10 press forward with our filing of the omnibus objection at the
11 time. And since that time, we've had the opportunity to
12 consider it more, and the Redeemer Committee has sort of
13 indicated its views on the protective order. But most
14 importantly, our objection, obviously, has now been resolved
15 as part of the settlement that Your Honor approved last week.

16 So, given that, coming full circle, Your Honor, the
17 Committee is no longer seeking the relief that we had
18 requested in the seal motion, and so that's where things stand
19 today. The Committee has communicated its position to both
20 the U.S. Trustee and the Debtor, and that's where things
21 stand.

22 So I believe the Debtor, in terms of the underlying
23 merits, I believe the Debtor still believes that those awards
24 contain some confidential information. Mr. Morris can speak
25 to that. And obviously, the U.S. Trustee had objected to our

1 seal motion.

2 But, again, Your Honor, coming full circle to the point
3 you raised initially, this really isn't an issue -- this isn't
4 a motion that the Committee continues to pursue, because the
5 objection, the underlying objection, the omnibus objection to
6 those second-day motions has been resolved as part of last
7 week's, or almost two weeks ago, the order that Your Honor
8 entered.

9 THE COURT: All right. So, to recap: The two
10 arbitration awards, or parts of them, I don't know if it was
11 the whole thing, but they were attached to the omnibus
12 objection, which is now moot because it was an objection to
13 the cash management motion, the DSI retention application, and
14 the ordinary course business protocols. That objection is
15 totally moot, if you will, now, because the global settlement
16 or the -- well, the settlement I approved last week resolved
17 all the issues raised in that objection. So, well, I guess, I
18 mean, what -- I was going to say, what would stop you from
19 just withdrawing the objection?

20 MR. TWOMEY: We can -- I think we can withdraw the
21 motion. Because it's a motion, obviously. We can withdraw
22 the motion to file under seal. That's --

23 THE COURT: Well, and again, I'm not telling you how
24 to do things, but I'm just saying that's what rolled through
25 my mind as far as why this might be a moot point.

1 MR. TWOMEY: Understood, Your Honor. And certainly,
2 from the Committee's perspective, we're not trying to, you
3 know, add more --

4 THE COURT: Uh-huh.

5 MR. TWOMEY: -- more issues that don't need to be
6 added. And I think that's exactly right. That's what I was
7 going to --

8 THE COURT: And that's part of what I'm getting here.
9 I mean, this could be a battle for another day. At some
10 point, someone may want to file a pleading attaching those
11 arbitration awards.

12 MS. LAMBERT: Your Honor, they are in evidence for
13 the motion to appoint a Chapter 11 trustee. That's why we're
14 having this motion before. The U.S. Trustee was constrained
15 to file its pleading redacted and all the documents under seal
16 --

17 THE COURT: Right.

18 MS. LAMBERT: -- because they're filed under seal
19 here and the order seals it.

20 THE COURT: Okay. Well, I guess what you're saying
21 is you're going to move, in connection with your trustee
22 motion in a few minutes, for me to admit into evidence these
23 arbitration awards we're arguing about right now?

24 MS. LAMBERT: That is correct.

25 THE COURT: Okay. Okay.

1 MR. TWOMEY: Thank you, Your Honor.

2 THE COURT: Thank you. Who else wishes to speak on
3 this?

4 MR. MORRIS: John Morris for Pachulski Stang Ziehl &
5 Jones for the Debtor.

6 THE COURT: Uh-huh.

7 MR. MORRIS: Your Honor, my first point here was
8 objection moot; procedurally nothing before the Court. I
9 think that's been taken care of.

10 But it's a very important point. And the reason why it's
11 very important is because the Redeemer award was first
12 proffered by the Committee in opposition to the Debtor's
13 motion for the appointment of a CRO. Old management was going
14 to stay in place, and they were using -- I presume that they
15 would have attempted to use the Redeemer award to show that,
16 notwithstanding the Debtor's desire to appoint the CRO, old
17 management was still in place.

18 The reason why it's very important to note that the
19 objection that the Committee filed is now moot is because
20 we're now here in a very different context. We're here
21 because the United States Trustee's Office wants to offer the
22 Redeemer awards into evidence in support of their motion for
23 the appointment of a trustee. That motion is going to be
24 determined under 1104. 1104 relates solely to current
25 management. We were here two weeks ago, Your Honor, and the

1 Court approved an order appointing new management.

2 And so our first argument, Your Honor, is that there is no
3 sealing issue for the Court to decide in the first instance
4 because the Redeemer awards simply are not relevant and
5 shouldn't be admitted into evidence, and we can leave it for
6 another day when and if another party in interest seeks to
7 either discover or otherwise introduce into evidence the
8 Redeemer awards.

9 If you recall, the week before last we were here and the
10 United States Trustee's Office attempted to elicit argument
11 over prior acts that were described in Your Honor's ACIS
12 decision, in a prior SEC order, in the Redeemer awards. And I
13 think Your Honor properly at that point kind of shut it down
14 and said, We're here on a motion to appoint new management.
15 And we have new management. And I'm prepared to put my
16 witness in the box who will testify that the independent
17 directors are firmly in control of this debtor, that every
18 single employee is under their authority and control, that
19 they have the ability to fire any of them, that none of them
20 are able to engage in any conduct that is outside their
21 approval.

22 And so I think the Redeemer award -- and, frankly, we're
23 going to have the same objection to the U.S. Trustee's offer
24 of the ACIS opinion into evidence and the SEC order, because
25 they're all related to conduct that took place prepetition

1 under old management.

2 1104, the only section upon which this motion is based,
3 refers to current management. And I don't think that we want
4 to spend a whole day. I mean, I just don't think it's
5 relevant. And so if it's not relevant, then it's not
6 admissible into evidence. The Court need not even get to the
7 issue of sealing.

8 If the Court were inclined to introduce it into evidence,
9 we would still request that it be marked under seal.

10 Specifically, Your Honor, under 107, the Debtor believes
11 that there is a very compelling interest in keeping the
12 Redeemer awards confidential. It does go into substantial
13 allegations and findings pertaining to the Debtor's business
14 practices. We do believe it contains confidential
15 information, confidential commercial information, as required
16 under 107. And the Debtor is very concerned. And you will
17 hear the testimony from the independent directors about
18 innuendo and rumor that can get into the marketplace and
19 hinder the ability of the Debtor to reorganize and to go
20 forward with their business operations.

21 So, in sum, Your Honor, I think we've got two points to
22 make. One is that the Redeemer award has nothing to do with
23 current management. There's no allegation that it has
24 anything to do with current management. There won't be any
25 facts to establish that the Redeemer award has anything to do

1 with current management. And we think that kind of ends
2 everything.

3 But if Your Honor really is inclined to allow that into
4 evidence, we would still ask that it be marked under seal.

5 THE COURT: Okay.

6 MR. MORRIS: Thank you.

7 MS. LAMBERT: Your Honor, the U.S. Trustee has two
8 responses. And the first really goes to the motion to seal.
9 Cause can be broader than the items listed. That goes all the
10 way to *Little Creek* and is carried through into the Fifth
11 Circuit's precedent on trustee appointment. The statute says
12 "or similar cause."

13 So the U.S. Trustee has raised three issues in connection
14 with the appointment of a trustee, and one of those issues is
15 that the legal division of the Debtor has so much control over
16 the Debtor's conduct that that establishes cause to appoint a
17 trustee so that there is somebody to replace the (inaudible)
18 decisions.

19 I anticipate the evidence will be that the Court in ACIS
20 and that the arbitration award and the SEC opinion all go to
21 those types of issues. That's number one.

22 Number two, technically, and it's not just a bureaucratic
23 technicality under the facts, the management of this debtor
24 has not changed. Individuals at Strand have changed. And the
25 U.S. Trustee agrees that, under some circumstances, that might

1 resolve the issues. But not under the facts of this case.

2 And that's because Dondero remains the sole shareholder of the
3 Strand entity. And --

4 THE COURT: That's not management.

5 MS. LAMBERT: No, it's not.

6 THE COURT: It's an equity interest.

7 MS. LAMBERT: It's an equity interest. That's
8 correct. Management has changed, but the management owes a
9 fiduciary duty to the stockholder. And there are a lot of
10 things --

11 THE COURT: Didn't they contract around that --

12 MS. LAMBERT: No.

13 THE COURT: -- in the settlement agreement?

14 MS. LAMBERT: Mr. Dondero contracted around various
15 provisions, but the board did not. And the reason the board
16 did not, I believe, is that the Delaware statute prohibits
17 contracting around a fiduciary duty to shareholders. If you
18 think about it, it makes a lot of sense.

19 THE COURT: I signed an order.

20 MS. LAMBERT: You did sign an order.

21 THE COURT: It's not a contract.

22 MS. LAMBERT: And you signed an order where Mr.
23 Dondero constrained his rights to vote the stock and a variety
24 of other things, but that doesn't change the fiduciary
25 obligations of the board to Mr. Dondero's stock equity

1 interests. And the case law is that corporate fiduciary
2 duties to shareholders, generally speaking, cannot be changed.

3 So it's a problem. It's a problem that, you know, it's
4 not because I'm a genius, it's because I've played chess on
5 this table a number of times that I know that this problem can
6 arise. And it's an issue of conflict for the new board.

7 THE COURT: Okay. Let -- my brain needs to take
8 things in a certain sequence. In all the arguments, we've
9 bled over a little bit to your motion for appointment of a
10 trustee. On the motion to seal, --

11 MS. LAMBERT: On the motion --

12 THE COURT: -- I am inclined, and tell me why I
13 shouldn't, I'm inclined to punt. The objection is now moot.
14 The motion to seal to which it attaches, in my mind, is moot.
15 So I'm inclined to just deny for mootness, and then we --

16 MS. LAMBERT: Your Honor, --

17 THE COURT: -- punt to another day whether these
18 arbitration awards get in in some context. Can -- is there
19 any disagreement with that, so we can just roll into the U.S.
20 Trustee's motion?

21 MS. LAMBERT: The U.S. Trustee is not subject to a
22 protective order except one the Court's about to enter. At
23 the time this was entered, the U.S. Trustee had no -- was not
24 subject to the protective order, but we did receive these
25 documents under the motion to seal order. So I need some

1 clarity on what I'm going to be doing.

2 This arbitration award was the basis, according to the
3 declaration, the catalyst for the filing of this bankruptcy
4 case. And the Court is considering and being asked to
5 restrain its disclosure to the public. It's highly material
6 to the facts of this case --

7 THE COURT: Okay.

8 MS. LAMBERT: -- generally.

9 THE COURT: All right. Well, again, my simple brain
10 is going to take these things in sequence. I am denying the
11 motion to seal merely for mootness, okay? I'm overruling the
12 objection -- well, I'm deeming the objection of the Committee
13 as moot, the omnibus objection to the CRO, the cash management
14 motion. It's moot, and therefore the motion to seal relating
15 to it is moot.

16 I haven't made any ruling broader than that with regard to
17 this motion to seal.

18 Now, I realize there's the protective order I've just
19 approved, and that has some relevance here, but we're done on
20 the motion to seal. Okay? Denied for mootness only.

21 MS. LAMBERT: Dismissed for mootness?

22 THE COURT: Denied. Dismissed. Is there a
23 distinction there that I'm glossing over?

24 MS. LAMBERT: I think, procedurally, dismissed for
25 mootness.

1 THE COURT: All right. It's one or the other.
2 Committee, you can draft the order as you think is
3 appropriate. I dismiss/deny, either one.

4 All right. Let's --

5 MR. TWOMEY: Thank you, Your Honor.

6 THE COURT: Let's move to the motion for appointment
7 of a trustee. I assume you're going to want opening
8 statements. I've read the pleadings. They don't need to be
9 lengthy.

10 OPENING STATEMENT ON BEHALF OF THE U.S. TRUSTEE

11 MS. LAMBERT: Judge Jernigan, the Debtor and the U.S.
12 Trustee have agreed to do brief opening statements, and the
13 U.S. Trustee is going to move for the admission of the binders
14 to establish its case in chief. The Debtor has some
15 objections, some of which you've already heard, to the U.S.
16 Trustee's exhibits. And then we'll move to the Debtor's case
17 in chief.

18 THE COURT: All right. In your opening statement,
19 you're asking the Court to admit the ACIS opinion, the
20 Redeemer Committee's arbitration award, the partial award
21 dated March 3, 2019, the final award dated April 29, 2019, and
22 an SEC order of September 25, 2014?

23 MS. LAMBERT: That is --

24 THE COURT: You're asking me, in your opening
25 statement, to admit those?

1 MS. LAMBERT: No, Your Honor. I was going to do that
2 after my opening statement, --

3 THE COURT: Well, I was confused.

4 MS. LAMBERT: -- but I will do it now if you'd like.

5 THE COURT: I misunderstood your statement.

6 MS. LAMBERT: I was going to make my opening
7 statement, they're going to make their --

8 THE COURT: You may proceed.

9 MS. LAMBERT: All right.

10 THE COURT: You may proceed.

11 MS. LAMBERT: So, the issues in the motion to appoint
12 a Chapter 11 trustee are three.

13 First, the management is the same because Strand is still
14 the general partner. In some context, because the individuals
15 at Strand have changed, it is material. On the other hand, it
16 has created its own conflict, and that is the basis for the
17 appointment of a trustee.

18 Number two, the legal team is central. I anticipate the
19 evidence will be that many of the compliance issues that
20 caused problems in past cases and have -- and the evidence
21 will indicate that the management -- the legal management team
22 ignored the advice of outside counsel. The Court's findings
23 in the ACIS opinion go to individuals at the legal team who
24 still remain there. And the testimony I anticipate will be
25 that they continue to maintain control over compliance

1 decisions and other decisions at the Debtor, based on the
2 testimony of the CRO.

3 And, finally, the efforts to keep this case *sub rosa* by
4 filing expansive protective orders and seeking expansive
5 sealing of documents that are central to the case continue to
6 prevent the transparency that's necessary, and a Chapter 11
7 trustee would facilitate the transparency that the Court has
8 always emphasized in all of its cases is a cornerstone of
9 Chapter 11.

10 For these reasons, the U.S. Trustee seeks the appointment
11 of a Chapter 11 trustee in this case.

12 THE COURT: All right. Other opening statements?

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: Good morning again, Your Honor. Jeff
15 Pomerantz; Pachulski Stang Ziehl & Jones.

16 Your Honor, the burden is on the United States Trustee to
17 demonstrate by clear and convincing evidence that cause exists
18 for the appointment of a Chapter 11 trustee or that the
19 appointment of a Chapter 11 trustee is in the best interest of
20 parties. The Debtor intends to present the testimony of Mr.
21 John Dubel, one of the Debtor's independent directors, which
22 will demonstrate that the U.S. Trustee cannot come close to
23 meeting its burden.

24 Rather, the testimony will unequivocally demonstrate that
25 the alternative governance structure approved by this Court on

1 January 9th satisfactorily addresses any concerns with the
2 Debtor's prepetition management, allows the parties to put the
3 acrimony which marked the first three and a half months of
4 this case behind them, and allows them to focus on efforts to
5 restructure the Debtor's liabilities in an efficient and
6 timely manner.

7 Specifically, the testimony will show that, since its
8 employment, the board has been fully engaged in managing the
9 Debtor's business. That a member of the board has physically
10 been at the Debtor's headquarters for six of the seven days
11 since their appointment, and that Mr. Dubel, the testifying
12 witness, has devoted in excess of 80 hours to the engagement
13 in the last 12 days.

14 The testimony will show that the board has met with
15 department heads and received briefings from them regarding
16 all facets of the Debtor's operations. And that, importantly,
17 the Debtor's employees, including the legal department, are
18 respecting the independent board members' authority and are
19 fully cooperating with the board.

20 And lastly, that the board is effectively overseeing the
21 implementation of the court-approved protocols.

22 Lastly, Your Honor, the evidence will demonstrate that the
23 appointment of a Chapter 11 trustee would destabilize the
24 business further, creating further uncertainty and adversely
25 affect the Debtor's ability to restructure.

1 For these reasons, Your Honor, the Debtor opposes the
2 appointment of a trustee. Thank you, Your Honor.

3 THE COURT: All right. Any other opening statements?

4 MR. TWOMEY: Your Honor, Dennis Twomey on behalf of
5 the Committee. The Committee did file an objection, Your
6 Honor, but does not intend to put forth any evidence. So if
7 it's okay with Your Honor, we would prefer to just wait to
8 make our statement until the end of the proceedings.

9 THE COURT: All right. That's fine.

10 MR. TWOMEY: Thank you.

11 THE COURT: Thank you. All right. Ms. Lambert?

12 MS. LAMBERT: Your Honor, Ms. Kippes has provided me
13 with this Court's order in the *Adeptus* case, where the Court
14 did include the standard language that the U.S. Trustee has
15 about referring criminal or ethical obligations. I'm happy to
16 present it to the Court.

17 THE COURT: All right. Well, you may. I've made my
18 ruling, but --

19 (Pause.)

20 THE COURT: Again, I've made my ruling. And, you
21 know, I don't know if this was heavily negotiated in that
22 case. If it was, you know, fine. I just don't know.

23 MS. LAMBERT: If I may I approach the bench?

24 THE COURT: Okay. These are the proposed exhibits
25 for the Trustee now?

1 MS. LAMBERT: Yes.

2 THE COURT: Okay.

3 MS. LAMBERT: Your Honor, I have an additional set of
4 binders. I'd intended for the ones that I presented to the
5 Court to be the work copies, and there to be an original set.
6 Does the Court not need the original set?

7 THE COURT: Well, did you give one to Tom?

8 MS. LAMBERT: I did.

9 THE COURT: Okay. We're good, then. Well, Tom,
10 don't work on yours.

11 MS. LAMBERT: No, I have an additional one.

12 THE COURT: Oh, well, if you have an additional one,
13 fine.

14 MS. LAMBERT: Yeah.

15 THE COURT: Give it to Michael over here.

16 (Pause.)

17 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
18 the admission of all but Exhibit 6, which the U.S. Trustee
19 hasn't been able to obtain, which is the transcript of the 341
20 meeting.

21 THE COURT: Okay. So, 1 through 5 and 7 through 11?

22 MS. LAMBERT: Yes, Your Honor.

23 THE COURT: All right. I know there are objections
24 to some of these. Are there some that are not objected to?

25 MR. MORRIS: May I speak from here, Your Honor?

1 THE COURT: Yes.

2 MR. MORRIS: Okay. John Morris for the Debtor. The
3 Debtor has no objection to Exhibits 4, 5, 8, and 9.

4 (U.S. Trustee's Exhibits 4, 5, 8, and 9 are received into
5 evidence without objection.)

6 MR. MORRIS: With respect to Exhibit #7, which
7 pertains to certain deposition designations, we've got a list
8 here that we shared with the U.S. Trustee's Office yesterday
9 that goes through each of the designations and identifies
10 those with which we have objections, those with which we do
11 not. We identified the bases for each of the objections, and
12 we've also offered a limited set of counterdesignations, to
13 which I understand the U.S. Trustee does not object.

14 If it would be easier, I could just mark this as an
15 exhibit and give it to the Court for the Court's
16 consideration.

17 THE COURT: All right. He's got a substitute, it
18 sounds like, for Exhibit 7. Do you have an issue with that?

19 MS. LAMBERT: Your Honor, the U.S. Trustee put in the
20 entire deposition, anticipating that the rule of completeness
21 would be sought and due to the time constraints and the
22 holiday weekend, not being able to change our depositions. So
23 we don't have any objections to the rule of completeness and
24 the entire deposition transcript, statement of a party, is in
25 the binder under Tab 7.

1 THE COURT: All right. Well, --

2 MR. MORRIS: That's not what we were asking, Your
3 Honor. We do not want the entire transcript admitted into
4 evidence for any reason. The U.S. Trustee's Office
5 specifically identified certain pages and lines, and we
6 responded. And there's a very limited set of
7 counterdesignations that we've offered simply for purposes, I
8 think, of I say completeness in two instances and context in
9 one. But nothing should go into evidence that is either
10 unobjected to or if the Court overrules any of our objections.
11 We don't want the whole transcript into evidence.

12 THE COURT: All right. So, do you need to look at
13 his revised version of your Exhibit 7?

14 MS. LAMBERT: Well, I would, yes.

15 THE COURT: Okay. And, again, I understood he gave
16 it to you earlier.

17 MS. LAMBERT: He gave it to me yesterday during the
18 holiday.

19 The objections that they've made are on relevance, and the
20 U.S. Trustee's response on the relevance is that the
21 management issues go to the in-house counsel as well, and
22 there's testimony about the in-house counsel. The only
23 objections are on relevance, Your Honor, and because this is a
24 bench trial, the Court has broader discretion on a relevance
25 objection than it would in a jury trial, as the Court is

1 disciplined and can scan out those materials that are not
2 relevant. And, more importantly, they are relevant to the
3 case as the U.S. Trustee has alleged it.

4 MR. MORRIS: Your Honor, the relevance objections
5 actually are not limited to issues of whether or not the
6 testimony relates to current management. Some of them have to
7 do with venue and I'm not even sure why it was designated.
8 But we've made our objections, and I think it would be
9 appropriate for the Court to rule. We understand that it's a
10 bench trial, but that doesn't -- that doesn't negate the Rules
11 of Evidence.

12 THE COURT: All right. Well, I certainly don't want
13 to go back in chambers and read the entire deposition if
14 that's not really what anyone was originally wanting me to do.

15 MS. LAMBERT: For this reason, Your Honor, the U.S.
16 Trustee has designated the lines that were relevant in the
17 U.S. Trustee's witness and exhibit list 7. And they
18 corresponding have designated the lines that they feel are
19 necessary for completeness and context.

20 THE COURT: Okay. I'm going to -- I guess I'm
21 overruling the objection to 7. I will look at your deposition
22 excerpts and I will look at what Mr. Morris has handed you as
23 far as his supplemental excerpts. All right?

24 (U.S. Trustee's Exhibit 7 is received into evidence as
25 specified. Debtor's supplement is received into evidence as

1 specified.)

2 MR. MORRIS: So then with respect to the exhibits,
3 Your Honor, I don't know if you want to hear argument now on
4 the objections.

5 THE COURT: All right. So, we have objections to 1,
6 2, and 3.

7 MR. MORRIS: Right. And those really just follow
8 along the argument that I made earlier. All of these
9 documents, the first one, I believe, is the ACIS opinion. The
10 second is the Redeemer awards. The third is a more than five-
11 year-old SEC cease-and-desist order. And our argument is that
12 they should not come into evidence for any purpose. They all,
13 to the extent -- you know, I'm not sure what they're trying to
14 use with them, but, again, 1104 is crystal clear. It relates
15 to the current management. None of the current managers were
16 at the Debtor prior to two weeks ago, let alone at the time
17 these orders were entered.

18 THE COURT: All right. Let me tell you where I am on
19 this, Ms. Lambert. I almost think of this as a summary
20 judgment issue on current management. I mean, I am inclined
21 to agree with the Debtor's argument that 1104 -- is it (b)(1)?
22 No. Which one? (a)(1). Just simply doesn't apply as a
23 matter of law anymore because we're not talking about current
24 management anymore.

25 Now, your U.S. Trustee motion lives another day, in my

1 view, because of 1104(a)(2), because you might still convince
2 me that it's in the interest of creditors, equity holders, or
3 other interests of the estate. But it almost feels like,
4 again, a summary judgment issue on current management.

5 So, what is your response to that?

6 MS. LAMBERT: Your Honor, the Fifth Circuit case law
7 is not limited to just management. Fraud, dishonesty,
8 incompetence, or gross [mis]management of the affairs of the
9 debtor by current management, either before or after the
10 commencement of the case, or similar. Or similar cause. The
11 U.S. Trustee is under 1104(a)(1). The Fifth Circuit precedent
12 establishes that cause for purposes of (a)(1) should be
13 considered like cause for bad faith or other factors such as
14 *Little* --

15 THE COURT: So you're saying there's clear Fifth
16 Circuit authority that says --

17 MS. LAMBERT: That --

18 THE COURT: -- similar cause --

19 MS. LAMBERT: -- inherent --

20 THE COURT: -- goes beyond the context of activities
21 of current management?

22 MS. LAMBERT: Correct. Like inherent conflicts,
23 which is what we have, an inherent conflict.

24 THE COURT: All right. Well, I am going to sustain
25 the objection to those three, but without prejudice,

1 basically, to me reconsidering your offer, for example, during
2 a rebuttal stage. Okay? If I hear something from witnesses
3 that makes me see this in a different light. But my view now
4 is that things changed when we replaced the current management
5 structure of the Debtor, the management structure that it had
6 when it filed bankruptcy, and all of these --

7 MS. LAMBERT: These issues -- these are not --

8 THE COURT: -- these orders --

9 MS. LAMBERT: Are not for current --

10 THE COURT: -- pertain to the prior regime.

11 MS. LAMBERT: No. The ACIS opinion, the Redeemer
12 arbitration partial award, also go line by line to the legal
13 counsel as being in control of decisions.

14 THE COURT: Okay. Again, I'm over -- I'm sustaining
15 the objection to these exhibits, subject to you re-offering
16 them after I've heard witness testimony --

17 MS. LAMBERT: But --

18 THE COURT: -- essentially as rebuttal evidence if
19 you convince me that --

20 MS. LAMBERT: But this is my case-in-chief evidence.

21 THE COURT: I've ruled.

22 MS. LAMBERT: So, the Court is determining that cause
23 must be management? Because these are being introduced for
24 issues as to the counsel.

25 THE COURT: Well, give me -- make your best argument

1 again on why 11(a)(1) is broader than just the context of
2 current management.

3 MS. LAMBERT: Cause can be items other than those
4 that are listed. Or similar cause. That's what the statute
5 says --

6 THE COURT: You're giving me a statutory
7 interpretation I disagree with, but do you have Fifth Circuit
8 authority binding on me --

9 MS. LAMBERT: Yes, Your Honor.

10 THE COURT: -- that --

11 MS. LAMBERT: It's cited in the U.S. Trustee's
12 motion, and it is --

13 THE COURT: I mean, I know *Cajun Electric* and --

14 MS. LAMBERT: *Cajun Electric* involves an inherent
15 conflict between --

16 THE COURT: But was that a context, I don't think it
17 was, where a whole new slate of directors and managers had
18 been put in place?

19 MS. LAMBERT: It was not a case involving wrongdoing.
20 And so the facts are totally --

21 THE COURT: Conflicts of interest.

22 MS. LAMBERT: It involves directly conflicts of
23 interest, yes, in the positions that must be decided by the
24 controlling board.

25 THE COURT: I am --

1 MS. LAMBERT: And I --

2 THE COURT: -- asking you, had a whole new slate of
3 officers and directors been brought in in *Cajun Electric*?

4 MS. LAMBERT: No, and that would not have resolved
5 the --

6 THE COURT: It's been many years since I've read it.

7 MS. LAMBERT: That would not have resolved the
8 problem in *Cajun Electric*.

9 THE COURT: Okay. So *Cajun Electric* is not --

10 MS. LAMBERT: But *Cajun Electric* stands for the
11 proposition that cause is broader than the items listed here.

12 THE COURT: Of course. But it's still pertaining to
13 current management. I'm not reading those words "for cause"
14 out of the statute. I'm just saying I think --

15 MS. LAMBERT: Right.

16 THE COURT: -- they all pertain to current
17 management.

18 MS. LAMBERT: But here's the thing on the Court's
19 statutory construction.

20 THE COURT: I either have --

21 MS. LAMBERT: The Court has --

22 THE COURT: -- a binding case or not. I'm telling
23 you what my interpretation of the statute is.

24 MS. LAMBERT: Right. Well, --

25 THE COURT: I either have a binding case or not.

1 MS. LAMBERT: -- *Cajun Electric* is binding and it
2 establishes, as do *Little Creek* and other Fifth Circuit cases,
3 in every context --

4 THE COURT: Okay.

5 MS. LAMBERT: -- where cause is used, --

6 THE COURT: But I am looking for a case on point.

7 MS. LAMBERT: Your Honor, this is a matter of
8 statutory construction. The Court is reading out a full
9 clause of the statute.

10 THE COURT: Okay.

11 MS. LAMBERT: Current management is at the --

12 THE COURT: I've ruled on the evidence. Do we want
13 to talk about Exhibit 6, which was objected to, and Exhibit
14 10?

15 MS. LAMBERT: No. 6 is out. That was the
16 transcript.

17 THE COURT: Oh, I'm sorry. 6 is out. So, 10 was the
18 one that --

19 MS. LAMBERT: And 10, the purpose of 10 is to
20 establish that Strand is -- Advisors is a Delaware
21 corporation, and I think that's stipulated to.

22 THE COURT: Uh-huh.

23 MR. MORRIS: If that's the only fact for which it's
24 offered, we withdraw the objection.

25 THE COURT: Okay. 10 is admitted.

1 (U.S. Trustee's Exhibit 10 is received into evidence.)

2 THE COURT: And 11, that's something that obviously I
3 can take judicial notice of the docket entry in this case.
4 Right?

5 MS. LAMBERT: Right.

6 THE COURT: Okay. So I just, I'll take judicial
7 notice of 11.

8 All right. You may call your first witness.

9 MS. LAMBERT: Your Honor, the U.S. Trustee rests on
10 its documentary exhibits.

11 THE COURT: All right. Debtor, your witness?

12 MR. MORRIS: Your Honor, before we call our case, we
13 move for a directed verdict based on the evidence or lack
14 thereof that was adduced.

15 THE COURT: Okay. Well, I'm going to deny that. I
16 haven't had a chance to go back and look at this Frank
17 Waterhouse deposition testimony. It may or may not resolve
18 the issue. So, --

19 MR. MORRIS: Thank you, Your Honor. I just wanted to
20 preserve the record.

21 The Debtor calls John Dubel.

22 THE COURT: All right. Mr. Dubel, if you could
23 approach our witness box. Yes. Please raise your right hand.
24 Please raise your right hand.

25 JOHN DUBEL, DEBTOR'S WITNESS, SWORN

Dubel - Direct

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1 THE COURT: All right. Please be seated.

2 DIRECT EXAMINATION

3 BY MR. MORRIS:

4 Q Good morning, Mr. Dubel. Take your time.

5 (Pause.)

6 MR. MORRIS: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. MORRIS: Okay.

9 BY MR. MORRIS:

10 Q Mr. Dubel, do you currently have a relationship to the
11 Debtor?

12 A Yes, I do.

13 Q And can you describe for the Court your understanding of
14 your relationship to the Debtor?

15 A Yes. I am one of the three independent directors
16 appointed at the Strand Advisors, Inc. level, which is the
17 general partner of Highland Capital Management, LP, which I'll
18 probably refer to as HCMLP, just for brevity, Your Honor.

19 Q Okay. I may refer to it as the Debtor, if I may.

20 A You may.

21 Q Do you recall when you were appointed as an independent
22 director?

23 A Yes. January 9th of 2020.

24 Q Okay. And prior to that time, did you personally have
25 experience in bankruptcy and the insolvency areas?

002527

1 A Yes, I do.

2 Q Can you describe that experience for the Court?

3 A My experience is about 35-plus years of working on all the
4 arenas of the restructuring, both from creditor side, debtor
5 side, as an investor in distressed. The majority of my work
6 over the years has been in the debtor side of running
7 companies as a CEO or a chief restructuring officer, sitting
8 on boards of directors as an independent director for
9 companies going through stress, either bankruptcy or
10 restructuring.

11 Q And are there other independent directors at the Strand
12 level today?

13 A There are.

14 Q And who are they?

15 A There are two of them. Russell Nelms, who is a retired
16 bankruptcy judge from the Fort Worth area, and Mr. James
17 Seery, who is an investor, also an attorney, but an investor
18 in distressed, and has also practiced law.

19 Q Okay.

20 MR. MORRIS: I want to spend a few minutes, if I may,
21 Your Honor, just asking the witness about the independent
22 directors' activities --

23 THE COURT: Okay.

24 MR. MORRIS: -- since appointment.

25 BY MR. MORRIS:

1 Q Has the board, in fact, been engaged in managing the
2 Debtor since being appointed?

3 A We have.

4 Q Can you describe for the Court generally the types of
5 tasks that the independent directors have covered since their
6 appointment?

7 A The first day of our appointment, on the 9th, we met as a
8 board, which the board meeting actually continued through
9 until the 10th, on that Friday, in which we sat down with the
10 chief restructuring officer and his team. We met with the
11 vast majority of the senior managers within the company to
12 make sure that we could hear from them what was going on
13 within the company and to convey to them what our duties and
14 responsibilities were, so it was very clear to both the CRO
15 and to all the management, the senior management, of what the
16 responsibilities were for the independent board and how the
17 protocol would work and how they would need to interact with
18 us in a -- in what has now become a daily basis.

19 Q And since being appointed, have the independent directors
20 received presentations from the Debtor and from DSI concerning
21 the Debtor's operations, assets, and liabilities?

22 A We have.

23 Q Can you describe just generally the nature and scope of
24 those presentations?

25 A Yes. So we've gone through, which is not untypical for

1 situations like this when you get involved, go through each of
2 the departments and ask them to walk us through how their
3 department works, what they're working on, key issues that are
4 necessary for us to pay attention to immediately, key issues
5 that we would look at further down the road, understand who
6 the personnel are within the organization, their group.

7 And we, of course, because there were a lot of issues that
8 were very time-sensitive, we reacted to those issues to be
9 able to give them guidance on what we needed, what we needed
10 further information for or what decisions we would make
11 immediately on those decisions -- on those issues.

12 Q Since being appointed, have you -- have the independent
13 directors also reviewed and authorized certain court filings?

14 A We have. We had a protocol in place where one or -- or
15 all three, depending on the filings, are required to sign off
16 on any filings before they're submitted to the Court so that
17 we have a good understanding and can make sure that we have
18 good -- good direction to our counsel as to what would be
19 going forward.

20 Q Mr. Dubel, in the last 12 days, how much time have you
21 personally spent managing the Debtor?

22 A In excess of 80 hours, probably closer to 90 hours. I
23 don't keep a -- I'm fortunate I don't have to keep time
24 records to the tenths of an hour like counsel does. But just
25 in looking at my calendar, in excess of 80 hours. And it's

1 been literally every single day, Saturdays and Sundays
2 included.

3 Q And to the best of your understanding, is the same true
4 with respect to Mr. Nelms and Mr. Seery?

5 A Yes, it is. In fact, a lot of the time has been spent
6 with them together on these issues. So, I, you know, I have
7 firsthand knowledge of the amount of time that they are
8 putting in also.

9 Q Can you describe for the Court the extent to which the
10 three of you have been physically present in the Debtor's
11 office since being appointed as independent directors?

12 A Yes. During the work days, which it's now I think been
13 seven business days that the offices have been open, we have
14 been there six of those days. Actually, seven, if you count
15 this morning. We spent some time in the offices this morning
16 working with folks before we came over here. And either one
17 or all three of us have been there during those six days.
18 We're trying to balance out the workload a little bit with the
19 needs of the organization.

20 Q Can you describe for the Court the role that Mr. Sharp and
21 DSI have played since the time that you were appointed as an
22 independent director?

23 A Yes. Mr. Sharp, as the chief restructuring officer, and
24 his team have provided us with a tremendous amount of
25 information on the organization, on the assets of the various

1 different entities that the Debtor has to manage. Provided us
2 with asset positions, liability issues, and has basically been
3 very helpful in bringing us up to speed immediately on
4 everything we need to know to understand how to operate the
5 business, and acted in a very, you know, forthright manner.

6 Q Since being appointed, have the independent directors
7 played a role in the implementation of the protocols that were
8 part of the order appointing them?

9 A Yes. We have made sure that everybody -- all the senior
10 managers in the organization understand what the protocols are
11 and worked with either DSI or directly with us, depending on
12 the facts and circumstances of the particular situation, so
13 that the protocols are being followed. And we continue to do
14 that on a daily basis.

15 Q Have you and the other directors had an opportunity to
16 review proposed transactions since being appointed?

17 A Yes, we have, starting on Thursday, January 9th, through,
18 actually, this morning. While we were sitting in court, we
19 got confirmation of things that were taking place as it
20 related to the protocols.

21 Q Since being appointed, have you and the other directors
22 communicated with the Creditors' Committee and its
23 professionals?

24 A We have. In accordance with the protocol, we have, but we
25 would be doing that anyway, even if the protocols didn't

1 require it, because we feel it's good for the transparency in
2 this case. But we have met with the Committee professionals
3 many times and with the Committee members themselves via
4 conference call.

5 Q Let's shift gears a little bit and talk about your
6 interaction and the interaction of the other directors with
7 the Debtor and its employees. Have the directors sought
8 information from the Debtor's employees as part of the tasks
9 that you've just described?

10 A Yes, we have.

11 Q And can you describe for the Court, you know, either by
12 name or by title or by department, the places within the
13 organization from which the directors have sought information?

14 A Yeah. So, I can kind of -- maybe it's easiest by
15 department. There have been investment decisions that have
16 been needed to be made. Part of those investment decisions
17 require compliance reviews and a legal understanding of those
18 decisions. So we have reached out to the three different
19 department heads or the individuals responsible within those
20 departments for information that was necessary for us to
21 understand and be able to make decisions.

22 So, as an example, for compliance, making sure that
23 whatever it is that's being asked of us is in accordance with
24 all of the compliance requirements under the various different
25 regulatory authorities, looking at it from a legal point of

1 view, making sure we understand how that transaction legally
2 might fit in with something else, whether it's a related party
3 issue or making sure that it fits in with the protocols.

4 And then, obviously, from the actual asset manager point
5 of view, the trader, understanding how the impact of our
6 decision would be able to be implemented in the ordinary
7 course process of trading a position as necessary or holding
8 onto a position.

9 Q To the best of your knowledge, have the independent
10 directors timely received the information that was sought to
11 fulfill your duties?

12 A We have.

13 Q And do you have any concerns that anyone at the Debtor has
14 withheld information from you or the other directors?

15 A I do not. In fact, I think they've been very forthright
16 in presenting us with information that we have requested and
17 been very responsive.

18 Q To the best of your knowledge, have either of the other
19 directors ever expressed any concern to you about the flow of
20 information?

21 A No, they have not.

22 Q Do you have any reason to believe that any information
23 provided to the independent directors by any of the employees
24 at the Debtor is false or inaccurate?

25 A No, I do not.

1 Q Have you and the other independent directors requested to
2 meet with certain employees?

3 A We've requested to meet with many of the employees, yes.

4 Q Can you just describe for the Court, again, either by
5 title or by department, the employees with whom the directors
6 have met thus far?

7 A Pretty much every single department head, whether it's the
8 finance office through the chief financial officer, the
9 controller, the -- looking through, then, to the chief
10 compliance officer, the trading groups for a variety of
11 different entities that we have under management. Our private
12 equity group, the leadership in that. The legal group,
13 looking -- we've met with pretty much everybody in the legal
14 group to understand various issues and get a better
15 understanding of the business. Human resources, et cetera.

16 Q Um, --

17 A Communications. Forgot about that one.

18 Q Have you or any of the other independent directors ever
19 expressed any concerns about the reliability of information
20 provided by any of the Debtor's employees?

21 A No, we have not.

22 Q Are you generally familiar with the Court's order that
23 appointed you as an independent director?

24 A I am.

25 Q Are you generally familiar with the duties and

1 responsibilities that have been bestowed upon you as set forth
2 in that order?

3 A I am.

4 Q Have you and the other independent directors discussed the
5 scope and responsibilities for your duties as an independent
6 director?

7 A We have.

8 Q And do you have a general understanding as to what those
9 duties are?

10 A Yes. As the independent directors of Strand, we are the
11 general partner for the Debtor's estate, HCMLP, and it's my
12 understanding that those duties lie to -- go to the Debtor's
13 estate, to maximize value for the Debtor.

14 Q And is it your understanding that the order that was
15 entered was an order that was entered after the Committee and
16 the Debtor reached an agreement for the appointment of new
17 management?

18 A That is my understanding.

19 Q Okay. Did -- have the independent directors taken any
20 steps to make sure that the Debtor's employees are aware of
21 your duties and responsibilities?

22 A Yes. From the first day that we got there, as I mentioned
23 earlier, we've met with all the department heads, explained to
24 them what the roles and responsibilities are. Walked through
25 with them the protocol that is laid out in the order. Asked

1 them to communicate that down into the organization.

2 We continue to walk around the offices. All of our
3 employees, except with the exception of one or two who are
4 overseas, all reside in the offices here in Dallas, and so
5 we've walked around and met with many of the other employees.
6 We've had our communications department put together
7 communication that's been posted on the Intranet and -- the
8 Intranet, the internal communications, and also on the
9 company's website for all employees to see and understand.
10 And we actually will be having an all-hands meeting this
11 afternoon with all of the employees.

12 Q Do you have any concerns that any of the Debtor's
13 employees either don't understand or don't respect the
14 authority and role of the independent directors?

15 A I do not.

16 Q Have either of the other independent directors ever
17 expressed to you any concern at all that any of the Debtor's
18 employees either don't understand or fail to respect the
19 authority and role that the three of you play?

20 A I've not heard any concerns, no.

21 Q Do you have any concerns at all that the Debtors engage in
22 any transactions that don't have the independent directors'
23 knowledge and approval?

24 A I do not.

25 Q Do you -- have the independent directors taken any steps

1 to try to prevent any unauthorized transactions from taking
2 place?

3 A Yes, through communications directly with all of the
4 individuals that could have the authority to do -- or the
5 apparent authority to enter into transactions, making it very
6 clear what our role and responsibility is, making it clear
7 what they have to do in order to execute anything.

8 We've also engaged, through working with the chief
9 restructuring officer and his team, to have them be
10 continuously looking at transactions that take place through
11 the Debtor's systems.

12 Q So, is it your understanding that the CRO has visibility
13 into the movement of the Debtor's assets?

14 A Yes.

15 Q Okay. Do you have any concern that the independent
16 directors are not firmly in control of the Debtor?

17 A I do not.

18 Q Have either of the other independent directors expressed
19 any concern to you at all that the independent directors might
20 not be fully in control of the Debtor?

21 A They have not expressed that.

22 Q I think you were in the courtroom for the argument that
23 preceded your testimony; is that right?

24 A I was.

25 Q Um, --

1 A Or, except for a very short period of time.

2 Q Pursuant to the order that was entered by this Court, is
3 it your understanding that the independent directors have the
4 ability to fire any employee of the Debtor?

5 A That is my understanding and that is exactly what we have
6 the authority to do.

7 Q And is it your understanding that the independent
8 directors have the final authority over transactions that are
9 being made on behalf of the Debtor?

10 A It is very clear in my mind that we have that authority.

11 Q Is there any aspect of the Debtor's business in which any
12 employee of the Debtor has authority that exceeds any of the
13 independent directors'?

14 A When you say exceeds, meaning overrides?

15 Q Correct.

16 A No. There's no -- no one has the authority that overrides
17 our decisions. We may authorize people to do things, but no
18 one has the authority to override our decisions.

19 Q And have the independent directors made that known to all
20 of the department heads?

21 A We have.

22 Q And have the independent directors made that known to all
23 of the employees in the legal department?

24 A We have.

25 Q And have the independent directors made that known to all

1 of the employees in the compliance department?

2 A I think there's only one person who's in Compliance, but

3 --

4 Q That's --

5 A Our chief compliance officer. Yes.

6 Q I do love precision. Thank you.

7 Does the independent -- do you or any of the independent
8 directors have any concerns at all that the message of control
9 has not been adequately conveyed to the people who are
10 executing your orders?

11 A I don't have any concerns about that.

12 Q Okay. Do you believe the independent directors -- have
13 you begun to kind of familiarize yourself with the Debtor's
14 operations, structures, and assets?

15 A Yes, we have.

16 Q And does the Debtor oppose the motion for the appointment
17 of a trustee at this time?

18 A Yes, the Debtor does.

19 Q Can you explain to the Court why the Debtor opposes the
20 appointment of a trustee at this time?

21 A Yes. There is a new management team in place, led by the
22 -- you know, with the independent directors in place, having
23 the authority over all of the actions of the Debtor. And we
24 believe that, based upon the expertise of the three
25 individuals, that we have the right expertise to run the

1 company, between legal, trading, restructuring, investment
2 management, that the expertise that we bring to the table is
3 what is necessary to run the company, and that if there were a
4 change in that it would obviously cause a tremendous amount of
5 disruption in the business. If there were a Chapter 11
6 trustee appointed, that it would have a tremendous negative
7 impact on the Debtor's ability to create the greatest value
8 for our creditors and other stakeholders.

9 Q Have any of the Debtor's employees quit since the
10 independent directors were appointed?

11 A We've lost a couple of people. I just don't remember the
12 exact timeline. But it's -- it has happened. It's -- you
13 know, we've had three -- I think three resignations.

14 Q Okay. Does the Debtor have any concerns that if a trustee
15 is appointed that the Debtor will be at risk of losing senior
16 -- senior management or other -- you know, senior employees or
17 other employees of the Debtor?

18 A Yes, we do.

19 Q And what's the basis for that concern?

20 A Our goal here is to reorganize the company and create the
21 greatest value for our creditors and others. And if an
22 appointment of a trustee was to be so ordered, that it would
23 send the wrong message to the employees and the employees
24 would lose confidence and seek employment elsewhere. And it's
25 a vibrant market for employees right now.

1 Q Based on your experience in the insolvency area, do you
2 have a view as to how the appointment of a Chapter 11 trustee
3 might be viewed in the marketplace?

4 A This is a business that trades on credibility. It's not
5 walking into a store and buying an item off of a shelf of a
6 company that's in Chapter 11, but it's all about the
7 credibility of the individuals. And if an appointment of a
8 Chapter 11 trustee was so ordered, we think it would have a
9 negative impact on our ability to continue to have that
10 relationship with the third parties that we have to deal with
11 on a daily basis.

12 Q Do you have a view as to whether or not the appointment of
13 a trustee could impair the Debtor's ability to reorganize?

14 A I do.

15 Q And can you share that view with the Court?

16 A I think it's for the exact same things that I just
17 mentioned. Our ability to create the greatest value and
18 reorganize and -- would be impacted by, you know, loss of
19 personnel who might not want to work in that environment and
20 also the loss of the relationships in the trading partners
21 that we have to deal with. And so it would -- it would
22 inhibit our ability to reorganize properly for this and create
23 greatest value.

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

25 THE COURT: All right. Cross?

1

CROSS-EXAMINATION

2

BY MS. LAMBERT:

3

Q Hello again. We talked before the hearing. But my name

4

is Lisa Lambert. I'm with the U.S. Trustee's Office.

5

A Good morning, Ms. Lambert.

6

Q How are you?

7

A Good.

8

Q So, you're an independent director of Strand, and Strand

9

is the general partner of the Debtor, right?

10

A That's correct.

11

Q And your testimony is that the duties to the Debtor trump

12

any duties to the stockholders of Strand, right?

13

A It is my testimony that, as the general partner, our

14

duties are to the Debtor's estate and to protect the Debtor's

15

estate and create the greatest value there, which would

16

ultimately benefit Strand.

17

Q Okay. So is it your testimony that there's no duty to the

18

stockholders of Strand?

19

A Our duty is to the Debtor's estate as the general partner,

20

and that would then protect Strand.

21

Q So your perspective is the duties are not in conflict?

22

They are coextensive, right?

23

A I apologize. I don't know -- I'm not a lawyer, so --

24

Q I'm going to --

25

A -- the reference to coextensive might be something that's

1 a legal term, but --

2 Q But the duties are the same, --

3 A Uh, --

4 Q -- is your testimony?

5 A I don't know if they're the same. My -- my view is the
6 duties are to the Debtor's estate as the general partner of
7 Strand.

8 Q Okay. Mr. Dondero is the -- still a stockholder of
9 Strand, right?

10 A As I understand, yes.

11 Q And Mr. Dondero currently is an employee of the Debtor?

12 A He is a nonpaid employee of the Debtor.

13 Q So if the decision came to terminate Mr. Dondero as an
14 employee, do you think it impacts his -- your fiduciary role
15 to him as the stockholder?

16 MR. MORRIS: Objection, Your Honor, to the extent all
17 of this calls for a legal conclusion. I just want to make
18 sure that we're just talking about the witness's lay
19 understanding.

20 MS. LAMBERT: No. His understanding.

21 THE COURT: Okay. Over...

22 MS. LAMBERT: His under...

23 THE COURT: Overruled.

24 BY MS. LAMBERT:

25 Q What is your understanding?

1 A I'm sorry. Could you repeat the question, Ms. Lambert?

2 Q Mr. Dondero is an employee of the Debtor, whether unpaid
3 or not. And does the board's -- the directors' decisions
4 about whether to maintain him or terminate him, is that
5 impacted by his holding all of the stock of Strand?

6 A From my perspective, it would have no impact. If there
7 was a decision to be made to keep him on board or terminate,
8 it would have no impact as to what his holdings are in Strand.

9 Q Why is that?

10 A Because our duties in managing the Debtor would be to
11 figure out what the right answer is for the Debtor. And if
12 that decision was to either keep him in place, as we currently
13 have, or to terminate him because there was no longer a need
14 for him at that level, it would be a decision we would make on
15 behalf of managing the Debtor.

16 Q You would agree with me that he might have a different
17 perspective on that, right?

18 A I don't know what his decision -- what his view would be.
19 It may be different; it may not be. It depends on the facts
20 and circumstances at the time that we would have to make that
21 decision.

22 Q Now, you testified that you've been very busy with the
23 activities of the Debtor. Did you have an opportunity to read
24 the Court's ACIS opinion?

25 A Yeah. I've read multiple decisions or multiple filings on

1 -- on ACIS. I --

2 Q I'm talking about the published opinion. It's a little
3 bit lengthy. You would have remembered seeing it, I think.

4 A I believe I did read that prior to our appointment, yes.

5 Q Okay. And then did you also read the Redeemer arbitration
6 awards?

7 A I've read a few different Redeemer arbitration awards. I
8 think there were two or three of them.

9 Q Two.

10 A Yeah.

11 Q And I'm talking about the partial --

12 A Yeah.

13 Q -- and the final judgments.

14 A Yes, I have.

15 Q Okay. You're aware that both of those opinions talk about
16 the attorneys testifying with plausible deniability, --

17 MR. MORRIS: Your Honor?

18 MS. LAMBERT: -- the in-house counsel?

19 MR. MORRIS: Your Honor, I would just ask the witness
20 not to answer the question until I state my objection.

21 This is exactly why we objected to the relevance of these
22 exhibits into evidence, and now she's just doing orally what
23 she has not yet been able to do with the admission of the
24 documents.

25 She should establish a foundation first that there's

1 anybody in any of those decisions who are in control of the
2 Debtor or who are deemed to be current management. Because
3 the evidence at this point I think is undisputed that the
4 independent directors are in fully -- are in full control of
5 this enterprise. They -- everybody reports to them. All
6 decisions are made with their knowledge and approval. And
7 there's no evidence to the contrary.

8 So I don't, you know, I don't think the U.S. Trustee
9 should be able to get through the back door what they're not
10 able to get through the front door.

11 THE COURT: I sustain that objection.

12 BY MS. LAMBERT:

13 Q Have you worked with the in-house legal department?

14 A Of the Debtor?

15 Q Of the Debtor.

16 A Yes.

17 Q Can you name for me the employees of the legal department
18 of the Debtor?

19 A I probably can't name all of them, but starting from the
20 top, Scott Ellington. Isaac Leventon. J.P. Sevilla. Tim
21 Cournoyer. Thomas Surgent is an in-house -- he's a lawyer.
22 He's also our chief compliance officer. I don't know
23 technically which -- whether he covers both. And then there
24 have been others in the group that I -- I don't remember all
25 the names. But those are the main folks that we've had to

1 deal with.

2 Q And Compliance is part of Legal, right?

3 A I don't technically know. I think it stands on its own.

4 But Mr. Surgent is an attorney, as I understand.

5 Q And how often have you dealt with Mr. Ellington?

6 A In the seven days that we've been there, probably five or
7 six of them he's had to travel for, you know, for work, so we
8 haven't always, you know, seen him every day. But pretty much
9 every day, including yesterday, when we were in the office.

10 Q And Mr. Leventon, how often have you consulted with him?

11 A Unfortunately, not as often as we would like, because Mr.
12 Ellington -- Mr. Leventon had an auto accident that he was
13 involved with, so he's been out of the office. But I've dealt
14 with him a little bit over the last several days as he, you
15 know, as he's allowed to -- as he's recuperating.

16 Q So, the board has been talking with the legal department
17 almost every day, right?

18 A Yes.

19 Q And the legal department in this particular business is
20 particularly important for management decisions, right?

21 A It's important to get information from them to inform us
22 as the managers, meaning the board, yes.

23 Q You rely on their advice, don't you?

24 A We take into consideration what they -- what they share
25 with us, yes.

1 Q And they have expertise in the areas of the legal issues
2 that are central to this case, right?

3 A They have expertise. Fortunately, the board also has a
4 tremendous amount of legal expertise, both in the -- specific
5 to investment management and also corporate governance. And
6 having been a CEO and a CRO and been involved for the last 35
7 years in some highly-contentious, litigious litigations, I've
8 unfortunately picked up a little bit of how to understand what
9 is given to me and interpret it.

10 Q All right. Have you had any hesitation in relying on
11 their legal advice?

12 A No.

13 Q Are you aware that the -- that the Redeemer's arbitration
14 award determines that their advice ignored the advice of
15 outside counsel?

16 MR. MORRIS: Objection, Your Honor. Relevance.

17 THE COURT: Sustained.

18 MS. LAMBERT: Your Honor, the relevant --

19 BY MS. LAMBERT:

20 Q Are you aware that the ACIS Court also determined that Mr.
21 Ellington and Mr. Leventon were providing affidavits for the
22 Debtor rather than the Debtor, --

23 MR. MORRIS: Object, Your Honor.

24 MS. LAMBERT: -- Mr. Dondero?

25 MR. MORRIS: Same objection.

1 THE COURT: Sustained.

2 MS. LAMBERT: Your Honor, these -- both of these
3 questions go to our presentation that the in-house counsel is
4 not providing advice that's in the interest of the Debtor and
5 has ignored outside counsel. It's relevant to whether -- to
6 the case if current management knows that, which the evidence
7 is unclear, and whether they're doing something about it.
8 That's the United States Trustee's case.

9 THE COURT: All right. I don't think you've laid the
10 foundation to go this route.

11 MS. LAMBERT: Okay.

12 BY MS. LAMBERT:

13 Q You're relying on the advice of the legal counsel on a
14 daily basis, right?

15 A We take information from counsel and we process it. We
16 talk as a group, meaning the board. And as I referenced
17 earlier, two of our board members happen to be experienced
18 lawyers, one of whom is an expert in corporate governance and
19 bankruptcy law, having been a judge for 14 years. We sift the
20 information that comes from all different parties and make our
21 decisions based upon our experience in these situations. We
22 talk to outside counsel also as necessary.

23 Q Are you aware of any concerns about the advice that your
24 legal counsel in-house has provided to you?

25 A I'm sorry. Could you -- are -- excuse --

1 Q Are you aware of any concerns about the advice that the
2 in-house legal counsel has provided to you?

3 A Nothing that's been provided to us, no. No concerns about
4 that.

5 Q Are you aware of any concerns historically?

6 A I understand that there -- and have read that there were
7 issues related to that on a historical basis, yes.

8 Q Has that impacted the way you interact with the legal
9 counsel?

10 A Sure. A healthy dose of skepticism is always important
11 whenever you get into a new situation, whether there are those
12 allegations or rulings or what have you. It's always
13 important to have a healthy set of skepticism on these things.

14 Q All right.

15 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
16 the admission of U.S. Trustee's 1, 2, and 3.

17 MR. MORRIS: *Voir dire*, Your Honor?

18 THE COURT: Pardon?

19 MR. MORRIS: *Voir dire*? Can I just ask a few
20 questions?

21 THE COURT: You may. Uh-huh.

22 VOIR DIRE EXAMINATION

23 BY MR. MORRIS:

24 Q Sir, has -- have the members of the legal department been
25 cooperative?

1 A Yes.

2 Q Have the members of the legal department been responsive
3 to the independent directors' requests?

4 A Yes, they have.

5 Q Have the members of the legal department been authorized
6 to do anything without the independent directors' knowledge
7 and approval?

8 A No.

9 Q Are the independent directors aware of any member of the
10 legal department having done anything without the knowledge
11 and approval of any of the independent directors?

12 A I am not.

13 Q Do the members of the legal department all report to the
14 independent directors?

15 A They report through the legal department organization,
16 which reports to the independent directors.

17 Q And the independent directors ultimately have the sole
18 authority as to whether or not to fire any member of the legal
19 department, as true with any member of the organization; is
20 that right?

21 A That is correct.

22 Q All right.

23 MR. MORRIS: I have no further questions.

24 MS. LAMBERT: Your Honor, the U.S. Trustee contends
25 that this is -- these opinions are highly relevant to the

1 board's understanding of the current situation. The
2 cooperativeness and the responsiveness and the doing of the
3 acts for the board members is not the issue if the information
4 that is being provided to the board is fundamentally
5 unreliable. And that's the issue the U.S. Trustee wants to
6 raise.

7 THE COURT: Okay. I sustain the objection and I
8 overrule the request to have the Court admit Exhibits 1
9 through 3.

10 MS. LAMBERT: Your Honor, is it necessary for me to
11 do an offer of proof, given that these exhibits are already in
12 the binder and have been -- everybody is familiar with the
13 desire that they be admitted?

14 THE COURT: All right. Well, if you're not wanting
15 any testimony, if you're just wanting the admission of the
16 exhibits, they will certainly be included in the record as
17 offered but not admitted. So if there's an appeal, they're in
18 there for the Court of Appeals to see.

19 CROSS-EXAMINATION, RESUMED

20 BY MS. LAMBERT:

21 Q So, it's your testimony that the Debtor's legal counsel
22 have been cooperative, responsive, and doing acts for the
23 board, and that ultimately the board acts as the sole
24 authority, right?

25 A That's correct.

1 Q Has the legal counsel provided the board with any advice
2 that they have -- that the board has disagreed with?

3 MR. MORRIS: Objection, Your Honor. To the extent
4 that this calls for the disclosure of attorney-client
5 communications, I would object.

6 THE COURT: All right. If you can answer without
7 disclosing privileged information, you may answer.

8 THE WITNESS: Okay. May I ask if you could repeat
9 the question, just so I --

10 BY MS. LAMBERT:

11 Q Has the board reached a determination that disagreed with
12 the legal counsel's recommendations?

13 A I don't believe so.

14 Q Has the board sought outside legal counsel after receiving
15 a report from in-house counsel that they -- that they wanted
16 more information on?

17 A That would be very common practice for getting information
18 from in-house counsel, then getting additional information
19 from outside counsel. It's -- we have done that. I would say
20 that's just a normal part of any organization, and I would do
21 that in every situation I'm involved with, --

22 Q Okay. But --

23 A -- if it was so relevant.

24 Q But I'm asking a little different question, which is, to
25 date, in this case, has the board done that?

1 A Have we sought advice from outside counsel on something --

2 Q That the in-house counsel provided advice on.

3 A Yes. And as I said, I think that's just a normal part of
4 our understanding information so that we can make decisions.

5 Q Now, you testified that having a trustee would impact the
6 Debtor's credibility in the market, right?

7 A That's my --

8 Q And ACIS --

9 A -- view.

10 Q -- had a trustee, correct?

11 A As I understand, yes.

12 Q And ACIS reorganized, didn't it?

13 A I am not familiar with the ACIS case, you know, whether it
14 was a reorganization. I'm just not familiar with the details
15 of it.

16 Q Okay. So, earlier, I had asked you if you were familiar
17 with the ACIS opinion and with the ACIS case, and my
18 understanding was you had read documents in the ACIS case.
19 Right?

20 A I've read them. I haven't studied them. I believe ACIS
21 was a reorganization, but I'm not familiar with the details of
22 it.

23 MS. LAMBERT: No further questions.

24 THE COURT: All right. Any other examination?

25 MR. MORRIS: No, Your Honor.

1 THE COURT: All right. Thank you. You're excused.

2 (The witness steps down.)

3 THE COURT: Does the Debtor have other evidence?

4 MR. MORRIS: No, Your Honor. The Debtor rests.

5 THE COURT: All right.

6 MR. MORRIS: Oh, I apologize. The only exhibit that
7 we did have that we noted on the exhibit list was the Court's
8 order and the exhibits that appointed the independent
9 directors. The protocols. We'd just --

10 THE COURT: All right. Well, the Court can take
11 judicial notice of those.

12 MR. MORRIS: Exactly. And just for the record, it's
13 at Docket #354-1.

14 THE COURT: Thank you.

15 MR. MORRIS: And I have a binder of exhibits if --

16 THE COURT: All right. You may approach with that.
17 Thank you.

18 All right. And the Committee said it did not intend to
19 put on evidence, correct?

20 MR. TWOMEY: That's correct.

21 THE COURT: All right. Any rebuttal evidence?

22 MS. LAMBERT: No, Your Honor.

23 THE COURT: All right. I'll hear closing arguments.

24 CLOSING ARGUMENT ON BEHALF OF THE U.S. TRUSTEE

25 MS. LAMBERT: Your Honor, Section 1104(a) is

1 structured with the clause about fraud, dishonesty, and gross
2 [mis]management, referring to -- management. Thereafter, the
3 statute says "or for other cause." The structure
4 grammatically of the statute is important because the
5 management provisions are one set and the "or for cause" is
6 another.

7 The Fifth Circuit precedent is clear that there can be
8 other types of cause. The inability to manage this Debtor and
9 to rely on its in-house legal counsel is pervasive in the
10 prior opinions and remains an issue today.

11 It is for this reason that the U.S. Trustee sought the
12 admission of Exhibits 1 through 3. There are not just issues
13 with Mr. Dondero, but there remains an issue with Dondero,
14 which brings me to point two, which is that the Delaware
15 corporate statute requires that there be a fiduciary duty to
16 him. There are many contexts where one can contract around a
17 fiduciary duty in partnerships, limited partnerships, but not
18 in corporations, because corporations have the stockholder and
19 creditor function. There is no evidence, no evidence, about
20 what creditors there might be of Strand. We have no knowledge
21 of that. And the Delaware case law is that there is a
22 fiduciary duty to creditors.

23 But if there are no creditors, then that duty runs to Mr.
24 Dondero. This remains a conflict of interest issue for
25 consideration. And it is an actual conflict, especially

1 because Mr. Dondero remains in the Debtor as an employee. And
2 the evidence is that, today, he, Mr. Ellington, and Mr.
3 Leventon, all of whom have been cited in prior opinions as
4 trying to establish plausible credibility, remain at the
5 Debtor, advising the management. And the board -- no one
6 questions that the board is some of the best people that we
7 have. But the issue is that, as a board, they are separate
8 from the Debtor, and there is a CRO in, but the CRO, I
9 anticipate the evidence will be that the CFO relies on the in-
10 house legal counsel, and that's -- the deposition transcript
11 cites go to the reliance on in-house legal counsel for major
12 decisions.

13 And so this remains a concern. And it is within Section
14 1104.

15 Finally, Your Honor, the effort to seal matters, including
16 the *sine qua non*, the catalyst for the bankruptcy filing, the
17 arbitration award, impede the ability of the public to
18 understand the facts of this case, impede the ability of the
19 regulators to understand this case, and it's too far. For
20 these reasons, the U.S. Trustee moves for the appointment of a
21 Chapter 11 trustee.

22 THE COURT: Let me just ask. I'm going to hit on
23 something you said there at the end, because you've said it a
24 few times. It concerns me a little. The words I remember Mr.
25 Pomerantz using on day one, and maybe using a couple of times

1 thereafter, was that the Redeemer Committee's arbitration
2 award created a liquidity problem at the Debtor's level and
3 that was the impetus for the bankruptcy.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: That is a little bit more of a narrow
6 statement than what I think your last sentence has implied.

7 MS. LAMBERT: Well, --

8 THE COURT: I mean, I hear what you're saying, tell
9 me if I'm hearing wrong, that there are statements in that
10 arbitration award that were the impetus for the bankruptcy
11 filing and the public needs to hear that. But that's not what
12 I heard Mr. Pomerantz say from day one. He said the
13 arbitration award, \$180 million in amount or whatever it was,
14 in that neighborhood, caused a liquidity problem that caused
15 the bankruptcy.

16 MS. LAMBERT: Yes, Your Honor. But the testimony is
17 today that the Debtor's credibility in the market is
18 important, and the Redeemer arbitration award and its basis --
19 I mean, it's not just that it was \$180 million. It's that
20 there was a basis for it -- they caused this bankruptcy [five-
21 second audio recording malfunction at 11:40 a.m.] award.

22 THE COURT: Okay. Well, again, maybe I shouldn't
23 have opened up that can of worms, but I just felt like there
24 was incorrect --

25 MS. LAMBERT: The --

1 THE COURT: -- repeating of the words of the Debtor.

2 MS. LAMBERT: The Court is right to be precise, and
3 it -- I suppose, from the U.S. Trustee's perspective, it's the
4 straw that broke the camel's back, and that's what we meant in
5 terms of a catalyst. And it is a judgment. But normally the
6 public has the opportunity to know what the basis of the
7 judgment is. And the basis of that ruling.

8 THE COURT: All right. Well, again, this is an issue
9 that may come up on another day and the Court will decide
10 whether it needs to come into the record. But, today, I
11 didn't think it was relevant for the motion before the Court.

12 All right. Anything else?

13 MS. LAMBERT: Finally, Your Honor, the evidence is
14 that, historically, the Debtor has had oversight externally as
15 a result of the same kind of problems that led to this, and
16 yet that did not work. And so for all those reasons, the U.S.
17 Trustee moves for the appointment of a trustee.

18 THE COURT: All right. Other arguments?

19 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

20 MR. POMERANTZ: Good morning again, Your Honor. Jeff
21 Pomerantz; Pachulski Stang Ziehl & Jones; on behalf of the
22 Debtor.

23 Just to pick up on the last point of your colloquy with
24 Ms. Lambert, Your Honor was correct. My statements at the
25 beginning of the case were that the reason the case was filed

1 was because of the Debtor's inability to satisfy the award
2 which was about to be confirmed in a judgment. It's not
3 inconsistent with what the testimony you heard today that the
4 disclosure of that award in the current context, where
5 management has completely changed, is totally irrelevant and
6 would be unduly prejudicial, and that is why we have
7 consistently sought to have that sealed and why we have
8 indicated to Your Honor and Your Honor has ruled that it's not
9 relevant for today's hearing.

10 Your Honor, the Trustee seeks appointment of a Chapter 11
11 trustee, notwithstanding Your Honor's January 9th approval of
12 a settlement between the Debtor and the Committee that
13 restructured management. And I think it's important to just
14 highlight some of the things that the settlement that Your
15 Honor approved did.

16 First, it involved a sweeping governance change,
17 highlighted by the establishment of a new board of directors
18 with three individuals who have exceptional reputations and a
19 diverse skillset that makes them unquestionably qualified to
20 manage a complex business such as the Debtor.

21 It also involved the removal of Mr. Dondero as the
22 Debtor's decision-maker, along with his agreement, which is
23 the subject, as Your Honor pointed out, of a separate court
24 order, not to interfere with the board's performance of its
25 duties, along with his agreement not to terminate substantial

1 contracts his affiliated entities have with the Debtor.

2 The settlement also established detailed operating
3 protocols which provide significant transparency regarding the
4 Debtor's operations and ensures, among other things, that the
5 Committee will have visibility into any related transactions
6 before they are consummated.

7 The settlement also granted standing to the Committee to
8 investigate and prosecute certain insider claims, along with
9 broad access to the Debtor's books and records, including
10 attorney-client information necessary to prosecute those
11 claims. While perhaps not unprecedented, this type of
12 authority being granted to Committee at this early in the case
13 is rarely granted and is quite unusual.

14 It is against this backdrop, Your Honor, that the Court
15 must evaluate the Trustee's motion. The applicable standard,
16 as you have heard, is under 1104 of the Bankruptcy Code, which
17 provides that the Court shall appoint a trustee for cause or
18 if the appointment is in the best interest of parties in
19 interest or for other cause.

20 As Your Honor wrote in the *Patman Drilling* case years ago,
21 "Appointment of a Chapter 11 trustee is a draconian remedy,
22 and there is a strong presumption that Chapter 11 -- a debtor
23 shall remain in possession."

24 And notwithstanding the Trustee's argument to the
25 contrary, the courts in the Fifth Circuit, including Your

1 Honor in *Patman Drilling*, follow *Cajun Electric* and require a
2 movant to demonstrate that appointment of a trustee is
3 justified by clear and convincing evidence.

4 Not only has the U.S. Trustee not met his burden, but the
5 facts demonstrate overwhelmingly that allowing the Debtor to
6 remain in possession is clearly in the best interests of all
7 parties in interest. In fact, no stakeholder supports the
8 U.S. Trustee's motion, and the Creditors' Committee, which
9 comprises the vast majority of unsecured claims in this case,
10 opposes the motion.

11 This bankruptcy case has been pending for over three
12 months and has been marked by significant acrimony and
13 litigation over governance and control. With the installation
14 of the board, the establishment of the protocols, the case is
15 finally on a positive trajectory, and the Debtor, through the
16 independent board, is now in a position to sit down and
17 cooperatively work with the Committee to develop a plan so
18 that the Debtor can exit Chapter 11 as quickly as possible.
19 Appointment of a Chapter 11 trustee would create further
20 uncertainty, adversely affect operations, and further delay
21 the efforts of the Debtor towards developing an exit strategy.

22 The Trustee has advanced three principal arguments on why
23 the Court should appoint a Chapter 11 trustee, none of which
24 are persuasive.

25 First, the United States Trustee argues that a Chapter 11

1 trustee is the only remedy to address various forms of
2 malfeasance that courts have found the Debtor to have
3 committed in the past. In so arguing to the Court, the U.S.
4 Trustee ignores the court-approved settlement, ignores the
5 existence of the independent board, ignores the removal of Mr.
6 Dondero from any position of control in the Debtor.

7 Section 1104 authorizes the appointment of a trustee for
8 cause, including fraud, dishonesty, incompetence, or gross
9 [mis]management of the affairs by current management. Case
10 law is clear that the focus is on the actions of current
11 management and not prior management. And, in fact, in the
12 *Bayou* case from the Second Circuit, which we identified and
13 cited, the Court refused to appoint a Chapter 11 trustee where
14 new management had been installed and there had been no
15 allegation that new management had committed any of those
16 acts.

17 The Debtor doesn't dispute that, prepetition, the Debtor
18 was involved in litigation where the courts found wrongdoing
19 by the Debtor. However, those findings are irrelevant if the
20 Debtor is under new management. New management, through the
21 independent board, is now in control, managing the Debtor's
22 operation. And importantly, James Dondero is not in a
23 position of control anymore. And as I said, there have been
24 no allegations that current management has engaged in any type
25 of fraud or mismanagement or done anything not to engender

1 confidence by the Court or the creditors. The independent
2 board consists of individuals with sterling reputations with
3 substantial skill.

4 Second, the Trustee argues that the independent board is
5 incapable of effectively managing the Debtor's affairs; the
6 structures implemented in other situations to combat Debtor's
7 bad acts have failed. Essentially, the Debtor [sic] is
8 arguing that other members of management, including the legal
9 team, may remain employed by the Debtor and the board will not
10 be able to prevent the Debtor from engaging in the same type
11 of activities that occurred prior to Chapter 11.

12 There is absolutely no evidence, Your Honor, to support
13 the U.S. Trustee's unfounded allegations. Rather, all the
14 evidence before Your Honor contradicts this argument and
15 demonstrates that the independent board has been and continue
16 to be an independent fiduciary to the estate and ensuring that
17 the Debtor takes only actions that are, in fact, benefiting
18 the estate and all parties in interest.

19 The only evidence before Your Honor regarding this is the
20 testimony you heard from John Dubel, one of the independent
21 directors. He testified as follows. Since his appointment
22 was effective on January 9th, at least one member of the board
23 has been present at the Debtor's headquarters for six of the
24 seven business days. Mr. Dubel himself has worked over 80
25 hours on the Debtor since the 9th. He testified that he

1 believes that other members of the board have put in the same
2 amount of work.

3 The board conducted a board meeting immediately upon its
4 appointment on January 9th and January 10th, and has had many
5 other informal discussions among themselves on a daily basis.

6 Mr. Dubel testified that the board has received
7 comprehensive presentations from counsel, from the CRO and his
8 team, and from each of the Debtor's department heads, and is
9 in daily communications with all such parties. He testified
10 that such presentations have covered the Debtor's structure,
11 organizations, operations, assets and liabilities, and the
12 rights and responsibilities of the board.

13 He testified that the board is reviewing and overseeing on
14 a daily basis implementing -- implementation of the protocols
15 approved by the Court.

16 He testified that, as any good board and fiduciary would
17 do, he has reached out and he has been in contact with the
18 Committee, the Committee members and their advisors on a
19 variety of issues. He's also testified that he has -- that
20 the board has reached out to department heads, who have
21 provided information without question to the board, and that
22 he believes and other members of the board believe that all
23 such information is truthful and accurate information.

24 He's testified that the authority of the board has been
25 communicated to employees, and that he believes and other

1 directors believe that the employees are respecting such
2 authority and that the CRO and the independent board are
3 providing critical interaction with the other Debtor's
4 employees and approval of transactions that are required.

5 He's testified that resolution of the corporate governance
6 will now allow the Debtor to move forward towards pursuing a
7 plan, and that appointment of a trustee would be very divisive
8 to the Debtor's operations and adversely affect operations.

9 In fact, Your Honor, the uncontradicted evidence is that
10 the independent board members are doing exactly what an
11 independent fiduciary like the trustee should or would be
12 doing: assessing the Debtor's operations and assets and
13 liabilities and evaluating how to maximize the Debtor's assets
14 for all stakeholders.

15 Moreover, the Trustee's argument that prior structures
16 implemented were insufficient is irrelevant. Never before has
17 an independent board been installed in this company, and never
18 before has Mr. Dondero been removed completely from a position
19 of authority.

20 It is also telling that two of the litigants who have had
21 significant dealings with the Debtor and its management over
22 the last years -- the Redeemer Committee and ACIS, both
23 members of the Committee -- oppose the U.S. Trustee's motion
24 and believe that the current structure is in the best
25 interests of the Debtor's stakeholders.

1 I would like to turn, Your Honor, to the last of the U.S.
2 Trustee's arguments with respect to the fiduciary duty, which
3 the Trustee says constitutes other cause because of some
4 apparent conflict. First, Your Honor, I would mention that
5 there is nothing in the pleadings regarding the fiduciary duty
6 issue. When --

7 MS. LAMBERT: Your Honor, I object.

8 MR. POMERANTZ: Excuse me.

9 MS. LAMBERT: I couldn't put it in the pleadings
10 because it didn't exist.

11 THE COURT: I'm not sure --

12 MR. POMERANTZ: Your Honor?

13 THE COURT: -- I understand the objection. He's
14 about to say what was in your pleadings.

15 MS. LAMBERT: Right. And he's saying that I should
16 have put it in my pleading, which was filed before there was
17 any management agreement, at a time when it looked like there
18 wasn't going to be a management agreement.

19 MR. POMERANTZ: Your Honor, then --

20 THE COURT: Well, --

21 MR. POMERANTZ: All right.

22 THE COURT: -- clarify. You were about to say
23 there's nothing about --

24 MR. POMERANTZ: Yes.

25 THE COURT: -- breach of fiduciary duty in --

1 MR. POMERANTZ: I was going to say, --

2 THE COURT: -- the motion?

3 MR. POMERANTZ: -- Your Honor, that the motion that
4 was filed was before the Committee settlement.

5 THE COURT: Right.

6 MR. POMERANTZ: The Committee settlement happened.
7 We opposed. In our position, we addressed the fiduciary duty
8 issue head-on. The U.S. Trustee chose not to file a reply.

9 THE COURT: Okay.

10 MR. POMERANTZ: The U.S. Trustee stood up and, Your
11 Honor, cited case law on what Delaware fiduciary duty is.
12 There is nothing in their pleadings. And the argument that
13 she -- the Trustee could not --

14 MS. LAMBERT: I again object.

15 MR. POMERANTZ: -- put that in the pleading --

16 MS. LAMBERT: The reason that they raised this in
17 their response is that, and they said in there, we anticipate
18 the U.S. Trustee will raise it, it's because I raised it at
19 the hearing on the management.

20 MR. POMERANTZ: Well, Your --

21 THE COURT: Okay. I overrule --

22 MR. POMERANTZ: Your Honor?

23 THE COURT: -- that objection. You can make your
24 argument.

25 MR. POMERANTZ: I will move on. It -- my only point

1 was there was a little bit of trial by ambush here, with
2 counsel standing up at the podium, talking about case law and
3 talking about Delaware fiduciary duties. That's not in the
4 record. But I'll move on, Your Honor.

5 Second, this issue was raised at the January 9th hearing
6 and Your Honor ruled that there was no conflict. So, in some
7 sense, it is res judicata to the issues that are here.

8 And most importantly, Your Honor, the Committee, as you
9 know, has been extremely active in this case, is represented
10 by competent professionals. There is no way that the
11 Committee would have allowed management to come in if they
12 believed that management would be subject to competing duties.

13 Nevertheless, Your Honor, I'd like to address the argument
14 head-on. The Debtor is a limited partnership. The limited
15 partnership is managed by Strand, which is the general
16 partner. And the management of the Debtor is carried out by a
17 board that has been installed at Strand at the general
18 partnership level.

19 When the Debtor filed its bankruptcy, its managers at
20 Strand owed a fiduciary duty to the bankruptcy estate. The
21 managers owe a fiduciary duty to the bankruptcy estate in the
22 same way that a trustee, if appointed, would owe a fiduciary
23 duty to the bankruptcy estate. And the argument that Jim
24 Dondero is an equity holder at Strand and somehow creates a
25 conflict is a red herring. Strand is a single-purpose entity.

1 All it does is manage the Debtor. Strand has an obligation to
2 manage the Debtor appropriately. If the board at Strand is
3 fulfilling its duties to the Debtor, it's fulfilling Strand's
4 duties to the Debtor.

5 So, in other words, Your Honor, what the board does that
6 is in honor of its fiduciary duties: makes sure Strand is
7 complying with its obligations and makes sure Strand is not
8 subject to any claims that they have not fulfilled their
9 obligations under the management agreement.

10 This was the situation in a case before Judge Isgur in
11 2014 in the *Houston Regional Sports* case, which we cite in our
12 papers at 505 B.R. 468. The debtor, a limited partnership,
13 was managed by a general partnership. The partners, ultimate
14 partners, disagreed in how the company should proceed, and the
15 company found itself subject to an involuntary bankruptcy
16 proceeding. One of the partners, the Houston Astros -- I
17 guess this is rag on Houston Astros week -- was --

18 THE COURT: Don't mention that, please.

19 MR. POMERANTZ: -- appointed a board member to the
20 general partner and argued to Judge Isgur that that board
21 member had duties to it as the general partner and that
22 because of that, and since its consent was needed for any
23 restructuring, that any Chapter 11 would have to fail.

24 Judge Isgur said no, no, no. A general partner, a board
25 member of a general partner, regardless of that it was

1 appointed by the Houston Astros, who may have different views,
2 had the obligations to the estate and to fulfill its the
3 obligations to the estate, and that if they did anything in
4 violation of that, it would create liability.

5 So that Judge Isgur directly challenged and opposed the
6 conclusion that there's somehow a different fiduciary duty.
7 Now, he did sort of, in a footnote, say that he wasn't finally
8 determining fiduciary duty issues, but he did not find any
9 conflict.

10 The same is true here. And the argument that there is
11 somehow this conflict, somehow these competing interests,
12 somehow that the board may act in favor of Jim Dondero that's
13 not in favor the board and that's different than a trustee,
14 that is essentially a red herring. It's hornbook law. When
15 an estate files bankruptcy, its managers owe a fiduciary duty
16 to the estate.

17 And who do we have on our board? We have a former judge.
18 What better to have on a board, considering what its fiduciary
19 duties are, as a former judge, a former bankruptcy judge who
20 is well-familiar with what fiduciary duties exist and to whom
21 they exist?

22 So, Your Honor, we don't think there's a conflict, and
23 there's certainly not a conflict that would rise to the level
24 of "other cause" that the Trustee is trying to fit and
25 shoehorn its motion for appointment of a trustee.

1 In conclusion, Your Honor, the Trustee has not carried its
2 burden of establishing that cause exists for the appointment
3 of a Chapter 11 Trustee, that "other cause" exists, or that it
4 is in the best interest of parties in interest. The corporate
5 governance structure approved by the Court renders moot the
6 concerns about the prepetition conduct and Debtor's prior
7 management, and there's nothing been adduced through the
8 testimony to lead to the conclusion that any of the members of
9 the -- employees of the Debtor are not doing what they're
10 supposed to be doing, reporting to the independent board, and
11 that the independent board cannot fulfill their duties.

12 Appointment of a Chapter 11 trustee would adversely impact
13 the Debtor's operations, jeopardize restructuring efforts.
14 And for all of these reasons, Your Honor, the Debtor requests
15 that the Court deny the Trustee's motion.

16 THE COURT: All right. Mr. Twomey, anything from
17 you?

18 CLOSING ARGUMENT ON BEHALF OF THE OFFICIAL COMMITTEE

19 MR. TWOMEY: Thank you, Your Honor. I will be brief,
20 but I do want to provide the Committee's perspective on this,
21 given in particular 1104's focus on stakeholders.

22 As Your Honor is aware, the Committee represents the
23 primary economic stakeholders in this case. Even more than
24 most cases, the unsecured creditors in this case comprise the
25 vast majority of creditors, given how little secured debt

1 there is. And Your Honor, the Committee which represents
2 those unsecured creditors strongly disputes the notion that
3 appointment of a Chapter 11 trustee would be in the best
4 interest of stakeholders, for many of the same reasons as Mr.
5 Clemente discussed at the prior hearing in support of the
6 settlement.

7 The Committee believes the settlement approved by this
8 Court a week and a half ago, and the corporate governance
9 structures embodied therein, provide the Debtor with the best
10 opportunity to maximize value in this case.

11 As described earlier, the Committee believes that the
12 board members are highly qualified, with complementary
13 skillsets. It's hard to imagine that there's a single trustee
14 out there that could match their combined experience and
15 expertise.

16 Any Chapter 11 trustee would face the same challenges that
17 the board is facing, and those challenges just wouldn't
18 magically go away by appointment of a trustee.

19 In addition, appointment of a Chapter 11 trustee at this
20 point would lead to more delay getting up to speed, additional
21 cost for the trustee trying to get up to speed in the case,
22 and it obviously would basically undo the settlement that the
23 Committee and the Debtor spent so much time trying to pull
24 together.

25 As Your Honor has heard today, the board clearly has

1 rolled up their sleeves. They're becoming heavily involved in
2 the case. And the Committee also has information and
3 oversight rights and standing to pursue certain claims under
4 the settlement that provides an additional check on all of
5 this process going forward.

6 So, Your Honor, in light of the foregoing, especially the
7 settlement that Your Honor approved a little over ten days
8 ago, the U.S. Trustee simply can't meet its burden of showing,
9 under these circumstances, that cause warrants appointment of
10 a Chapter 11 trustee or that appointment of a Chapter 11
11 trustee would be in the best interest of stakeholders.

12 So, Your Honor, the Committee respectfully requests that
13 the motion be denied.

14 THE COURT: Counsel for UBS, did you have something?

15 CLOSING ARGUMENT ON BEHALF OF THE UBS PARTIES

16 MS. POSIN: Yes, Your Honor. Thank you, Your Honor.
17 Kim Posin of Latham & Watkins, counsel for creditors and
18 Unsecured Creditors' Committee members, UBS Securities, LLC,
19 and UBS AG London Branch.

20 Your Honor, just very briefly, I wanted to say that UBS
21 has a very substantial claim against Debtors and this estate.
22 We believe our claim to be in excess of \$1 billion. And that
23 results from a November 2019 judgment in the New York Supreme
24 -- or Superior Court -- Supreme Court, excuse me, on a breach
25 of contract claim.

1 So, as a very significant creditor of this estate, we have
2 spent a substantial amount of time with the Committee and with
3 Committee counsel over the last few weeks creating this new
4 governance structure that the Court has put into place in the
5 last week and a half.

6 We are hopeful and we fully expect that, now the new
7 governance is in place, that the Debtors will be able to
8 proceed with a path forward and avoid the distractions and,
9 you know, influences that may have hindered their decision-
10 making processes to date or before the new governance
11 structure was put into place.

12 While we appreciate the U.S. Trustee's concerns with the
13 pre-existing management structure, we believe that that broken
14 structure has now been fixed. And unless and until the new
15 governance structure proves to be unworkable or detrimental to
16 the Debtor's estate or to its creditors in some fashion, the
17 -- there is no need and it would be inappropriate to appoint a
18 Chapter 11 trustee.

19 In fact, we agree with Mr. Twomey and Mr. Pomerantz that
20 the appointment of a Chapter 11 trustee at this point in these
21 cases would be detrimental, it would be disruptive, it would
22 cause delays, and there's no assurances that any Chapter 11
23 trustee that could be appointed would be -- would have
24 anywhere near the qualifications and capabilities of the new
25 board members.

1 So, Your Honor, we believe it is in the best interests of
2 all creditors, not just the numbers of this Committee, to deny
3 the motion, to allow the new governance structure to proceed,
4 and to give the board members an opportunity to manage the
5 Debtor's decision-making processes to preserve value and
6 hopefully to reach a resolution of this case in an appropriate
7 manner as efficiently and effectively as possible.

8 THE COURT: All right. Thank you.

9 MS. POSIN: Thank you.

10 THE COURT: Anyone else? Any rebuttal? All right.
11 We'll take a 15-minute break. It's 12:02. We'll come back at
12 12:17 and I'll give you a ruling.

13 THE CLERK: All rise.

14 (A recess ensued from 12:02 p.m. until 12:34 p.m.)

15 THE COURT: All right. We are going back on the
16 record in the Highland case. This is the Court's ruling on
17 the United States Trustee's motion for appointment of a
18 trustee.

19 The Court has bankruptcy subject matter jurisdiction
20 pursuant to 28 U.S.C. Section 1334. This is a statutory core
21 proceeding pursuant to 28 U.S.C. § 157. The Court concludes
22 it has constitutional authority to make a final ruling in this
23 contested matter. And the Bankruptcy Code section that
24 governs the merits of the motion is Section 1104.

25 Based on the totality of the evidence, the Court believes

1 -- well, let me back up. Based on case authority, the Court
2 believes the legal standard is that there must be clear and
3 convincing evidence establishing the need for a trustee. But
4 even if I am misremembering the procedural history of *Cajun*
5 *Electric*, and even if the Fifth Circuit later, on a
6 rehearing, adopted a preponderance of the evidence standard
7 that had been suggested in a prior dissent, I would still find
8 here, under a preponderance of the evidence standard, that
9 there are not grounds under Section 1104(a)(1) or (2) for the
10 appointment of a trustee in this case. So the motion of the
11 U.S. Trustee is denied.

12 I frequently say in court hearings, some folks know, that
13 facts matter. It's kind of a mantra of mine. It seems like a
14 very obvious statement, I know. But facts, evidence, really
15 does matter. And here are some of the facts involved that
16 are, frankly, quite atypical compared to what bankruptcy
17 courts frequently see with trustee motions, motions to appoint
18 a Chapter 11 trustee.

19 First, as I've noted a couple of times before, we have a
20 well-constituted and well-represented Official Unsecured
21 Creditors' Committee. Three of the four members of the
22 Committee have extensive multi-year experience litigating with
23 this debtor. They are collectively owed many millions of
24 dollars. Actually, one Committee member, UBS, represented
25 today it thinks it's owed a billion dollars.

1 They are, beyond any doubt, sophisticated, well-
2 represented parties. And with all of their background and
3 breadth of knowledge about this debtor and its now-former
4 control person, Jim Dondero, with all of their history of
5 distrust and acrimony, they do not at this juncture support a
6 Chapter 11 trustee.

7 In fact, as we all know, the Committee and its
8 professionals worked mightily for several weeks with the
9 Debtor's professionals to come up with a new corporate
10 governance structure that, in their reasonable view, could
11 serve as a much more favorable vehicle than a Chapter 11
12 trustee.

13 They, as we all know, negotiated and chose three new
14 independent board members of the general partner of the
15 Debtor, Strand, which general partner, of course, ultimately
16 controls the Debtor and has fiduciary duties to the Debtor as
17 a general partner. And this new board not only has all the
18 attributes, benefits of independence and an understanding of
19 fiduciary duties, the Court has issued an order defining its
20 role as such, but, in this Court's opinion, this new board has
21 at least two distinct advantages over a Chapter 11 trustee.

22 First, with no offense to any of the Chapter 11 trustee
23 candidates out there that might be able to serve, the three
24 board members bring a fabulous skillset to the process. A
25 retired bankruptcy judge, an individual with tremendous high-

1 yield investment and portfolio management experience, and an
2 individual with significant experience as an independent
3 director in difficult, large restructuring cases.

4 Second, the Debtor and the Committee professionals believe
5 that a new board, with the ability to retain or terminate
6 employees as they deem fit, would be less disruptive overall
7 and could potentially preserve enterprise value better than
8 the more drastic mechanism of a Chapter 11 trustee.

9 Moreover, in connection with this overhaul of governance,
10 corporate governance, the UCC, the Official Unsecured
11 Creditors' Committee, also negotiated mechanisms for
12 transparency in the Debtor's operation of its business, and
13 the Committee, Official Unsecured Creditors' Committee, was
14 given standing to pursue certain actions.

15 So, back to my mantra. The bottom line is facts matter,
16 and the facts are that we have sophisticated, well-heeled
17 economic stakeholders who have worked mightily to essentially
18 overhaul the entire corporate governance as to this debtor.
19 They have sanitized the problems.

20 Again, some of these Unsecured Creditors' Committee have a
21 history with this debtor. They have a history with putting
22 checks and balances in place and those not ideally working.
23 It is with this background that they have worked mightily for
24 several weeks with Debtor's professionals to come up with this
25 new corporate governance structure that, in their reasonable

1 view, provides the appropriate oversight and control that the
2 mechanisms perhaps in prior situations did not provide.

3 The U.S. Trustee relies on the strict wording of Section
4 1104 in urging its motion. Specifically, the wording that,
5 quote, The Court shall order the appointment of a trustee for
6 cause, including fraud, dishonesty, incompetence, or gross
7 [mis]management of the affairs of the debtor by current
8 management, either before or after the commencement of the
9 case, or similar cause.

10 The Court believes this statutory provision is aimed at
11 problems or malfeasance with current management. All of this
12 has been fixed. It's a very different scenario than when this
13 case was filed. If there are problems with remaining
14 employees, like in-house lawyers or treasurers or others, the
15 board has the ability to terminate these individuals. But I
16 had no evidence that there are specific problems with any
17 particular remaining individuals.

18 Simply because I or another Court may have made statements
19 in prior rulings about unreliable testimony or may have found
20 evidence of fraudulent transfers is not a problem that taints
21 this completely-overhauled management structure. Again, this
22 was a complete overhaul. The facts and timing are such today
23 that Mr. Dondero is no longer current management. Current
24 management are the words used in Section 1104.

25 This case is no different than numerous other large

1 Chapter 11 cases when, often before the petition date but
2 sometimes after, old board members resign, new board members
3 are brought in, CEOs are ousted. It's common. It avoids the
4 possible need for a Chapter 11 trustee. It brings integrity
5 to the process and hopefully preserves the ability to
6 reorganize. Creditors sometimes demand it. The debtor's
7 professionals sometimes suggest it. Sometimes, current
8 management resigns before being told they'll need to. This is
9 one of the realities with distressed companies.

10 A new board and new management are not only a pragmatic
11 solution, but this Court concludes are totally within the
12 parameters and the provisions and overall structure of Chapter
13 11.

14 At bottom, the professionals for the Debtor and the
15 Official Unsecured Creditors' Committee have fixed the
16 problem, the problems with the current management that existed
17 as of the petition date. I approved the new governance
18 structure pursuant to Sections 363 and 105, and now we don't
19 have the cause that 1104 refers to.

20 Moreover, I have no evidence that a trustee is in the best
21 interest of parties pursuant to Section 1104(a)(2). So, no
22 cause for a Chapter 11 trustee.

23 I reserve the right to supplement or amend in a form of
24 order, but I will ask Debtor's counsel to submit a form of
25 order.

1 All right. Well, turning to the remaining business, I
2 know we had two or three other motions, and there were no
3 objections to those motions.

4 MR. LITVAK: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. LITVAK: Max Litvak; Pachulski Stang Ziehl &
7 Jones; on behalf of the Debtor.

8 THE COURT: Okay.

9 MR. LITVAK: I'm here to present those last three
10 items on the agenda, which are 7, 8, and 9.

11 THE COURT: All right.

12 MR. LITVAK: And Your Honor, if I may suggest that we
13 go in reverse order.

14 THE COURT: All right. I'm pulling out my agenda to
15 the appropriate --

16 MR. LITVAK: Yes, Your Honor. Number 9 is the Mercer
17 retention application.

18 THE COURT: Okay. That is the compensation expert
19 professional, correct?

20 MR. LITVAK: Exactly right, Your Honor. We have no
21 objections to this application, and Mercer has already, some
22 time ago, actually, commenced rendering services for -- to the
23 Debtor with respect to compensation issues.

24 THE COURT: All right. Again, we did not have any
25 written objection. Anybody want to say anything about this

1 application?

2 All right. Well, notice has been proper. We have no
3 objections. They appear to be well-qualified. I approve this
4 under 327 and 328 of the Bankruptcy Code.

5 MR. LITVAK: Your Honor, would you like to see a
6 proposed form of order, or -- it is essentially the same one
7 that we filed with the application, except we have updated the
8 caption because the application was actually originally filed
9 in Delaware.

10 THE COURT: All right. No. You may simply upload it
11 electronically, please.

12 MR. LITVAK: Yes, Your Honor. Will do. Thank you.

13 Moving to Number 8 on the agenda, Your Honor, is the bonus
14 motion. It is the Debtor's motion to pay our ordinary course
15 obligations under employee bonus plans. And Your Honor, there
16 are no pending objections with respect to this motion. The
17 U.S. Trustee has filed no objection. We did negotiate
18 resolution with the Creditors' Committee that I wanted to tell
19 you about.

20 THE COURT: Okay.

21 MR. LITVAK: We have agreed, for purposes of today,
22 to exclude four statutory insiders.

23 THE COURT: All right.

24 MR. LITVAK: So, from our perspective, there are no
25 -- no insiders who are covered by the motion. Or covered with

1 respect to the proposed order that we'd be submitting to you
2 today, which has been reviewed and approved by the Creditors'
3 Committee. There are a few others that are being pulled out
4 as well.

5 But the net result of it, Your Honor, is that we are
6 asking for approval of ordinary course plans in an amount
7 that's substantially reduced from what was initially asked
8 for, the initial request for relief.

9 Specifically, Your Honor, the order for relief here today
10 is with respect to what we've called an annual bonus plan and
11 also what we've called a -- as a deferred bonus plan. The
12 annual bonus plan was actually approved almost a year ago, in
13 February 2019. It relates to employee performance in 2018
14 calendar year. As I mentioned, it's all ordinary course. But
15 the payments are in installments. So it's deferred
16 compensation, which actually is a substantial portion of
17 employee compensation in the industry as well as for this
18 Debtor. Employees agree to take reduced salaries with the
19 expectation that they're going to be compensated substantially
20 with respect to bonuses.

21 And that is, in fact, what happened here, and what has
22 happened in the ordinary course. And in February 2019, the
23 company approved bonuses for employees for their performance
24 in 2018, but employees will only be entitled to receive those
25 bonuses to the extent they continue to be employed with the

1 Debtor on deferred payment dates. And there are four
2 installments. Two were made prepetition and two remain to be
3 paid. And what we're asking for today, Your Honor, is for
4 your authority to continue to make those payments in the
5 ordinary course.

6 So the third installment comes due on February, in
7 February 2020, and then the fourth installment comes due in
8 August 2020. So this year, next month, and then a few months
9 down the road.

10 The deferred bonus plan goes back even further. It was
11 approved in February 2017 for the 2016 calendar year. And it,
12 in the ordinary course, is deferred 39 months, and those
13 payments are actually tied in with certain publicly-traded
14 allocated -- allocated publicly-traded stock. So an employee
15 is awarded a certain amount, and that value is represented in
16 publicly-traded stock, which is actually set aside, held by
17 the company for the benefit of that employee.

18 If the employee sticks around for 39 months, then on the
19 39th month there will be a vesting. And the next vesting will
20 be in May, May 2020 for the February 2017 awards.

21 And the stock in many cases has increased in value, just
22 as the stock market has increased in value, generally
23 speaking. So the amounts that were awarded in February 2017
24 have actually increased in value, and the employees would be
25 expecting that, that if they're continuing to perform and do

1 their job and they're still employed on that date of when
2 there is a vesting, that they would be entitled to that stock
3 at the value -- at the market value of that stock on the
4 vesting date.

5 Your Honor, another important thing that's significant
6 about the Debtor's bonus plans is that they are not
7 guaranteed. Even -- even when they're awarded. An employee
8 has to continue to perform at a very high level or they can be
9 terminated. Frankly, an employee can continue to perform at a
10 high level and still be terminated. So someone can be
11 terminated without cause, and then they will not be entitled
12 to the bonus, unless they're there on the actual payment date.
13 So, come February 28th, the employees that are there, the
14 board will decide which employees are there. Presumably, it's
15 the bulk of the employees. Then those employees will be
16 entitled to what they have been awarded prepetition. And
17 that's what we're asking the Court to approve today.

18 We're not asking Your Honor to approve anything with
19 respect to 2019 bonuses yet. Frankly, the board is still
20 getting its arms around that and making determinations as to
21 what bonuses will be payable.

22 Your Honor, the board, the independent board, has closely
23 evaluated the Debtor's employee compensation structure and
24 reached a decision that most aspects of the bonus should be
25 approved, to avoid potentially catastrophic consequences for

1 this estate.

2 The board has considered input from the Creditors'
3 Committee. The board has decided to make certain
4 modifications to the bonus plans as they were proposed in the
5 initial filing. So the initial motion that we filed was
6 actually filed in Delaware, I believe on November 26, 2019.
7 And the matter was initially set for hearing on December 17th
8 in Delaware. Then venue was transferred, and we have
9 subsequently renoticed the hearing a couple of times to today,
10 ultimately.

11 The bonus amounts -- as I mentioned, Your Honor, the board
12 has decided with respect to the modifications to exclude the
13 four statutory insiders as well as a few others, and the board
14 intends to address the compensation of those employees
15 separately.

16 The bonus amounts that are requested today, Your Honor,
17 after reductions, now aggregate \$1.8 million in February, \$1.2
18 million in May, and \$1.7 million in August, for a grand total
19 of approximately \$4.6 million, Your Honor. That would cover
20 approximately 40 employees.

21 In the original motion, we actually asked for over \$10
22 million, so this is more than cutting it in half. The board
23 has had the benefit of a compensation expert, which is Mercer,
24 who has confirmed that the Debtor's bonus, bonus plans, are
25 well within market, and that if such bonuses are not paid, the

1 Debtor's employees would be severely undercompensated.

2 The bottom line, Your Honor, is that the board has
3 concluded, in its sound business judgment, that continuing to
4 honor the Debtor's ordinary course bonus obligations, as
5 modified, to employees is critical. The failure to do so is
6 likely to cause an employee exodus and will adversely
7 prejudice the Debtor's efforts to maximize value for all
8 constituents.

9 Your Honor, we're asking you to approve the payments, the
10 bonus payments, under Sections 105 and 363 of the Bankruptcy
11 Code as a sound exercise of business judgment. Also, under
12 Section 1107 of the Bankruptcy Code in that the Debtor is
13 exercising its fiduciary duty to try and maximize value,
14 consistent with a couple opinions that we've run across in
15 this district from Judge Lynn.

16 Most recently, Your Honor, there is a decision called *In*
17 *re Tusa* -- T-U-S-A hyphen -- *Expo Holdings*, 2008 Bankr. LEXIS
18 2852. It's Judge Lynn's opinion from 2008 where he clarifies
19 an earlier opinion, *In re CoServ*, 273 B.R. 487. He basically
20 reaches the conclusion, Your Honor, that, under Section 1107,
21 the Debtor has a fiduciary duty to maximize value, and
22 maintaining relationships with employees is a necessity.

23 So, under the necessity of payment doctrine, we would ask
24 Your Honor to approve these payments. Even though they were
25 approved prepetition, they are coming due postpetition. We

1 would ask the Court to approve that.

2 Further, Your Honor, because we have carved out insiders,
3 we do not believe that Sections 503(c)(1) or (c)(2) of the
4 Bankruptcy Code apply at all to what we're asking for today,
5 and that 503(c)(3) also doesn't apply. Even though that
6 section is not limited to insiders, we don't think it applies
7 because this is an ordinary course program and 503(c)(3) talks
8 about outside the ordinary course.

9 Here, the bonus plans are entirely consistent with the
10 ordinary course operations of the Debtor and completely
11 consistent with prepetition practice.

12 Your Honor, in addition to the bonus plans, just as a
13 minor point, there is what is called a dividend reinvestment
14 plan where the Debtor will contribute -- gross up, effectively
15 -- an employee contribution into an investment fund, which is
16 actually with an affiliate called NexPoint. So, basically,
17 employees of the Debtor are given the opportunity to invest in
18 a couple of mutual funds that are run by affiliates. If they
19 choose to do that, then the Debtor will gross up the value of
20 those employees' investments as an employee benefit. So it's
21 really just another form of compensation to employees. It's a
22 15 percent gross-up. And with respect to possible prepetition
23 obligations under the DRIP, they're very nominal. Less than
24 \$30,000, if any. So we are asking approval in the motion up
25 to \$30,000, and then authority to continue the program in the

1 ordinary course.

2 The Debtor also has certain of its own funds invested in
3 these mutual funds, and those mutual funds throw off
4 dividends. And the Debtor in the ordinary course reinvests
5 the dividends in those funds. And the Debtor is asking for
6 authority to continue to do that.

7 These are not huge numbers, Your Honor, but it's -- it's
8 maybe \$10,000 to \$20,000 a month.

9 For these reasons, Your Honor, the Debtor would urge you
10 to approve the motion. If you need any further factual
11 support, I'm prepared to offer it, but the motions are
12 uncontested, as far as we know.

13 THE COURT: All right.

14 MR. LITVAK: Or the motion is.

15 THE COURT: All right. Well, I certainly didn't see
16 written objections. Do we have comments from, first, the
17 Committee? Are you willing to accept these facts as
18 unrefuted, or do you have a desire to examine witnesses on
19 this?

20 MR. TWOMEY: Absolutely not, Your Honor. Just wanted
21 to confirm for Your Honor that the Committee did originally
22 have issues with the scope of the relief requested in the
23 motion as it was filed back in November, but the Committee and
24 its advisors have worked with the Debtor, primarily through
25 their directors and advisors, to narrow the scope of the

1 relief requested to the point where it is, in fact, acceptable
2 to the Committee, as outlined by Mr. Litvak. So, the
3 Committee is now comfortable with the narrowed relief as just
4 outlined and is comfortable with the Court approving that
5 requested relief.

6 THE COURT: All right. Well, we appreciate your role
7 --

8 MR. TWOMEY: Thank you, Your Honor.

9 THE COURT: -- in negotiating some narrowing of the
10 relief.

11 Anyone else? U.S. Trustee or anyone else have issues?
12 All right. Ms. Lambert, you had something?

13 MS. LAMBERT: No. No issues, Your Honor. It is our
14 understanding that any new bonus program will be subject to a
15 separate motion.

16 THE COURT: All right. I think that's what I
17 inferred, but maybe you should clarify on the record.

18 MR. LITVAK: Your Honor, I would like to clarify
19 that, because we -- we actually have not reached that
20 determination. We are evaluating what the bonus plan will
21 look like, and then we'll confer with the board, do some
22 research of our own, and make that determination. But if it
23 would make Ms. Lambert happy, I'm sure we could agree to
24 communicate to her our decision.

25 THE COURT: All right. So think what I'm hearing is

1 you're reserving the right to take the position that any new
2 bonus program would be ordinary course of business and
3 wouldn't need court approval?

4 MR. LITVAK: Yes, Your Honor.

5 THE COURT: All right. Well, then I am going to
6 accept you at your word made on the record that you will
7 communicate, you'll give notice to the U.S. Trustee if any new
8 bonus plan is -- the Debtor desires to implement one and takes
9 the position it doesn't need court approval, and then if she
10 disagrees or the Committee disagrees, someone can file a
11 motion to, whatever the motion would be worded, to have the
12 Court weigh in on the subject.

13 MR. LITVAK: Yes, ma'am.

14 THE COURT: Okay. All right.

15 MR. LITVAK: Your Honor, I do have a proposed form of
16 order, along with a redline against the original form of order
17 that we had filed, if you'd care to see that with respect to
18 the bonus motions.

19 THE COURT: You --

20 MR. LITVAK: If I may approach.

21 THE COURT: You can approach on that.

22 (Pause.)

23 THE COURT: Thank you.

24 MR. LITVAK: The redline primarily reflects changes
25 that were requested by the Creditors' Committee, Your Honor.

1 THE COURT: Okay.

2 MR. LITVAK: And clarifying that the motion is
3 granted as presented at the hearing today minus the few
4 employees, insiders that I had mentioned.

5 THE COURT: All right. Well, the Court is going to
6 approve the bonus motion as narrowed here on the record today.
7 The Court believes that, based on the unrefuted facts, there's
8 a sound exercise of business judgment reflected in this
9 proposal, and that it would certainly be a preservation of
10 value by keeping these bonuses in place that were negotiated
11 or put in place prepetition. So the Court thinks this form of
12 order looks fine and the motion is hereby approved.

13 MR. LITVAK: Thank you very much, Your Honor.

14 With that, I'll move to the last item on the agenda, which
15 is Number 7, the cash management motion, which was filed some
16 time ago as a first-day filing. Judge Sontchi did enter an
17 interim order. We've been operating under the interim order
18 ever since. It's been over three months now.

19 And at the last hearing, we were prepared to present the
20 final order, but the U.S. Trustee, as I understand it, stood
21 up and made a speaking objection to the effect that the Debtor
22 should be required to bond a couple of brokerage accounts.

23 So the Debtor has two brokerage accounts that are at
24 issue. There is a Jefferies account and then there's an
25 account at Maxim. And there is a significant amount in terms

1 of value of securities there. At Jefferies, we're looking at
2 in the range of \$80 million, and at Maxim \$30 million. At
3 Jefferies, there is a margin balance, so basically a
4 prepetition secured claim by Jefferies against the estate of
5 \$30 million.

6 We have gone to these brokers to ask them if they would be
7 willing to participate in a bond or surety relationship of
8 some sort with a third party. We have also gone out and
9 obtained one quote so far with respect to how much that would
10 cost. The one quote was in the range of \$200,000 or \$300,000.

11 The board -- I've discussed this with the board. It is
12 the board's view that spending that money to buy a surety bond
13 is not a good use of the estate's limited resources. But
14 further, as a practical matter, Your Honor, we have gone to
15 Jefferies, and they are unwilling to enter into surety -- they
16 would be required to sign an indemnity agreement with a
17 surety. So if a surety is ever called upon to pay because the
18 securities that are supposed to be there for some reason are
19 not there, then Jefferies would be obligated to reimburse the
20 surety. That's the indemnity. And further, Jefferies would
21 be required to become an approved depository here. They're
22 not willing to do that.

23 So, Your Honor, I think we're at the position, from the
24 Debtor's perspective, that we would ask you to, to the extent
25 that the U.S. Trustee still has an objection, that we would

1 ask you to approve a waiver of the 345 requirement for cause,
2 the cause being that the Debtor does not believe that this is
3 a good use of estate resources. The Debtor is in the business
4 of doing just this, which is money management, investing in
5 securities. This is not a retail business that, on the side,
6 is trying to make some money off securities. This is what the
7 Debtor does. So it is a very unique set of facts here.

8 The Debtor also doesn't have the ability to move the
9 accounts, particularly the one at Jefferies, because Jefferies
10 has a significant margin balance which secures them. So
11 they're not going to let us move the money out. So we're kind
12 of stuck.

13 And it has never been an issue before, Your Honor.
14 Jefferies, incidentally, has, we found out from their website
15 -- it is obviously a highly-regulated entity, as is Maxim --
16 Jefferies has significant insurance in place. Beyond the SIPC
17 coverage for securities accounts, which is tapped at \$500,000,
18 Jefferies has another -- an excess policy of \$24-1/2 million
19 on top of that, and maybe more.

20 So, Your Honor, from the Debtor's perspective, we would
21 ask the Court to give us the waiver here under the unique
22 circumstances here of 345 and that the Debtor be permitted to
23 continue to maintain those two brokerage accounts in the
24 ordinary course.

25 THE COURT: All right. Others wish to be heard?

1 MS. LAMBERT: So, to be clear, Your Honor, the United
2 States Trustee didn't ask them to bond the amounts. The U.S.
3 Trustee asked that the insurance parallel the specific
4 insurance, or the bonding, parallel that, so that if the
5 actual stocks are not there, there's something to go against,
6 and so, therefore, making it parallel to the same kind of
7 posting of collateral with the Fed in case an institution
8 fails.

9 So, it is also possible to get insurance, just as
10 Jefferies has, for the Debtor. And they're still outstanding
11 on several requests. But if Jefferies won't sign the
12 indemnification agreement, they won't sign it. So that's the
13 issue. I mean, could they get insurance separately? I don't
14 know. They haven't tried. But I will want the Court -- I
15 mean, like Judge Houser will never ever grant this kind of
16 relief. I want the Court to be aware that the estate is at
17 risk if there's a problem at Jefferies or if there's a problem
18 at the other institution.

19 THE COURT: All right. Anyone else wish to weigh in?
20 And I'm going to go back to my mantra. Facts matter. I'm
21 not sure Judge Houser has ever had this type of entity. You
22 know, it's not a retail store, it's not a restaurant, it's not
23 an apartment complex. It's a debtor whose reason for existing
24 is money management and investing. Not that it doesn't ever
25 make mistakes, but, again, I think the unique circumstances of

1 this debtor in this case merit a waiver of the Section 345(b)
2 requirement.

3 I think it would not be an exercise of reasonable
4 judgment, under the facts I have before me, to require, you
5 know, a \$200,000 or \$300,000 cost surety bond. So I grant the
6 motion and grant the waiver.

7 And as with any order, I won't require this blue sky
8 language, but certainly if, you know, Jefferies and Maxim, you
9 know, it's well publicized, they go into distress themselves
10 and we need to revisit this ruling, the Court would certainly
11 be willing to revisit the issue if the world changes, and I
12 think that's a good thing to do.

13 All right. Before we end matters on this motion, I left
14 my notes on my desk, but I had in my brain that at one time
15 there were four stray issues that the Committee had. And I
16 just want to double-check these four stray issues were
17 resolved with the settlement. I know there was an issue with
18 regard to a couple, I mean, well, four recurring commitments
19 of the Debtor. One regarding that life settlement entity,
20 where the premium was something like a million dollars a month
21 that Debtor was paying. There was another, you know,
22 Singapore office and a Korea investment company. And I can't
23 remember, I think the other was just general overhead
24 provided. Have those issues been resolved, wrapped up in the
25 settlement? I did not go back and double-check the

1 settlement.

2 MR. POMERANTZ: Your Honor, Jeff Pomerantz. We had
3 interim approval under the cash management to do certain
4 things.

5 THE COURT: Uh-huh.

6 MR. POMERANTZ: But Your Honor is correct that any
7 continued intercompany cash management issues were covered by
8 the protocols. So that is where we will be seeking authority
9 to do any other type of intercompany transactions. It will
10 not be pursuant to this cash management order, but it was
11 important for this cash management order to become final
12 because it did govern the case before the case got transferred
13 here and we took action as we were permitted to do under the
14 interim order.

15 THE COURT: Okay. So without asking you to recite
16 every single sentence of the settlement motion and order,
17 there's some sort of oversight and approval mechanism for
18 those payments, those obligations?

19 MR. POMERANTZ: Correct. Correct. Correct.
20 Intercompany transactions, related-party transactions, is a --

21 THE COURT: Just that general umbrella?

22 MR. POMERANTZ: -- is the general umbrella.

23 THE COURT: Okay.

24 MR. POMERANTZ: And there's a certain process and
25 procedure how we would get approval from that, giving

1 visibility to the Creditors' Committee.

2 THE COURT: Okay. Counsel, did you want to add
3 anything?

4 MR. TWOMEY: Just to confirm that's correct, Your
5 Honor. We had an operating protocol that was approved as part
6 of the settlement. And so, pursuant to that, these types of
7 transactions will be, you know, for example, run by the
8 Committee, and only if there are issues will we have to come
9 back to the Court.

10 THE COURT: The general umbrella --

11 MR. TWOMEY: Yes.

12 THE COURT: -- of intercompany transactions? All
13 right. I bet Retired Judge Nelms' ears perked up when he
14 heard about life settlements. If you don't understand that
15 comment, I'm sure he'll love to talk to you about *Life*
16 *Partners*.

17 MR. POMERANTZ: Yes. We've had those discussions,
18 Your Honor.

19 THE COURT: Okay.

20 MR. POMERANTZ: Your Honor, I think the only thing
21 remaining to be done is a couple of dates.

22 THE COURT: Okay.

23 MR. POMERANTZ: We thought it would be helpful to set
24 sort of, you know, essentially omnibus dates.

25 THE COURT: Okay.

1 MR. POMERANTZ: We may have things relating to the
2 continued bonus programs to bring before the Court. May not.
3 And just so people generally could know when to file things.
4 So we've conferred with the Creditors' Committee counsel. I
5 didn't have the opportunity to confer with the Trustee. But
6 we have a date in February, perhaps either February 19th or
7 20th.

8 THE COURT: Okay.

9 MR. POMERANTZ: And then also a date in March, either
10 the 10th, 11th, or 12th.

11 THE COURT: Okay. Let me see what we can do.

12 (Pause.)

13 THE COURT: Okay. We can give you 2/19 at 9:30 in
14 the morning.

15 (Pause.)

16 THE COURT: Okay. We can give you Wednesday, March
17 11th, at 9:30.

18 MR. POMERANTZ: Thank you very much, Your Honor.

19 THE COURT: All right. So, for now, do we want to
20 absolutely set some of these carryover matters? I know we had
21 the retention application.

22 MR. POMERANTZ: We have the retention applications,
23 we have the PensionDanmark, --

24 THE COURT: The Pension --

25 MR. POMERANTZ: -- and then we have the settlement

1 related to the CLO Issuer. So why don't we put all those
2 three on for the 19th at 9:30 a.m.?

3 THE COURT: Okay. I think it's four things. I think
4 there were two retention applications.

5 So, for now, Traci, we're going to set the Foley Gardere
6 and Lynn Pinkerton retention applications on February 19th, as
7 well as the Pension motion to lift stay. I can't remember the
8 exact name of that. And then, okay, you said there's a CLO
9 Issuers motion?

10 MR. POMERANTZ: Well, it was the -- it was the
11 overall settlement motion, if Your Honor recalls, that I
12 mentioned at the beginning of the hearing.

13 THE COURT: Oh, the language --

14 MR. POMERANTZ: That specific issue on the protocols.

15 THE COURT: -- they were hoping to have for
16 protocols?

17 MR. POMERANTZ: Correct.

18 THE COURT: Okay. Yeah. So we'll carry over the
19 settlement motion between the Committee and the Debtor. Even
20 though I've entered an order, we actually have some carryover
21 language. So we'll put that on the calendar again. No, all
22 of those on February 19th. And, again, you'll coordinate with
23 Traci if you have add-on matters that you need --

24 MR. POMERANTZ: Correct, Your Honor. And then we
25 will file the appropriate agenda of that in advance and

1 provide Your Honor with notebooks so that Your Honor will know
2 exactly what was on. I know Traci was -- did a great job of
3 trying to figure it out, and we didn't make her life easier up
4 until the agenda, but we promise to make both yours and her
5 life easier going forward.

6 THE COURT: Well, for my life, the notebook and
7 everything was great when I started looking at it over the
8 weekend, so thank you. Appreciate it.

9 MR. POMERANTZ: Thank you very much, Your Honor.

10 THE COURT: All right. I appreciate everyone's
11 positions and courtesies today. All right.

12 MR. POMERANTZ: Thank you, Your Honor.

13 THE CLERK: All rise.

14 (Proceedings concluded at 1:17 p.m.)

15 --oOo--

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19

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CERTIFICATE

21

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

23

/s/ Kathy Rehling

01/24/2020

24

Kathy Rehling, CETD-444
25 Certified Electronic Court Transcriber

Date

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 12**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj1
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*Vol. 1
000001*

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
004704				
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

Vol. 22

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004882

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

KELLY HART PITRE

Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

SBAITI & COMPANY PLLC

MAZIN A. SBAITI
TEXAS BAR NO. 24058096
JONATHAN BRIDGES
TEXAS BAR NO. 24028835
JPMORGAN CHASE TOWER
2200 ROSS AVENUE – SUITE 4900W
DALLAS, TX 75201
T: (214) 432-2899
F: (214) 853-4367
E: MAS@SBAITILAW.COM
JEB@SBAITILAW.COM

COUNSEL FOR PLAINTIFFS

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopier: (817) 878-9280

COUNSEL FOR MARK PATRICK

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

In re: § **Case No. 19-34054-sgj11**
§
HIGHLAND CAPITAL MANAGEMENT, §
L.P., § **Chapter 11**
§
Debtor §

**RESPONDENT MARK PATRICK AND PLAINTIFFS’
AMENDED EXHIBIT AND WITNESS LIST**

Mark Patrick (“Patrick”) and CLO Holdco, Ltd. (“CLO Holdco”) and Charitable DAF Fund, L.P. (“DAF,” collectively with CLO Holdco, the “Plaintiffs”),¹ submit the following witness and exhibit list with respect to the *Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* (Dkt. No. 2255) (the “Show Cause Order”) set for hearing at Tuesday, June 8, 2021 at 9:30 a.m. (Central Time) (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses Patrick and Plaintiffs may call to testify:

1. Mark Patrick;
2. Grant Scott (by deposition testimony);
3. Any witness identified by or called by any other party;
4. Any witness needed for authentication of documents; and
5. Any witness for impeachment or rebuttal.

B. Exhibits Patrick and Plaintiffs may introduce:

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
1.	DAF/ CLO Holdco Structure Chart		
2.	Charitable Giving Summary Presentation		
3.	CLO Holdco, Ltd. - Written Shareholder Resolution of Shareholder of the Company made on March 31, 2021		

¹ CLO HOLDCO, LTD. and Highland Dallas Foundation, Inc. have filed a *Motion to Withdraw the Reference* [Adversary No. 20-03195, Doc. No. 24], and nothing herein shall be deemed a waiver of their right to a trial by jury on all claims asserted in the Adversary Proceeding nor consent to the entry of final orders in the Adversary Proceeding by the Bankruptcy Court.

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
4.	CLO Holdco, Ltd. - Written Shareholder Resolutions of the Sole Shareholder of the Company made on April 2, 2021		
5.	Charitable DAF Holdco, Ltd - Written Resolution of the Sole Director of the Company Dated March 25, 2021		
6.	Charitable DAF Holdco, Ltd - Share Transfer Form Dated March 24, 2021		
7.	Charitable DAF GP, LLC - Assignment and Assumption of Membership Interest Agreement Dated March 24, 2021		
8.	Charitable DAF Holdco, Ltd - Written Shareholder Resolution of the Management Shareholder of the Company Made on March 25, 2021		
9.	Register of Members for Charitable DAF Holdco, Ltd. Dated March 25, 2021		
10.	Register of Directors for Charitable DAF Holdco, Ltd. Dated March 25, 2021		
11.	CLO Holdco, Ltd - Written Shareholder Resolution of the Sole Shareholder of the Company Dated March 24, 2021		
12.	Register of Members for Charitable DAF Holdco, Ltd. Dated May 19, 2021		
13.	Charitable DAF HoldCo, Ltd. Register of Members holding participating shares Dated May 19, 2021		
14.	Charitable DAF HoldCo, Ltd. Register of Members holding management shares Dated May 19, 2021		
15.	Charitable DAF Fund, LP Register of Members Dated May 19, 2021		
16.	CLO HoldCo, Ltd. Register of Members Dated May 19, 2021		
17.	Liberty CLO HoldCo, Ltd. Register of Members Dated May 19, 2021		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
18.	Liberty Sub, Ltd. Register of Members Dated May 21, 2021		
19.	HCT HoldCo 2, Ltd. Dated May 21, 2021		
20.	MGM Studios HoldCo, Ltd. Register of Members Dated May 21, 2021		
21.	Amended and Restated Limited Liability Company Agreement of Charitable DAF GP, LLC Dated January 1, 2012		
22.	Certificate of Formation Charitable DAF, GP, LLC Dated October 25, 2011		
23.	Certificate of Incorporation of Charitable DAF Holdco, Ltd. Dated October 27, 2011		
24.	Certificate of Incorporation of CLO Holdco, Ltd. Dated December 13, 2010		
25.	Certificate of Registration of Exempted Limited Partnership for Charitable DAF Fund, LP Dated October 28, 2011		
26.	Amended and Restated Exempted Limited Partnership Agreement of Charitable DAF Fund LP Dated November 7, 2011		
27.	Memorandum and Articles of Association of CLO Holdco, Ltd. Dated December 13, 2010		
28.	Amended and Restated Memorandum and Articles of Association of Charitable DAF Holdco, Ltd.		
29.	Register of Members owning Management Shares – Charitable DAF HoldCo, Ltd. dated May 19, 2021		
30.	Register of Members owning Participating Shares – Charitable DAF HoldCo, Ltd. dated May 19, 2021		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted
31.	Original Complaint filed in the United States District Court for the Northern District of Texas in the action captioned Charitable DAF Fund, L.P. v. Highland Capital Management, L.P., Case No. 21-cv-00842 (the “DAF Action”)		
32.	Motion for Leave to File First Amended Complaint filed by CLO Holdco Ltd, Charitable DAF Fund LP (and exhibits thereto) in DAF Action		
33.	Amended Proposed Order in DAF Action		
34.	Email Correspondence Re: CLO Holdco Transition Dated March 23, 2021 from Mark Patrick to Rhett Miller		
35.	Email Correspondence Re: documents effectuating transfer from Grant Scott to Mark Patrick Dated March 24, 2021		
36.	Email Correspondence Re: Approvals of director for CLO Holdco and related DAF entities Dated March 25, 2021 to Frank Waterhouse from Mark Patrick, with Grant Scott Copied		
37.	Email Correspondence Re: Grant Scott Trustee Fees and Resignation Dated April 1, 2021 to Chris Rice from Mark Patrick		
38.	Email Correspondence Re: accounts and director transition Dated April 5, 2021 from Mark Patrick to Grant Scott		
39.	Email Correspondence Re: Transition of Accounts Dated April 29, 2021 From Chris Rice to Mark Patrick		
40.	Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP, LLC		
41.	Second Amended and Restated Investment Advisory Agreement, Dated January 1, 2017 between Highland Capital Management, L.P. and Charitable DAF Fund, L.P., and Charitable DAG GP, LLC		

Patrick/ Plaintiffs Exhibit	Description	Offered	Admitted								
42.	November 30, 2020 Termination Letter Investment Advisory Agreement										
43.	November 30, 2020 Termination Letter Service Agreement										
44.	Transcript of July 14, 2020 Hearing										
45.	Amended and Restated Investment Advisory Agreement by and between Charitable DAF Fund, L.P., Charitable DAF GP, LLC, and HCMLP, effective July 1, 2014 (PATRICK_000923)										
46.	Amended and Restated Service Agreement by and among HCMLP, Charitable DAF Fund, L.P., and Charitable DAF GP, LLC, effective July 1, 2014 (PATRICK_000938)										
47.	<p>Any document entered or filed in the Bankruptcy Case, including any exhibits thereto Including but not limited to:</p> <table border="1" data-bbox="358 957 1149 1314"> <tr> <td data-bbox="358 957 743 1024">Notice of Hearing</td> <td data-bbox="743 957 1149 1024">Doc. No. 2249</td> </tr> <tr> <td data-bbox="358 1024 743 1136">Amended Notice of Hearing</td> <td data-bbox="743 1024 1149 1136">Doc No. 2252</td> </tr> <tr> <td data-bbox="358 1136 743 1203">Order to Show Cause</td> <td data-bbox="743 1136 1149 1203">Doc. No. 2255</td> </tr> <tr> <td data-bbox="358 1203 743 1314">Declarations in Support and Exhibits thereto</td> <td data-bbox="743 1203 1149 1314">Doc. Nos. 2351, 2355, 2377</td> </tr> </table>	Notice of Hearing	Doc. No. 2249	Amended Notice of Hearing	Doc No. 2252	Order to Show Cause	Doc. No. 2255	Declarations in Support and Exhibits thereto	Doc. Nos. 2351, 2355, 2377		
Notice of Hearing	Doc. No. 2249										
Amended Notice of Hearing	Doc No. 2252										
Order to Show Cause	Doc. No. 2255										
Declarations in Support and Exhibits thereto	Doc. Nos. 2351, 2355, 2377										
48.	All exhibits necessary for impeachment and/or rebuttal purposes										
49.	All exhibits identified by or offered by any other party for the hearing on the <i>Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> [Doc. 2248] and <i>Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> [Doc. 2255]										

Dated: June 7, 2021

Respectfully submitted,

KELLY HART PITRE

/s/ Louis M. Phillips

Louis M. Phillips (#10505)

One American Place

301 Main Street, Suite 1600

Baton Rouge, LA 70801-1916

Telephone: (225) 381-9643

Facsimile: (225) 336-9763

Email: louis.phillips@kellyhart.com

Amelia L. Hurt (LA #36817, TX #24092553)

400 Poydras Street, Suite 1812

New Orleans, LA 70130

Telephone: (504) 522-1812

Facsimile: (504) 522-1813

Email: amelia.hurt@kellyhart.com

And

KELLY HART & HALLMAN

Hugh G. Connor II

State Bar No. 00787272

hugh.connor@kellyhart.com

Michael D. Anderson

State Bar No. 24031699

michael.anderson@kellyhart.com

Katherine T. Hopkins

Texas Bar No. 24070737

katherine.hopkins@kellyhart.com

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Telephone: (817) 332-2500

Telecopier: (817) 878-9280

ATTORNEYS FOR MARK PATRICK

SBAITI & COMPANY PLLC

/s/ MAZIN A. SBAITI

MAZIN A. SBAITI

TEXAS BAR NO. 24058096

JONATHAN BRIDGES

TEXAS BAR NO. 24028835

JPMORGAN CHASE TOWER

2200 ROSS AVENUE – SUITE 4900W

DALLAS, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: MAS@SBAITILAW.COM

JEB@SBAITILAW.COM

COUNSEL FOR PLAINTIFFS

EXHIBIT 2

EXHIBIT 44

002615

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

5 For the Official Committee: Paige Holden Montgomery
6 of Unsecured Creditors: SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
7 Dallas, TX 75201
(214) 969-3500

8 For Acis Capital Rakhee V. Patel
9 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
10 Dallas, TX 75201
(214) 745-5250

11 For Acis Capital Brian Patrick Shaw
12 Management GP, LLC: ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
13 Dallas, TX 75201
(214) 239-2707

14 For Redeemer Committee of Mark A. Platt
15 the Highland Crusader FROST BROWN TODD, LLC
Fund: 100 Crescent Court, Suite 350
Dallas, TX 75201
16 (214) 580-5852

17 For Redeemer Committee of Terri L. Mascherin
18 the Highland Crusader JENNER & BLOCK, LLP
Fund: 353 N. Clark Street
19 Chicago, IL 60654-3456
(312) 923-2799

20 For Redeemer Committee of Marc B. Hankin
21 the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
22 New York, NY 10022-3098
(212) 891-1600

23

24

25

1 APPEARANCES, cont'd.:

2 For UBS Securities, LLC: Andrew Clubok
3 Latham & Watkins, LLP
4 555 Eleventh Street, NW,
5 Suite 1000
6 Washington, DC 20004
7 (202) 637-2200

8 For UBS Securities: Kimberly A. Posin
9 LATHAM & WATKINS, LLP
10 355 South Grand Avenue, Suite 100
11 Los Angeles, CA 90071-1560
12 (213) 891-7322

13 For Certain Employees: David Neier
14 WINSTON & STRAWN, LLP
15 200 Park Avenue
16 New York, NY 10166
17 (212) 294-6700

18 Recorded by: Michael F. Edmond, Sr.
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JULY 14, 2020 - 1:34 P.M.

2 THE COURT: ... to get lawyer appearances. First,
3 for the Debtor, do we have some Pachulski lawyers on the
4 phone? Please make your appearance.

5 MR. POMERANTZ: Good morning, Your Honor. It's
6 Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones. Also with
7 me are John Morris, and then listening in are Greg Demo and
8 Ira Kharasch.

9 THE COURT: All right. Thank you all. And do we
10 have any Hayward lawyers on the phone?

11 MR. ANNABLE: Yes, Your Honor.

12 THE COURT: I presume that was Mr. Annable.

13 MR. ANNABLE: Yes, Your Honor. Sorry. My mic's not
14 picking up. It's Zachery Annable and Melissa Hayward --

15 THE COURT: All right.

16 MR. ANNABLE: -- as local counsel for the Debtor.

17 THE COURT: Okay. Thank you. For the Unsecured
18 Creditors' Committee, who do we have from Sidley Austin?

19 MR. CLEMENTE: Good afternoon, Your Honor. Matthew
20 Clemente from Sidley Austin, and Paige Montgomery is also on
21 the phone.

22 THE COURT: All right. Thank you. All right. I'll
23 go to some of our usual appearances. Do we have lawyers for
24 the Redeemer Committee this afternoon? (No response.) All
25 right.

1 MS. MASCHERIN: Yes. Excuse me, Your Honor.

2 THE COURT: Yes?

3 MS. MASCHERIN: This is Terri Mascherin. I wasn't
4 sure whether I had the microphone on mute or not.

5 THE COURT: Okay.

6 MS. MASCHERIN: I apologize. Terri Mascherin, Jenner
7 & Block. My colleague, Marc Hankin, is on the phone. And I
8 believe that Mark Platt is also on the line.

9 THE COURT: All right. Thank you. What about UBS?
10 Anyone wanting to appear for UBS?

11 MR. CLUBOK: Yes. Good afternoon, Your Honor. This
12 is Andrew Clubok from Latham & Watkins, LLP. And my partner,
13 Kimberly Posin, is on as well.

14 THE COURT: Okay. Thank you. What about for Acis?
15 Any lawyers appearing for Acis?

16 MS. PATEL: Yes. Good afternoon, Your Honor. Rakhee
17 Patel of the Winstead firm and Brian Shaw of the Rogge Dunn
18 Group appearing on behalf of Acis.

19 THE COURT: All right. Do we have Mr. Lynn or Mr.
20 Bonds for James Dondero? (No response.) Maybe not. All
21 right. Is there anyone else who wishes to appear for today's
22 hearings?

23 MR. NEIER: Good afternoon, Your Honor. David Neier
24 of Winston & Strawn making a reappearance, but this time for
25 several employees of Highland: Mr. Leventon, Mr. Sevilla, Mr.

1 Ellington, several others.

2 THE COURT: Oh, okay. Thank you. Any other
3 appearances today?

4 (No response.)

5 THE COURT: All right. I'll assume everyone else is
6 just going to observe.

7 Well, we have two employment applications. Mr. Pomerantz,
8 how did you want to proceed on those?

9 MR. POMERANTZ: So, Your Honor, we have the two
10 motions to present, Your Honor. I'm happy to say that neither
11 of them are opposed.

12 Before I present the motions to Your Honor, I wanted to
13 ask if Your Honor would like to address the mediation issues
14 at the conclusion of the hearing or prior to the presentation
15 of the motions.

16 THE COURT: At the conclusion. Thank you.

17 MR. POMERANTZ: Thank you, Your Honor.

18 Your Honor, the first motion on the docket today is a
19 Motion to Appoint James Seery as the Debtors' chief executive
20 officer and chief restructuring officer, effective as of March
21 15th, which is about the time that Mr. Seery began performing
22 the services as the chief executive officer.

23 While there's a good argument that the retention of a
24 chief executive officer is in the ordinary course of business
25 and does not require court approval, the Debtor, out of an

1 abundance of caution, filed the motion, and the motion seeks
2 approval of the agreement which is attached to the motion.

3 The second motion, Your Honor, is a Motion to Approve the
4 Retention of DSI as the Debtors' Financial Advisor. And as
5 the Court is aware, Mr. Sharp, a managing director of DSI, was
6 approved as the Debtors' Chief Restructuring Officer pursuant
7 to this Court's January 10th order.

8 Although Mr. Seery is proposed to replace Mr. Sharp as the
9 Debtors' Chief Restructuring Officer, Mr. Seery still requires
10 the financial assistance and advisory support that DSI has
11 been providing to him, the Board, and the Debtor for several
12 months.

13 While each of these motions, as I mentioned, Your Honor,
14 are unopposed, we plan to put on the testimony of James Seery,
15 John Dubel, and Brad Sharp to provide the Court with the
16 evidentiary basis to support the relief that is requested.
17 And with the testimony, Your Honor, we intend to accomplish
18 several things.

19 First, Your Honor, in light of our exchange at the hearing
20 on July 8th, we thought it'd be appropriate for Mr. Seery to
21 provide a more fulsome response to Your Honor regarding the
22 nature and extent of the Debtors' operations and assets and
23 the variety of significant activities that the Board in
24 general and Mr. Seery as the chief executive officer has been
25 performing over the last several months.

1 We think this is very important, Your Honor, given that
2 the Debtor has substantial and multiple complex business
3 operations that it oversees that are in -- that are in
4 subsidiaries outside of Chapter 11 or are in entities managed
5 by the Debtor and also not in Chapter 11. And the Court, we
6 appreciate, especially in light of Your Honor's comments, does
7 not have the benefit of seeing what is really going on. So
8 we're hoping, by Mr. Seery's testimony, it will provide Your
9 Honor with a much clear picture, and, quite frankly, a better
10 job doing it than I was able to do last week.

11 Mr. Seery's testimony will support the need for the
12 retention of the chief executive officer and why his
13 particular background and qualifications made him the
14 appropriate choice for the role.

15 Second, Mr. Dubel, as the chairman of the compensation
16 committee of the Board, will testify regarding the process
17 undertaken by the compensation committee that led to the
18 conclusion to ask Mr. Seery to become the chief executive
19 officer and the agreement -- under the terms and conditions
20 set forth in the agreement.

21 Lastly, Mr. Sharp will testify regarding the activities he
22 and DSI have been performing since the commencement of the
23 case, the assistance they have been providing to Mr. Seery
24 over the last few months, and how the nature and extent of the
25 services they are providing will essentially remain the same

1 if Your Honor approves the motion to employ Mr. Seery.

2 Before I turn the virtual podium over to my partner, John
3 Morris, to present the testimony, Your Honor, I thought I
4 would provide the Court with a brief summary of the events
5 leading to the Debtors' filing of the motion.

6 THE COURT: Okay.

7 MR. POMERANTZ: As Your Honor will recall, the Court
8 entered an order on January 9th approving a settlement between
9 the Debtor and the Committee, and a significant part of that
10 settlement involved modifications to the Debtors' corporate
11 governance that resulted in the installation of the
12 Independent Board.

13 The term sheet that was attached in the settlement motion
14 specifically contemplated that the Independent Board, in
15 consultation with the Committee, would determine whether it
16 was appropriate to retain a chief executive officer, and
17 further went on to say that the chief executive officer could
18 be a member of the Board.

19 And the retention of a chief executive officer was on
20 everyone's minds from the beginning, because since Mr.
21 Dondero's authority as the CEO of the Debtor was being
22 terminated in connection with the settlement, the Debtor and
23 the Committee contemplated that, in order to manage a dynamic
24 and widespread asset management platform like Highland's, that
25 the retention of a chief executive officer may very well be

1 necessary.

2 I will leave it to Mr. Seery and Mr. Dubel to explain to
3 the Court what transpired during the early stages of the case
4 and the decision-making process that led to Mr. Seery starting
5 to act as the Debtors' chief executive officer. And I would
6 also leave it to Mr. Dubel to discuss the sequence of events
7 which led from the appointment of him as the chief executive
8 officer through the filing of the motion that brings us here
9 today, which events will include the establishment of a
10 compensation committee; the commissioning of a report from the
11 Debtors' compensation expert, Mercer; the procurement of the
12 Debtors' [sic] and officers insurance coverage to cover Mr.
13 Seery and Mr. Dubel; the negotiations over the (inaudible) of
14 Mr. Seery; and lastly, the negotiations with the Committee
15 which has resulted in the motion being fully consensual.

16 I'll also leave it to Mr. Seery to explain his personal --
17 professional background and why he was qualified to fill that
18 role.

19 The agreement, Your Honor, between Mr. Seery and the
20 Debtor includes the following material provisions.

21 First, there would be base compensation at the rate of
22 \$150,000 a month, retroactive to March 15th. And while Mr.
23 Seery will remain on the Board as part of his role as the
24 chief executive officer, the \$150,000 per month would cover
25 his services not only as a CEO but also a member of the Board.

1 In other words, the Board fees that were agreed to back in
2 January of \$60,000 a month, \$50,000 a month, and \$30,000 a
3 month would be replaced by the \$150,000 a month commencing on
4 March 15th.

5 While the compensation committee and Mr. Seery reached
6 agreement on the structure of potential bonus compensation,
7 the Committee has not agreed to that proposed structure. As a
8 result, the compensation committee and Mr. Seery decided that
9 approval sought in this motion would only be the monthly
10 compensation and the other non-economic terms, but would not
11 include the bonus compensation. Any bonus compensation sought
12 to be paid to Mr. Seery would be pursuant to a separate motion
13 filed, if at all, a lot later in the case.

14 The Committee was also uncomfortable with the open-ended
15 nature of the agreement and wanted some control in being able
16 to seek to terminate it. To accommodate the Committee, Mr.
17 Seery and the Debtor agreed to the following: After 90 days
18 from the date the Court enters an order approving this
19 agreement, if the Court is inclined to do so, the Committee
20 may provide the Debtor with notice that it does not want the
21 agreement to continue. The Debtor would then have two weeks
22 to file a motion on normal notice seeking to extend the date
23 of the agreement, and Mr. Seery would be entitled to his base
24 compensation until the Court ruled on the motion.

25 Also, the Committee asked us that be made clear in the

1 order, which we've done, that Mr. Seery's retention would
2 terminate on the effective date on the plan, subject, of
3 course, of his right to seek bonus compensation pursuant to a
4 separate motion. The agreement also contains standard
5 reimbursement and indemnification provisions.

6 Your Honor, those conclude my initial remarks. I'm happy
7 to take questions. And then, at the appropriate time, I
8 return it over to Mr. Morris, who will put on the testimony of
9 Mr. Seery, Mr. Dubel, and Mr. Sharp.

10 THE COURT: All right. I'd like to pretty quickly
11 get to the evidence. So, I'll ask: Does anyone have a
12 burning desire to make an opening statement? If so, please
13 let's keep it brief.

14 (No response.)

15 THE COURT: All right. I assume everyone is content
16 to wait until the end and speak up in any way they want to
17 speak up.

18 Mr. Morris, are you ready to call your witness?

19 MR. MORRIS: I am, Your Honor. Can you hear me right
20 now?

21 THE COURT: I can. Thank you.

22 MR. MORRIS: Okay. Your Honor, this is John Morris
23 from Pachulski Stang Ziehl & Jones for the Debtor. As the
24 Debtors' first witness, we call James Seery.

25 THE COURT: All right. Mr. Seery, I need to swear

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1 you in by video. So could you take your phone off mute and
2 please raise your right hand. Can you say Testing 1, 2, so I
3 know you're there?

4 MR. SEERY: Testing 1, 2.

5 THE COURT: All right.

6 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: All right. Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor. Before I begin
9 my questioning of Mr. Seery, the Debtor had filed its witness
10 list and its exhibit list. We provided copies of the exhibits
11 to the Court and to the Committee, and I would like to just
12 move into evidence Debtors' Exhibits 1 through 7 at this time.

13 THE COURT: All right. So I have in front of me
14 Docket Entry No. 822 with Exhibits 1 through 7. Any
15 objection? (No response.) All right. 1 through 7 are
16 admitted.

17 (Debtors' Exhibits 1 through 7 are received into
18 evidence.)

19 MR. MORRIS: Thank you, Your Honor. And just as an
20 overview, so you have a sense of where we're going with Mr.
21 Seery's testimony, I am going to begin with some very brief
22 background questionings and then have Mr. Seery answer some
23 questions concerning the overview of the company and the
24 corporate structure of the company. You may have heard some
25 of this before, but I think in the context of a motion such as

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1 the appointment of a CEO, I think it would be helpful to hear
2 it all.

3 When I finish with that, we're going to move into the area
4 of the Board and the work that the Board has done and Mr.
5 Seery's work as a member of the Board.

6 And then we'll transition into really the meat of the
7 discussion here, and that is what has he done in his capacity
8 as CEO. And to be clear, he's not the CEO, he doesn't call
9 himself the CEO, but he's functioned as the CEO, and I think
10 that's the point that we want to present to the Court. And we
11 want to present to the Court the fact that he functioned as a
12 CEO really from day one of the process. And we're not going
13 to get into, you know, every single thing he's done, because
14 we'd be here for an awfully long time, but we do intend to
15 highlight a couple of the transactions that he worked on and
16 give you a sense of his role in trying to develop a plan and
17 resolving claims.

18 And I think, with that, you'll have a better understanding
19 of Mr. Seery, his role, and why we believe it's a proper
20 exercise of the Debtors' business judgment to appoint him as
21 CEO.

22 THE COURT: All right. Sounds good.

23 MR. MORRIS: All right.

24 DIRECT EXAMINATION

25 BY MR. MORRIS:

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1 Q Mr. Seery, can you hear me?

2 A I can. Can you hear me?

3 Q Yes, I can.

4 MR. MORRIS: Your Honor, just one other point. I
5 have a legal assistant on the phone here. She's participating
6 in the WebEx. Her name is La Asia Canty. La Asia is going to
7 handle the exhibits when and if we need to put them up on the
8 screen. So we've tried to practice that, and hopefully it
9 will go smoothly, but I may turn to Ms. Canty from time to
10 time with some help with the exhibits.

11 THE COURT: All right. Fine.

12 BY MR. MORRIS:

13 Q Okay. Mr. -- what is your current relationship to the
14 Debtor?

15 A I'm an Independent Director of Strand, which is the
16 general partner of the Debtor.

17 Q All right. And when did you become the Independent
18 Director of Strand?

19 A On January 9th, along with John Dubel and Russ Nelms.

20 Q The Court has previously heard about your background, but
21 from a high level, can you just hit the highlights for the
22 Court as to your experience, et cetera?

23 A To go swiftly -- and if Your Honor wants me to go further,
24 I certainly can -- I was a restructuring and finance lawyer
25 for 10 years, handling virtually every type of restructuring

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1 matter as well as financing in distressed matters during that
2 time.

3 In 1999, I went to the business side and I began to manage
4 distressed assets at Lehman Brothers as well as a leverage
5 finance business. That grew into my running the risky finance
6 business as well as the loan business at Lehman globally,
7 which included high-grade loans, high-yield loans, trading and
8 sales of those products, a big part of distressed, all of
9 restructuring, all of asset management, and all of the hedging
10 of the portfolio that we had.

11 From there, I left Lehman with a small group and sold it
12 to Barclay's. I moved on and ran a hedge fund with two former
13 partners of mine who are the founding partners called River
14 Birch Capital. It was a long-short credit fund; mostly
15 credit, though we did structured finance as well, and we also
16 handled some equities.

17 Q Okay. Let's spend a few minutes, as a preview, talking
18 about the Debtor and its business. And let's start with the
19 basics. Is there a way you can summarize the business of the
20 Debtor?

21 A I think, from a high level, the best way to think about
22 the Debtor is that it's a registered investment advisor. As a
23 registered investment advisor, which is really any advisor of
24 third-party money over \$25 million, it has to register with
25 the SEC, and it manages funds in many different ways.

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1 The Debtor manages approximately \$200 million current
2 values -- it was more than that at the start of the case -- of
3 its own assets. It doesn't have to be a registered investment
4 advisor for those assets, but it does manage its own assets,
5 which include directly-owned securities; loans from mostly
6 related entities, but not all; and investments in certain
7 funds which it also manages.

8 In addition, the Debtor manages about roughly \$2 billion
9 in -- \$2 billion in total managed assets, around \$2 billion in
10 CLO assets, and then other entities, which are hedge funds or
11 PE style.

12 In addition, the Debtor provides shared services for
13 approximately \$6 billion of assets. Those are assets that are
14 owned by related entities but not owned by Debtor-owned or
15 managed entities. And those are a combination of back office
16 services, which include timely reporting, asset management,
17 legal and compliance support, trading and research support,
18 but not the actual management of the assets.

19 The Debtors run -- and I think the way to think about it
20 is on a functional basis; at least, that's the way I think
21 about it -- and there's really six areas. There's corporate
22 management; finance, accounting and tax; trading and research;
23 private equity and fund investing; compliance and legal; and
24 then structured equity, which really includes all of the CLO
25 businesses.

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1 The goals of the Debtor generally are what you'd expect
2 out of an asset manager. A little bit different than most
3 because the Debtor does own assets, which is a little
4 different than when money asset managers typically hold assets
5 away from the asset manager. But number one, discharge
6 Highland's, which I'll call Highland (inaudible), LP, duties
7 to investors in the funds. Those are fiduciary duties under
8 the Investment Advisors Act. Each day, you've got to make
9 sure that you do that first and foremost.

10 Number two, create positive MPD in each of the funds that
11 we manage, either through sales, purchases, or hedging.

12 Next, make sure that we report timely finances of our own
13 assets, including in the funds, but also, to the third-party
14 investors. Maximize the value of HCMLP's owned assets. And
15 then operate as efficiently as possible for the lowest cost.

16 That's essentially how the Debtor -- how we think about
17 the Debtor from a functional perspective. It's got about 70
18 employees laid out in those areas that I mentioned, and each
19 of those employees every day usually think about those goals
20 and try to discharge their duties by focusing on those goals.

21 Q Thank you, Mr. Seery. And can you describe for the Court
22 how those 70 or so employees are organized? Is there an
23 internal corporate structure that you're working with?

24 A Yeah. The way -- the way -- I apologize. The way we
25 think about it is, as I said, corporate management, which is

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1 really HR and overseeing the function that it's filling every
2 day, that's been really -- because Mr. Dondero was removed
3 from management. It used to all roll up to him. That's been
4 effectively rolling up to me since February.

5 Finance, accounting, and tax. Each of these businesses
6 every day require certain amounts of liquidity. Each of them
7 have requirements that they have to pay out to investors.
8 Each of them have expenses. And all of them have different
9 kinds of tax either obligations or reporting. Those are
10 managed by Frank Waterhouse as the CFO. (inaudible), sorry.

11 Trading and research. With respect to the assets, they're
12 not -- they're not static assets. Many of them do get traded
13 on a regular basis. A gentleman, Joe Sowin, heads up the
14 trading of the liquid assets. John Povish (phonetic) heads up
15 the research and the trading of the more illiquid assets, but
16 not PE. In addition, we have PE assets that require some
17 management every day, including Board seats. That's a
18 gentleman by the name of Cameron Baynard, and also he will
19 fund investments in that area. J.P. Sevilla is responsible
20 for working with Cameron on those investments and leading that
21 team.

22 Importantly, because of the nature of what the Debtor
23 does, the fiduciary obligations, as well as the
24 responsibilities to each investor and the legal overlay, we
25 have a robust compliance and legal department. That's headed

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1 by Thomas Surgent and Scott Ellington. Scott: more focused
2 on transactional issues with respect to legal. He is actually
3 general counsel. Everything that has do with compliance, the
4 interrelatedness of the funds, trading between funds or
5 positions that are shared across funds, which are many, runs
6 through Thomas Surgent and his team.

7 And finally, structured equity. Sitting on top of the
8 structured finance business that we have, understanding those
9 assets, particularly of two billion-ish assets in CLOs, that's
10 headed by Hunter Covitz.

11 Q Can you describe for the Court your interaction with each
12 of the department heads that you just identified?

13 A Well, depending on the nature of the issue each day, I
14 have at least -- I'd say generally at least weekly contact
15 with most, often daily contact with most. So, for example,
16 when there are trading issues, particularly as the market was
17 extremely volatile with respect to unliquid securities, Joe
18 Sowin and I were on the phone several times a day.

19 Relating to the COVID issues, Brian Collins, who heads the
20 HR group, and I were on the phone several times a day.

21 Relating to structured equity, depending on what's
22 happening with a particular fund or what's happening in loan
23 prices, I speak to Hunter Covitz. And it goes down the line.

24 So it really depends on each of the areas and what's going
25 on in the business, but I try to touch base with each of those

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1 department heads on a regular basis.

2 Frank Waterhouse, of course, is at least weekly. We have
3 a standing call every week to make sure that we're focused on
4 liquidity, which is always a concern in a Chapter 11, and
5 Frank and his team are on that call and prepare weekly
6 materials for us.

7 Q Okay.

8 MR. MORRIS: Your Honor, before I move to the next
9 area of questions, the work of the Board, I just wanted to see
10 if the Court had any questions on the corporate organizational
11 structure, the internal structure of the business, or any of
12 the matters that Mr. Seery touched on?

13 THE COURT: I do not. And I do have in front of me a
14 demonstrative aid that Mr. Annable sent over ahead of time, so
15 I appreciate that as well.

16 MR. MORRIS: Okay. Your Honor, I think Mr. Seery
17 covered much of what's on that document, but if you'd like him
18 to go through that, we're happy to do it.

19 THE COURT: No, that's fine.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Then let's shift gears a little bit and start talking
23 about the work of the Independent Board itself. The
24 Independent Board was appointed in mid-January; is that right?

25 A Yeah. It was the first -- January 9th, the first week of

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1 January, and we started working that afternoon.

2 Q Okay. Can you describe for the Court what the -- the
3 Board's initial focus? What were you focused on?

4 A Well, if you think about the areas that I just mentioned
5 previously, the Board initially, for lack of a better term,
6 gang-tackled everything. So we tried to make sure that we had
7 a broad base of understanding among the three of us with
8 respect to the business.

9 I, because of my background, had a lot more familiarity
10 with asset management, these type of asset security
11 businesses. But we wanted to make sure that each of us was at
12 least facile with the main areas that we had to understand.
13 First was operations. How does the company run each day?
14 Particularly, how was it going to run without Mr. Dondero?
15 And I went through some of those functional areas and how we
16 thought about those and who head each of those.

17 Next in the -- I don't mean to say it's second, because
18 it's always first, but liquidity. What did the Debtors'
19 liquidity look like? How are we going to manage that
20 liquidity, not just for the near-term, but also for the
21 medium-term, and then even into the slightly longer-term? We
22 had to think about what assets are there, what money those
23 assets might need that we would have to invest in them, and
24 whether there was liquidity in those assets that we can create
25 liquidity in order to fund the Debtors' business.

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1 Personnel, we needed a good opportunity to understand who
2 did what, not just in the senior managers that I mentioned,
3 but deeper into the staff, because we're going to rely on
4 those folks. Particularly worked through with DSI.

5 As I mentioned, the Debtor, unlike a lot of other asset
6 managers, owns a lot of assets. It's a disparate group of
7 assets, but getting a feel and understanding for what those
8 assets were, what the critical issues surrounding those assets
9 are, who managed them day-to-day: We wanted to make sure that
10 each of the directors had a good (inaudible) and understanding
11 of those issues that might arise with respect to those assets,
12 and a good sense of how quickly those issues could, you know,
13 further arise.

14 We also had to get a very good understanding of each of
15 the funds that we manage. As I said, the Investment Advisors
16 Act puts a fiduciary duty on Highland Capital to discharge its
17 duty to the investors. So while we have duties to the estate,
18 we also have duties, as I mentioned in my last testimony, to
19 each of the investors in the funds.

20 Now, some of them are related parties, and those are a
21 little bit easier. Some of them are owned by Highland. But
22 there are third-party investors in these funds who have no
23 relation whatsoever to Highland, and we owe them a fiduciary
24 duty both to manage their assets prudently but also to seek to
25 maximize value. And we wanted to make sure we had a good

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1 understanding of that.

2 Finally, with respect to the shared service arrangements,
3 we needed to get an understanding of that \$6 billion in assets
4 and how our business, HCMLP, worked with those -- those shared
5 service counterparties and exactly who did what for whom.

6 It's very complicated because it had been run much more on a
7 functional basis than on a line basis from each contract. So
8 it's not as if your employees are allocated to NexBank. It's
9 the whole panoply of businesses that we enter into, and
10 providing those services to NexBank, not through a central
11 point but through whatever requests come in from the counter-
12 parties. So we needed a good understanding of what those
13 contracts looked and what those obligations were.

14 A VOICE: John, you're on mute.

15 MR. MORRIS: Thank you.

16 BY MR. MORRIS:

17 Q All of that work was going on in the first weeks of the
18 appointment of the Board?

19 A Yeah, it would not be fair to say we could do that in a
20 couple weeks. So it took far longer than that. But that
21 didn't mean that issues didn't start to arise immediately in
22 February. And so, while we were learning, we were also
23 starting to get a feel for different things that could happen
24 in the company.

25 As in many companies, immediately, one of the first things

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1 you have to deal with is, particularly at the beginning of the
2 year, what does compensation look like; who are the -- what do
3 promotions look like; are you going to be able to hold this
4 team together to service these assets? And yeah, we had that,
5 with an additional wrinkle that Highland's payment structure
6 defers a significant amount of compensation to its employees,
7 and it vests over time, and it has the very typical provision
8 that if you are not there when it vests -- when it is going to
9 be paid, actually, not when it vests. Even if you're vested,
10 if you're not there when it gets paid, you're not entitled to
11 it. And so understanding who was owed what; how the vesting
12 worked; what the compensation structure looked like compared
13 to third parties, was one of the first things we had to do.
14 And Highland has an extremely robust review process. Brian
15 Collins manages it. It's first-rate. It goes through both
16 360 in terms of what other employees think of each other as
17 well as bottoms up, in terms of performance. And then it has
18 a top-down component, which ultimately ran through Mr.
19 Dondero. Since he was effectively removed from that role, the
20 Board had to jump in and get a full understanding with Brian
21 about what the process looked like; how it was going to work;
22 how it compared to other firms; and whether we could go
23 forward with it. And that was one of the motions that was
24 brought early to the Court.

25 A Let's talk a minute about the transactional work that the

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1 Board was called to focus on initially. Are you familiar with
2 the transactional protocols that the Debtor agreed to with the
3 Committee?

4 Q I am.

5 A Can you describe for the Court the impact those protocols
6 had on the Board's work?

7 Q Well, they make it extremely difficult. And I understand
8 the purposes behind the protocols. Was not involved in
9 negotiating them. However, because of the limitations they
10 put on the Debtor, they make it very difficult to manage
11 certain of the assets. So, if an asset needs money to invest
12 in it, depending on the size, it may need Committee approval.
13 If the -- if there are expenses that need to be paid from --
14 in related entities, and the related entity does not have the
15 capital to make the expense payment, the Debtor needs to put
16 the money in. Can the Debtor put that money in without the
17 Committee's approval, and if the Committee doesn't approve,
18 would we have to go to Court?

19 So, the functioning on a day-to-day basis for how to deal
20 with those assets became very difficult. And that came up
21 really early, as the market started to get a lot more
22 volatility by mid-February. We saw with respect to the
23 internal accounts trades that we would have liked to put on,
24 for example, short position, where we just weren't able to put
25 the trades on.

Seery - Direct

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1 Now, we could go to the Committee, and we did, but
2 understanding why we wanted to put it on; explaining it;
3 presenting that opportunity to the Committee; and then having
4 them go to the full Committee with it: It's very cumbersome.
5 And the trading markets don't wait for a week to determine
6 whether that offering that you want to -- that you want to
7 access is available.

8 So, early on, we got a sense of how difficult it would be
9 to manage the business with the protocols.

10 One of the areas I think that was significant and that we
11 talked about significantly with the Committee was an entity
12 called Multi-Strat. Multi-Strat is a fund that is owned by
13 the Debtor. It's, in essence, a PUNY-style (phonetic) fund.
14 It's an older fund. And it's about 60 percent owned by the
15 Debtor and roughly 30 percent owned by Dondero-related
16 entities.

17 However, there are 90 million, roughly 89 million,
18 approximately, third-party redeemers who had redeemed in that
19 fund but have yet to be paid, so they're treated like equity
20 claims but they're a fixed dollar amount because they are set
21 at the date that they redeemed based on the NAV at that time,
22 the net asset claim.

23 So, we were -- we were stuck with looking at that fund and
24 trying to determine how do we best manage the fund to get up-
25 side for the Debtor as well as the related entities that owned

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1 the equity, making sure that we treated the redeemed entities
2 as fiduciaries, so which we acted as their fiduciaries, but
3 then also assuring that we managed the assets that that fund
4 owns in a prudent way.

5 One of the large assets in that fund were 13 life
6 policies. And these are, in essence, life insurance policies
7 that the Debtor bought from third parties. And there's a
8 market that trades life policies, and they owned these
9 policies on (inaudible). The value at the time was marked
10 around \$32 million when -- when we took control.

11 The problem with the policies and some of the other
12 expenses at Multi-Strat is that they didn't -- Multi-Strat
13 didn't have the funds to continue to pay premiums. So, if the
14 premiums weren't paid, that \$32 million was at risk of going
15 to zero. Why? Because if the premiums aren't paid, the
16 policies lapse. And once they lapse, the insurance company
17 will pay you zero for them. They don't them buy them back
18 anywhere. That's the market. But we looked at those assets
19 and began to consider how we would fund, from a liquidity
20 perspective, monies going into Multi-Strat.

21 The amounts required would require CC's approval under the
22 protocols, and the Debtor prepetition had advanced monies to
23 Multi-Strat to make premium payments and other expenses at
24 Multi-Strat. We went to the Committee and were able to get
25 approval to put a couple million dollars in early on to keep

1 the policies alive while we analyzed the best opportunity for
2 maximizing value with respect to those policies.

3 But thereafter, we needed additional money to try to
4 consider how to continue to maximize value, and the Committee
5 balked. So we went to Dondero-related entities, and they
6 actually put equity into the Multi-Strats. So we -- the
7 Debtor had made a postpetition, in essence -- it wasn't a
8 postpetition advance because it was going outside of the
9 Debtor, but postpetition, the Debtor made a loan to Multi-
10 Strat to service the policies, and then Dondero-related
11 entities made an equity investment into Multi-Strat to
12 continue to service the policies.

13 Well, we understood as a Board but that wasn't going to
14 work and that the protocols were going to continue to hinder
15 us, so we entered into a sale process with respect to those
16 policies.

17 Q And the work that you're describing with respect to Multi-
18 Strat, is that -- just to transition to your work as
19 functionary CEO, would it fall into that bucket as opposed to
20 the Board work that we were talking about earlier?

21 A Yeah, absolutely. I think the -- the initial assessment,
22 as I said, we made as a group. And we looked at what the
23 opportunity set was, and determined that, because of the
24 costs, we weren't going to be able to continue to fund money
25 into Multi-Strat to make those payments.

Seery - Direct

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1 So the Board asked me to take on trying to work out a
2 process to sell those policies. So, working with Fred Caruso
3 of DSI, we hired a broker, after interviewing a couple
4 different brokers. We considered the views of the internal
5 Highland team with respect to value and how to maximize that
6 value. We entered into a sale process for those policies, and
7 we ended up with a number of bidders and broke it down to two
8 bidders for the 13 policies, breaking up the policies to
9 maximize the value. They're only on eight lives, so it's not
10 fair to call it a portfolio. And so there's significant
11 amounts of premiums that have to be paid on a monthly basis
12 and going forward, and realizations on those policies are very
13 uncertain because it's hard to take them over an actuarial
14 methodology because there's only eight lives.

15 We tried to consider other ways to finance those policies,
16 but seven turned out to be, in our view, far and away the best
17 net present value for the investors in the fund.

18 The challenge that we had, as I mentioned, is the
19 complexity of Multi-Strat was also layered with a loan from
20 NexBank that was secured by four of the policies. That \$32
21 million loan was also secured by the MGM stock owned by Multi-
22 Strat.

23 And then, as we got towards closing, we learned that one
24 of the buyers wanted a more detailed title rep, and as we
25 peeled through, we found a long-dormant UBS fraudulent

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Seery - Direct

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1 conveyance suit that had been brought against Multi-Strat.
2 There was no lien on the policies, but it made it impossible
3 for us to give the clean rep that the buyer wanted.

4 And at this point, I was running that with Fred Caruso, at
5 the request of the Board, and it became almost a full-time job
6 except for the five other things that we have to do during
7 April. And we negotiated a variety of different -- well,
8 considered a variety of different opportunities to try to
9 complete the sale.

10 First, I negotiated directly with UBS to see if they would
11 agree to a release, and then when the funds, other than
12 certain escrows which had to be paid out to NexBank as well as
13 repayment of the Debtors' fund, (inaudible), that didn't -- it
14 was very unfruitful in terms of those negotiations.

15 I then moved towards a potential bankruptcy of Multi-
16 Strat, where we would file Multi-Strat, have to do a 363 sale,
17 have a DIP loan to service the NexBank monthly payments. That
18 seemed very expensive.

19 We also thought about doing it as not selling them, so
20 perhaps we would a 360 -- a filing without a sale and try to
21 maximize the value by holding onto the policies but have to
22 get financing.

23 Ultimately, we came up with a structure which was we
24 escrowed funds for UBS, \$10 million of funds, but they're not
25 actually for UBS. We preserved all of our rights to defend

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Seery - Direct

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1 the claims and we had paid down NexBank. We allocated funds
2 to make sure that we can pay NexBank for the next year before
3 their loan comes due. We allocated for all the expenses in
4 Multi-Strat. And then when we went back to the sellers, lo
5 and behold, one of the two sellers balked. Didn't -- or
6 buyers, I'm sorry. Balked. Didn't want to complete the sale.
7 And fortunately, our broker (inaudible) and Fred Caruso had
8 had another buyer in the wings, kept them warm, and were able
9 to complete the sale for \$37 million.

10 So that goes to: How does this business function, what's
11 the complexity of it, and what have I and the rest of the
12 Board been doing? That was virtually a month's worth of work.

13 Q And when did the Board ask you, if you recall, to
14 undertake this project? When did it begin and when did it
15 end?

16 A Well, the initial project, around -- around Multi-Strat,
17 we started analyzing it as a group in January, the first week
18 we were there. I started probably taking control of it
19 sometime in mid-February, with Fred Caruso. So, DSI was
20 already on it. We were looking to work with the Debtors' team
21 as well as hire a broker. We, as a group, as a Board, made
22 the decision to sell the policies. Ultimately, we sold them
23 for about \$37 million, which was -- which was more, a few
24 million dollars more than the mark on the policies when we
25 took them.

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Seery - Direct

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1 Q Can you give the Judge a sense of your role, as distinct
2 from the Board's role, how you went about completing or
3 attempting to complete all of the tasks that you've described
4 and the interaction with the Board and what the Board's role
5 was in assessing all of that?

6 A With respect to the Multi-Strat policies?

7 Q Uh-huh.

8 A I think, you know, initially, it was a understand, for the
9 three of us, understand the policies; understand the premium
10 obligations; understand what the benefits, the potential up-
11 sides to those policies were; and understand what the risks
12 were if we were to fail to make a premium payment; what did
13 the lapse period look like. And we did that collectively.
14 From there, all of the individual work around -- we came up
15 with a strategy to sell the policies, and then the tactical
16 work with Fred Caruso about how to execute sale of the
17 policies and completing that sale through the issues NexBank,
18 through the issues with UBS, resolving those issues, that
19 became really my job.

20 Q Now, I do want to take a step back, because we kind of
21 transitioned from the Board to the work that you were doing,
22 and I wanted to ask: You're seeking -- the Debtor is seeking
23 to have you appointed as the CEO, right?

24 A Yes.

25 Q Can you just describe for Judge Jernigan your

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1 understanding of the duties and responsibilities of the CEO
2 position that we're seeking your appointment for?

3 A Sure. From a high level, it's -- I apologize. From a
4 high level, it's what I said earlier, which is the Board sets
5 the strategy, the CEO implements the strategy. And so I work
6 with the Highland team and the managers that I described
7 earlier, whose function that is, to try to execute on that
8 strategy. So that's, that's the basic overlay of what we do.
9 But that includes everything from, as I mentioned, personnel
10 issues to COVID-19 protocol to determining whether we're going
11 to sell certain assets and then how we're going to sell them,
12 determining how we'll resolve issues like Multi-Strat.

13 Another good example was the trading accounts that the
14 Debtor had. So, on the second or third week of January, or
15 perhaps the third or fourth week, we determined as we were
16 going through the asset review that the Debtor had two primary
17 liquid or semi-liquid securities accounts, and those were in
18 the Select account, which was a separate fund that had
19 previously third-party investors but was effectively a hundred
20 percent, 99 and change percent, owned by Highland at this
21 point. And an internal account, which was basically just
22 HCMLP-owned and denominated securities. These were generally
23 at Jefferies. Both of them employed significant margin.

24 THE WITNESS: If this is too pedantic, Your Honor,
25 please tell me if I'm going too deep.

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1 But margin is, in essence, a way for a security purchaser
2 to borrow money to facilitate the purchase and holding of the
3 securities. In essence, the lender, which in this case was
4 Jefferies, a large, well-known, reputable financier and New
5 York investment bank, was the Debtors' account holder. The
6 Debtor would select securities. Jefferies would establish a
7 haircut. The haircut is really the -- how the lender
8 determines how much they want to lend against the assets. So
9 if there's a -- if there's a haircut of a hundred percent in
10 use there, there would be no margin against that asset. A
11 haircut of 50 percent means the debtor will give you -- or,
12 the lender will give you 50 percent of the funds you need to
13 own and hold that asset and you put up 50 percent of the
14 funds.

15 And in a margin loan, the way that the lender protects
16 itself is, each day, it assesses the value of the asset; it
17 looks at the volatility of the asset; and then it asks for
18 more margin if the asset value went down in the trading
19 markets; and then you have a day or two or three, depending on
20 the structure, to post the new margin.

21 If you don't post the new margin, and this the way every
22 margin loan works, the lender has the ability to seize the
23 asset, sell it, and pay off its loan. It will then give you
24 the proceeds above the loan, if any.

25 The debtor -- the lender does that by looking at both the

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1 daily prices, to make sure that it can manage its exposure,
2 but also it considers the volatility. And what it does when
3 it's looking at the volatility, and volatility is really a
4 measure, the way -- the way that securities analysts look at
5 it, is a forward year of the movement, potential movement of a
6 security. And that's how you set your haircut. Because if
7 the -- if the asset is very, very stable -- for example, your
8 home -- if your home was a margin loan and your mortgage, say,
9 is a margin loan, there wouldn't be much calling of margin
10 every day, because if the lender loaned 80 percent of the
11 value of your home, there may be house sales that go higher or
12 lower, but they don't necessary move that much really quickly,
13 particularly if these loans set what's called a threshold
14 amount that allow a little bit of movement each way.

15 The margin loans, though, are on securities that can move
16 tremendously. And what happened in February and then in early
17 March, volatility spiked up, prices moved significantly,
18 prices moved against the Highland positions. So Jefferies did
19 two things. One is it called margin, because it was -- its
20 equity cushion, in essence, was getting trimmed, and it wanted
21 more protection. Number two, it increased the haircuts, which
22 it was entitled to do because it looked forward and said, The
23 volatility in this market is worse than we thought. It will
24 be a higher volatility and there's more risk to us that the
25 asset could be worth less than the loan.

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1 I started working with Joe Sowin, who's a head trader, a
2 very accomplished trader at Highland. He actually reports
3 into the -- not on the Debtors' payroll but another payroll
4 that we don't manage. But he spends a ton of time working on
5 Highland assets and trading those assets. And Joe and I
6 started working together to try to manage the Jefferies
7 exposure.

8 At one point, Jefferies actually seized the Select
9 account. Again, Select wasn't in bankruptcy, but Jefferies
10 had safe harbor provisions or protections anyway and they
11 could have done it. We felt they were about to seize the
12 internal account, and so we sent them a note that said that
13 perhaps their safe harbors weren't as good as they thought.
14 But, more importantly, here's our sale program. Jim Seery's
15 going to take over the account, working with Joe, and we're
16 going to manage it down.

17 In the Select account, Jefferies took it over -- and this
18 is not really a blame to Jefferies; it's part of the market --
19 they sold out of that account pretty quickly. They did work
20 with us, but they were the selling position and covering their
21 loan, and we lost virtually all of the value in that account.

22 In the internal account, we effectively kept Jefferies
23 from seizing it, gave them a sale program, and then day-to-day
24 managed the sale of the more significant assets, as well as
25 the hedges, which mean we traded pretty aggressively

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1 throughout the day. This was a full-day job, trading that
2 account, with Joe as the trader and then me acting as the PM,
3 effectively.

4 We took that account, which if Jefferies had taken it over
5 and done -- it had virtually the same securities, it had just
6 a small number of securities, as well as some hedges which had
7 significant basis risk related to the securities -- we took
8 that account over. If we'd gotten the same program as
9 Jefferies, we would have lost \$11 million. We made about \$23
10 million. So that swing, that swing was pretty significant.
11 I'm sorry, we made about \$11-1/2 million, about a \$23 million
12 swing than if Jefferies had taken it over.

13 So that was another example of what I've been doing that
14 the Board designated me to do to help run this business.
15 Working with Joe, as well as research, as well as discussing
16 these positions on a regular basis with Jefferies, weekly
17 calls and daily e-mails, we were able to preserve that value
18 in that account.

19 Q And so, just for context, this is happening in late
20 February or early March, as COVID is hitting and the markets
21 are volatile; is that fair?

22 A That's when we started taking it over. The real -- the
23 real -- the lay in the markets was about March 22nd or 23rd.

24 Q Uh-huh.

25 A And that's when it became a daily grind on those positions

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1 for a solid month to make sure that we got it in a decent
2 place.

3 And remind you that we were trading those accounts within
4 the strictures of the protocols. So we didn't have the
5 ability to -- the securities were -- rather less liquid. We
6 didn't have the ability to just dump them, because we would
7 have destroyed the market and taken significant losses.

8 In addition, because of the protocols, we didn't have the
9 ability to go out and buy hedges, even though we had a
10 negative bias as to where the market was, particularly in
11 those less-traded securities.

12 And it's -- it was public that Highland (inaudible) and
13 Highland (inaudible) was in bankruptcy, so you can be certain
14 that the traders were leaning on those -- those securities
15 from short decisions. So it was a very difficult, time-
16 consuming effort, and a great job by Joe.

17 Q When you talk about a time-consuming effort, how would
18 you -- how would you characterize the amount of time you spent
19 on this project in the month of March? Was it a full-time
20 job?

21 A Yeah. Yeah. I mean, full-time is relative, right, but it
22 was -- it was a lot of time. So we would start out, you know,
23 like everybody else who is in those markets and do it the same
24 way, it's pretty tried and true: By 6:30 in the morning,
25 you're starting to look at what the EOP, what Asia did, where

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1 European markets were opened up, what the futures were looking
2 like, looking at your own securities, checking all of the
3 mail, talking to your research folks. To the extent that you
4 know that there's other investors in those investments, we
5 reached out to those -- I have a number of contacts in the
6 market who are in these kinds of assets -- to see what they're
7 thinking and how they're looking at value. And then set up a
8 trading strategy with Joe, and then execute on it every day.
9 And that trading strategy, again, was not static. So during
10 the day, a dynamic trading strategy has to be adjusted
11 depending on what the market is doing, and Joe was excellent
12 at it.

13 Q I think you mentioned the protocols earlier. Can you just
14 talk a little bit more about how you and the Debtor
15 communicated with the Committee through this process of
16 addressing the Jefferies mortgage -- mortgage defaults?

17 A Well, every day, we sent a report to -- to the Debtor -- I
18 mean, to the Committee, I apologize -- with our positions in
19 each of the accounts and tell them exactly what we're doing,
20 what the plan is, what we're set up to do, where we think it's
21 going, and what assistance we might need through the
22 protocols.

23 I think it became really difficult for the Debtors'
24 professionals -- the Committee's professionals to deal with
25 these issues, because it's just not what they were used to

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1 doing every day. So we would report to them. The Committee
2 met weekly. We can -- provided direct information to
3 Committee members when they -- you know, there's members on
4 the Committee who are very versed in these types of assets.
5 We would talk to them directly, I would talk to them directly,
6 and tell them exactly what we're doing and why and get their
7 input, because there was no magic special sauce as to exactly
8 what to do.

9 Q And would you characterize the process as transparent and
10 open between you and the Committee and its members?

11 A Oh, oh, absolutely. You know, we were -- they were
12 constructive. I wouldn't say that the Committee wasn't
13 constructive. I think the difficulty the Committee had, which
14 is what, you know, any third party would have, is that: Why
15 are we going to put more money into these accounts when the
16 value is going down, and what's -- what's your -- what are
17 your price targets? How do you think about those assets;
18 who's the analyst who's working on it; how do they compare to
19 other assets? So it wasn't an easy process for the Committee
20 to get their arms around, either.

21 Q Okay.

22 MR. MORRIS: Your Honor, we have other transactions
23 that we could talk about if you think that would be useful, or
24 we could continue to push this forward.

25 THE COURT: You can continue to push it forward.

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1 Thank you.

2 MR. MORRIS: Okay.

3 BY MR. MORRIS:

4 Q Then let's transition for a moment just about your
5 recollection as to kind of when and how, you know, the
6 discussions with the Board and the Committee evolved with
7 respect to your taking over as CEO. Did there come a point in
8 time that you can recall when the Board asked you to consider
9 that?

10 A Yeah. The Board asked me to consider it I would say
11 probably late January or early February. And the initial
12 discussions, even before, you know, before we were selected.
13 So, as John Dubel and I had been selected by the Debtor and
14 the Committee, we talked about the need for one central point
15 of management for this company. That it's 70 employees and
16 diverse assets, diverse business practices. How are we going
17 to mold that as a Committee? It really needed somebody to
18 execute the strategic plan that the Board put in place.

19 And so John had asked me about that even before we were
20 selected. Committee counsel asked me about it. So there was
21 -- there was some, at least away from me, there was some view
22 that perhaps I was going to be the person that was most
23 likely, if it was needed.

24 My view in early February was that, you know, we were
25 effectively, as the phrase goes, drinking from a fire hose,

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1 and I wanted to get a better sense of who the folks were at
2 Highland; what their responsibilities are; how they performed;
3 what I thought of them as performers; how -- I had -- or,
4 having some idea what the claims are and how that process
5 would work; and could we make this a success?

6 So, early on, in January and in February, as we started
7 having these discussions, I was in the Highland offices at
8 least three, usually four days a week. And I was there from
9 7:30 in the morning until 6:00 or 7:00 at night every day.
10 And that gave me just a different feel for exactly how the
11 organization was running and the issues that were coming up
12 every day.

13 That evolved into March where, after I took over the
14 securities accounts in early March and then took over the
15 Multi-Strat issues, that John and Russ Nelms pushed me to
16 really consider stepping up fully to the CEO role. So, by
17 early April, I think it's the first week of April, we actually
18 -- we put it forth and go to the Committee. So we started
19 negotiating what potential terms were, how it would work.

20 You know, one of the concerns that I had, you know, we had
21 no idea, and I suppose we still don't, how the COVID-19 issues
22 will play out and how that would both -- because at the time
23 they were really affecting New York, where I'm based and I
24 live, and less so in Dallas. But by mid-March, it was pretty
25 clear that the whole country was being affected. And now,

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1 obviously, it's hitting all over.

2 And hopefully that will settle, but what we did learn, and
3 I think a lot of businesses learned, is that particularly
4 these types of service businesses that function electronically
5 in lot of respects, even when they are in an office, because
6 you're in front of your screen, that we are very lucky to have
7 these types of roles where we can really perform the job, if
8 not equally well, pretty darn close to how you perform it when
9 you're at the office. And so that issue subsided a little bit
10 in terms of how I would interrelate -- not the issue going
11 away, obviously -- but how I could interrelate and work with
12 the team to drive the business, even if I was doing it from
13 New York.

14 Q And have you continued to play a leadership role from the
15 time you spoke with your fellow Board members in early March
16 until the present?

17 A I have. And I think one of the things that the Committee,
18 you know, recognized was that John and Russ, experienced
19 professionals, were willing to step back and let me take the
20 day-to-day working with the Committee or presenting to the
21 Committee. So we do have weekly Board meetings and we do have
22 almost daily Board calls, and then, without an official
23 meeting, we meet on the phone virtually every Saturday or
24 Sunday, sometimes both, with the three of us, to go through
25 what's happened every -- each week, how the plan has evolved

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1 and where we're pushing it.

2 But in terms of the presentations to the Committee, I took
3 the lead on those in both designing and working with the Board
4 then and then implementing them and laying them out for the
5 Committee, as well as the individual negotiations.

6 So, early on, we determined that we had to try to figure
7 out a way to push this case forward, notwithstanding that we
8 weren't getting -- we didn't see a lot of movement from any of
9 the parties, frankly, on trying to figure out a way to
10 coalesce around a direction. So we designed a program that we
11 laid out for the Committee in which we considered three main
12 areas to consider for a plan. And I took the lead on doing
13 that.

14 Q So, let's talk a little bit about the claims resolution
15 process and the formulation of a plan. Have you played any
16 role in the claims resolution process?

17 A Well, we haven't actually resolved any claims completely
18 yet, but we're very close on one, and I've taken the lead on
19 doing that.

20 On the other two, I've been involved heavily with the --
21 both counsel and with DSI in analyzing the claims. As well as
22 with the rest of the Board, frankly. The -- you know, we've
23 got a significant amount of expertise between John Dubel and
24 Russ Nelms with respect to how to think about these issues in
25 the context both of a bankruptcy, obviously, with Russ, and in

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1 the context of both a restructuring and in the business with
2 respect to John.

3 So we've gang-tackled those, again, effectively, all
4 analyzing the various issues with respect to these claims.
5 But in terms of having the direct negotiations, particularly
6 on two of them, I've taken -- I've taken more of the lead
7 about where we could go. And if you -- particularly with my
8 background in restructuring, and having wrestled with
9 substantive consolidation, alter ego, piercing the veil since
10 1988 or '89, you know, some of the issues that have arisen in
11 this case are very, very familiar to me. I've spent a
12 significant part of my career dealing with those. So I've
13 taken the lead on those types of issues.

14 I think that where I was going was in terms of structuring
15 potential outcomes for plans. And we are -- you know, we've
16 been slowed down, as I think Jeff Pomerantz mentioned last
17 week, to a fair degree by COVID, in that the business impacts,
18 we can go into, and Jeff touched on some of those, but the
19 social impacts with respect to negotiating are hard to -- are
20 hard to understate. The -- you can run a business like this
21 through your screen. It's very difficult to simply negotiate
22 by phone or by video. The face-to-face, at least in my
23 experience, makes a big difference in moving parties, and we
24 haven't had as much of that.

25 What we've tried to do recently, starting in May, is we've

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1 put together a program for the Committee, and we'll walk them
2 through what I think are the -- what we determine as a Board
3 and then we laid out the specifics -- I didn't; DSI -- of what
4 the options are in this case.

5 And I think number one was the status quo. Do we maintain
6 this case status quo, continue to run the business, and then
7 try to negotiate, resolve, mediate, or litigate, first through
8 dispositive motions, then through something more significant
9 if we can't do it through dispositive motions, these claims?

10 The Debtor right now on an operating basis does burn cash.
11 I can go into the specifics, but the Committee knows them, and
12 I'd prefer to do those *in camera* if we -- if the Judge would
13 like that. We do burn cash on an operating basis, but not
14 that much. The Debtor has about \$30 million (inaudible) and
15 the business does run, and generally each year the operating
16 burn, if you will, which is, in compensation, is filled by
17 selling some assets that have appreciated in value. And the
18 Debtor runs real -- with those accretions, run roughly
19 breakeven.

20 The problem in this case is that we are burning a
21 significant amount of bankruptcy professional fees. And it's
22 the lament of creditors and business operators and the
23 bankruptcy bar. I think, certainly, the judges that I see for
24 a long time. And the percentage -- the cost of the cases
25 keeps going up and the percentage of the assets keeps going,

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1 but particularly if the asset values are going down.

2 So the status quo didn't make a lot of sense unless we
3 were going to get very swift movement from the parties, and I
4 mean all sides, to try to resolve the case.

5 The other type of outcome we thought about in terms of a
6 plan was a downsiding model. Downsizing model, excuse me. In
7 that model, we would try to significantly cut headcount, try
8 to significantly cut expenses. Run the business as leanly as
9 possible. And then try to go through those steps with respect
10 to resolving the claims.

11 Again, the problem, the problem with that is resolution of
12 those claims was uncertain and could take a long time, unless
13 we had significant movement from either side. But, moreover,
14 in terms of operating the business, we determined that with
15 respect to both the managed accounts and shared service
16 agreements, we really couldn't effectively do the job that the
17 Debtor does with a smaller staff. Truth is, even at 70
18 people, the HCMLP staff is pretty lean. It's a really good
19 team and they are very efficient and they've really proved it
20 through working offsite, you know, through the pandemic.

21 But we really thought that if we -- and analyzed it. If
22 we were to try to cut that team and provide the services, we
23 would fall down. So we would breach the duties or potentially
24 incur liabilities under those various contracts.

25 The third area that we took a look at, which was what we

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1 called the subservicing model. In this model, we would try to
2 separate the business of the Debtor, which has a small
3 operating loss, but it's still material money, from the asset
4 management. That way, you could hold onto the assets for the
5 benefit of the creditors or the Debtor, depending on where the
6 claims comes out, still provide the services to those third
7 parties under the subservicing agreements or the management
8 agreements. You wouldn't make money on that, but you'd get
9 rid of the operating burn.

10 And that model had a number of issues, but we've sort of
11 evolved that model to what I think has been referred to in
12 court as the debtor-creditor monetization vehicle. So a
13 little bit of a cumbersome name, but the idea would be to try
14 to separate the assets, which potentially are the ways to pay
15 the creditors, depending on where claims come out, and then --
16 and the operations, and make sure you can continue the
17 operations without a heavy burn.

18 That model also permits us to cut, we believe, bankruptcy
19 operating expenses significantly. So, right now, because of
20 the nature of the case, we have two professionals doing every
21 job: Committee professionals and Debtor professionals. We
22 would be able to reduce that cost by putting those into one
23 entity that'll be a trust-like structure to service the
24 business, resolve the claims, monetize the assets.

25 And, finally, something I started working on -- I'd say on

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1 my own, but that wouldn't be true -- with the DSI team,
2 particularly the two -- we have two excellent analysts on the
3 case. A very detailed model of what I think has been referred
4 to maybe even in court as a potential grand bargain plan. And
5 that plan looks at monetizing the assets over what period we
6 believe that we could get that done. (inaudible) we're
7 looking at the values that we could achieve as well as setting
8 out what we think are reasonable numbers for the claim
9 distributions and then how they would be made.

10 Now, on the asset side of the ledger, we have a pretty
11 good understanding. We obviously know where the assets are
12 bought, and we have a pretty good sense of what the current
13 market looks like for those assets. We're not a forced
14 seller, but we have -- we have been involved in processes
15 around a number of the assets and have a good sense of where
16 values are and how long it would take to achieve those values.

17 You don't have to sell an asset as well to get money from
18 it. There might be ways to finance those assets. Although,
19 to be sure, in this environment, financing particularly these
20 types of assets has become very, very difficult.

21 The other side of the equation of the claims, and we're
22 using our best estimate of where we think those claims come
23 out in terms of payment, the creditors often have a different
24 view as to what they would like those claims to come out with.
25 So we're trying to figure out, through negotiation and

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1 discussion, how we get those two sides closer together. And
2 that, that would be the grand bargain plan.

3 And I think where we're really focused now is that status
4 quo doesn't make sense. We've gone that way too long.
5 Downsizing doesn't work because of the complexity of these
6 operations and the contractual obligations that the Debtor
7 has. And it's really a grand bargain plan or a Debtor
8 monetization, a debtor-creditor monetization vehicle, which
9 would be structured like a trust and still be able to service
10 the business while resolving the claims.

11 Q Taking into account the uncertainty because there are
12 still some options being considered, in your leadership role,
13 have you -- do you have a sense of timing? Is there a
14 timeline by which certain milestones are at least
15 aspirational, if not achievable?

16 A Well, I don't think I'm telling anyone what they don't
17 know, that deadlines get people to act and make decisions.
18 Sometimes they're good decisions, sometimes they're not, but
19 we're going to push forward on both of these plan
20 opportunities now. So we intend to file a debtor-creditor
21 monetization vehicle plan, and we'll keep pushing the parties
22 towards settlements.

23 You know, as we say on the Multi-Strat negotiations, until
24 it was clear that we were either going to default, because we
25 didn't have the money to pay those premiums, or we're going to

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1 file Multi-Strat as a bankruptcy, it was hard to get folks to
2 really come to the table and think about how to settle that
3 issue.

4 These issues in regard to the total case are much more
5 complicated. We're going to file a plan. We believe that
6 will set a bit of a crucible to folks to think about how to
7 move forward with their claims. We are, as Jeff Pomerantz
8 mentioned last time, agreed in principle, but we have some
9 issues to work through with Redeemer that we hope to be able
10 to resolve by this week. And so that's my internal goal, but
11 I expect to be able to do it.

12 The reason that's complex is not that it's simply a -- the
13 arbitration award is not simply a money award; it actually
14 requires certain offsets, it requires certain assets be sold
15 and paid for. And we're trying to carve our way around some
16 of those, because they (inaudible) agreement, because they're
17 -- they're more difficult than simply exchanging cash for
18 assets, because we don't have the ability to do that right
19 now. We don't have the cash, and we're in bankruptcy.

20 So I do believe that we can get these done. And then if
21 mediation is something that would work, great. We're going to
22 try to do it without mediation as well. Going to try to do it
23 before we get to mediation and resolve claims. And if we're
24 unable to do that, hopefully mediation will push it forward or
25 we have to have a fallback, which will be dispositive motions

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1 with respect to certain of the claims.

2 But we expect to have and I think we have a number of
3 claims objections that have (inaudible). We've resolved
4 those. We're really down to three claims. And one of them is
5 almost done.

6 Q All right. At the last hearing, --

7 MR. MORRIS: Your Honor, that really does finish the
8 substance of the testimony with respect to this motion, but at
9 the last hearing Your Honor raised some questions about PPP
10 loans.

11 THE COURT: Yes.

12 MR. MORRIS: Would you like me to just take a moment
13 with Mr. Seery to address that?

14 THE COURT: Yes, please.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q Mr. Seery, you're aware that the Judge raised some
18 questions about whether and to what extent the Debtor may have
19 been involved in any of the PPP loans?

20 A Yes.

21 Q And have you done any work to try to figure out the
22 answers to the questions the Judge posed?

23 A Well, work in response to the question, but also work
24 previously. So, just a -- quickly, as I think we all know,
25 the PPP program was put forth to try to give companies cash

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1 that they had to use for employee payments, to continue to
2 keep payroll supported and to continue to have folks hold
3 their jobs.

4 We have -- and I think the *Business Insider* article, which
5 I'm not familiar, I know the publication is not something I
6 seen much, but I'm not familiar with the specifics of that
7 article, and -- but any PPP, away from the assets that HCMLP
8 actually owns or controls. And we've got -- we've got three
9 -- and I think there's some substance to the article. But
10 we've got three businesses. And these are -- this is public,
11 but I'll go into the -- sort of the obvious reasons without
12 going into the specifics of the business around the ones that
13 I know of well.

14 Carey Limousine is a business that transports folks in
15 high-quality cars from airports or from events or between
16 businesses. It was hit severely by the COVID-19 pandemic.,
17 particularly with respect to the air transportation, which was
18 really one of its biggest areas. The business,
19 notwithstanding Uber and the other type of shared ride
20 services, had actually done quite well, and Highland was an
21 owner of a significant portion of that business related to
22 some loans that it held in various funds.

23 That business's management, with its own outside counsel,
24 sought a PPP loan. Then our director came to us and discussed
25 with the Board the propriety of that loan. We engaged outside

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1 counsel, not bankruptcy counsel but counsel that had
2 particularized expertise in PPP, and spent a ton of time
3 really understanding both the law as well as the specific
4 regs. Carey did get a PPP loan. It is potentially
5 forgivable, depending on how it's used.

6 The second entity that was similar but didn't come to the
7 Board, we have a business called SSP, which is an excellent
8 highway business that provides equip -- materials for a lot of
9 different road construction, but primarily highway road
10 construction. Very well run business. That entity got a PPP
11 loan as well, primarily worried about whether the construction
12 on the highways would shut down.

13 So it's been -- I don't believe that's really happened in
14 Texas, which is where most of their business is, but they
15 qualified for that loan. They did not come to the Board. A
16 very specific carve-out, because one of the interest holders
17 that we share that position with is a Small Business
18 Administration fund and, so it was very clear that it was
19 entitled to that loan.

20 Then there's a third entity called Roma that got a very
21 small PPP loan. We don't control the entity and we were not
22 involved in its acquisition of that loan. Again, it would
23 have to be used as required.

24 One of the things I want to make sure that is in the
25 record and for Your Honor with respect to Carey, we spent a

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1 lot of time as a Board focused on, one, whether it was legal
2 to get that loan, first. We're doing everything right, by the
3 book. We're not going to play in the gray. There is no gray.
4 There's black and white in these areas.

5 Number two, was it ethical, was it appropriate that we
6 went and got this loan or that Carey went and got this loan?
7 Management, with the outside counsel, was sure that we could
8 do it, but we didn't want to take their word for it, so we
9 went out and got our own counsel, third-party counsel for the
10 Board to make sure that this was appropriate.

11 Three, the requirements around these loans are significant
12 and the penalties for violating them are severe. So if you
13 get a loan by mistake, are you really required to pay it back?
14 And if you're mistaken, that will be expensive, but it won't
15 be a real penalty. But if you get a loan that's really
16 inappropriate, that you shouldn't have gotten, that was a
17 material misstatement of any of the facts around it, the
18 penalties are significant. And not only in terms of the
19 opprobrium that you'd suffer in the press, because that's
20 coming, but in terms of how you use the funds.

21 So they can only be used in very specific ways, and we
22 were exceptionally careful around this program.

23 The basis of the program is to keep people employed. And
24 with a business like Carey Limousine in particular, where
25 there's a significant amount of debt, where the business is

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1 shut down by COVID, where we didn't have the funds to put into
2 Carey, nor even if we wanted to, we might not have been able
3 to do it without the Committee's approval because of the
4 protocol, a PPP loan was not only legal but it was
5 appropriate. And it's being used in that fashion, meaning to
6 keep employees employed.

7 Q Thank you very much, Mr. Seery.

8 MR. MORRIS: Your Honor, I have no further questions
9 of Mr. Seery. Does the Court have any questions?

10 THE COURT: I actually have a follow-up question
11 regarding the PPP, just to kind of put a bow on this.

12 EXAMINATION BY THE COURT

13 THE COURT: I'm looking at the demonstrative aide. I
14 don't know if you, Mr. Seery, have it there handy.

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. So I'm turning to Page 6, the
17 chart, the subchart, Investments and Subsidiaries. The third
18 column, Privately-Held Equity, Various Companies. I mean,
19 that would be the type of investment entity we're talking
20 about here that got the PPP loan: Carey Limousine, SSP, Roma?
21 Nothing that was -- well, I'm going to say Highland affiliate.
22 Affiliate, that's a dicey term, but that's the type of entity
23 in the organizational structure we're talking about, correct?

24 THE WITNESS: Those are the ones -- I want to be very
25 careful, because I know what I know and I know I won't

1 represent anything that I don't know.

2 So, with respect to the entities that HCMLP, the Debtor,
3 controls, that's absolutely the case. I don't know, and I can
4 try to find out, but they are not HCMLP-controlled entities.
5 Whether other entities in the related-party complex received
6 loans -- so, obviously, HCMLP did not receive a loan. And the
7 only entities that we were involved with is the ones I
8 mentioned to you.

9 And I should mention, there are other entities in the
10 privately-held equity that got other government money, in the
11 medical space, that they didn't even ask for. HHS pushed
12 forward payments to folks in the business, medical healthcare-
13 providing businesses, to assure that they had liquidity to
14 provide. And so -- and this has been described to me exactly
15 this way, that they woke up in the morning and found money in
16 their account. And with one of the companies, they actually
17 returned a bunch of the money because it was from a dormant
18 provider number and they didn't believe it was appropriate to
19 keep that money. So that was one of the entities that we
20 control with other investors.

21 But with respect to our HCMLP entities, these are the only
22 ones I know. With respect to other related entities that
23 might be in the family of businesses, for lack of a better
24 term, that were alluded to in the *Business Insider* article, I
25 don't know that answer. So, I -- if I -- I can try to find

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1 out. I just don't know the answer, Your Honor.

2 THE COURT: All right. Thank you. Well, this has
3 been extremely helpful.

4 I should ask does anyone have any questions of Mr. Seery?
5 The Committee counsel, perhaps? Anyone else?

6 MR. CLUBOK: Your Honor, this is Andrew Clubok. In
7 light of the testimony, I do have some questions on behalf of
8 UBS.

9 THE COURT: All right. Briefly. Go ahead.

10 MR. CLUBOK: Okay.

11 MR. MORRIS: Your Honor? Your Honor, I'm sorry to
12 interrupt, but there's no objection lodged here. If Your
13 Honor wants to permit it, that's obviously the Court's
14 prerogative. But as just a point of order, having not lodged
15 an objection, I don't know what right anybody has to cross-
16 examine the witness.

17 THE COURT: All right. Well, that's why I said
18 briefly. I think that Mr. Morris makes a good point, Mr.
19 Clubok. You could have filed a written objection, response,
20 comment, or something. So, you're a party in interest. I'll
21 give you a little bit of leeway here. But please keep it
22 brief.

23 MR. CLUBOK: Yeah. Thank you, Your Honor. It's just
24 some of the things that Mr. Seery said which we didn't expect
25 to hear that has raised a few questions that I just very

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1 briefly will try to address.

2 CROSS-EXAMINATION

3 BY MR. CLUBOK:

4 Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham &
5 Watkins, on behalf of UBS.

6 Mr. Seery, you talked about the fiduciary duties you've
7 understood yourself to have with respect to certain parties,
8 and my question to you is: Have you understood, since the
9 beginning of your service as an Independent Director of
10 Strand, that you had fiduciary duties to the unsecured
11 creditors of the Debtor?

12 A It's a -- it's a -- the answer is I understand the
13 fiduciary duties very well. I think we have fiduciary duties
14 to the estate. So Highland -- what I tried to explain is that
15 Highland, as an asset manager, has very specific fiduciary
16 duties that are set forth in (inaudible) in the cases and the
17 rules that have interpreted it. We, as directors of Strand,
18 have a duty to the estate.

19 I don't think it's -- I don't think it's fair, and I'd
20 have to subject myself to some education from counsel, I don't
21 think it's fair to say we had a specific fiduciary duty to a
22 particular creditor.

23 So, for example, if I had a fiduciary duty to UBS, it
24 would be very difficult for me to object to UBS's claim. It
25 would be -- I don't know how I could do that as a fiduciary.

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1 When the claim is crystalized in the estate, I believe that we
2 have fiduciary duties to each and every interest holder in the
3 estate.

4 Q My question is a little simpler, and I just -- well, I'm
5 actually not asking legally whether you do or not. I'm asking
6 what your understanding has been since your role. Have you
7 conducted yourself in a way in which you have treated your
8 obligations as though you have a fiduciary obligation to the
9 unsecured creditors?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q You said that you believe that you have, with respect to
15 Multi-Strat, which is an entity that you manage, you said that
16 you understood yourself to have fiduciary duties to the
17 redeemers of Multi-Strat. Do you recall that?

18 A Yes.

19 Q Yeah. And Multi-Strat is outside of the estate, but HCM,
20 the Debtor manages Multi-Strat. And you said because of, you
21 know, your role, you personally feel as if you have a
22 fiduciary duty to the redeemers in Multi-Strat, correct?

23 A I --

24 MR. MORRIS: Objection to the form of the question.

25 Mischaracterizes the testimony.

1 THE COURT: Sustained.

2 MR. CLUBOK: Your Honor, I believe that the
3 transcript -- I believe Mr. Seery said in direct that he
4 considered himself to have fiduciary duties with respect to
5 the redeemers of Multi-Strat. The transcript will show it. I
6 don't know what the objection is. Maybe I misstated when I
7 asked my question, but I'm just starting --

8 THE COURT: Okay.

9 MR. CLUBOK: I'm just trying to understand --

10 THE COURT: All right. I'll let you rephrase the
11 question, but this -- I've probably -- I may have made a
12 mistake in letting you ask questions, because this is about
13 the propriety of him being CEO and the reasonableness of
14 compensation. This isn't a discovery opportunity. So I'm a
15 little confused the relevance of what you're asking. Could
16 you address that for me?

17 MR. CLUBOK: Sure. Your Honor, Mr. Seery on direct
18 described what he understood his fiduciary duties to be. I
19 think we -- it made me wonder, he didn't mention the unsecured
20 creditors or what he believes his fiduciary relationship is,
21 if any, with the creditors, unsecured creditors. I would -- I
22 think it's a fair question to ask what his understanding is,
23 because now he's going to take on a new role as CEO, and I
24 think it's appropriate for everyone to understand, so we know
25 when we're dealing with Mr. Seery --

1 THE COURT: Okay.

2 MR. CLUBOK: -- what his --

3 THE COURT: I think -- I think he --

4 MR. CLUBOK: -- he understands -- what he understands
5 his fiduciary duties to be.

6 THE COURT: I think he answered the question, and
7 frankly, I think he answered it correctly. His fiduciary
8 duties go to the estate, right? And the creditors are the
9 beneficiaries of his actions in that regard, right? So I
10 think he correctly answered the question already. All right?
11 Next question.

12 MR. CLUBOK: Okay. He says that there's three
13 aspects of the business he's been managing: \$300 million,
14 roughly, of Highland's own assets; the fact that they manage
15 \$3 billion in other assets, I think in managed assets; and
16 then they have shared services for \$6 billion in assets owned
17 by related entities, mostly.

18 BY MR. CLUBOK:

19 Q For those three separate businesses, I just want to
20 briefly understand: With respect to the first one, for
21 example, there's \$300 million, you said, roughly, of
22 (inaudible) assets. Roughly what were the value of the assets
23 when you started your role in January of 2020?

24 A It's hard to compare apples to apples on this because
25 there are certain assets that we've taken out that didn't

1 change in value. So I would say they were carried on the
2 balance sheet at different levels. I think a good rough
3 number would be in the \$500 to \$600 million area.

4 Q Okay.

5 A And the biggest -- the biggest movants in asset values
6 have been on securities, both ones that we continue to own and
7 the accounts that Jefferies -- that were levered, and those
8 were shown as unlevered marks on the balance sheet and the
9 losses that were incurred there. And then with respect to
10 certain of the PE assets and then a major movement on a
11 related-party loan, where the Board, through analysis that we
12 did with DSI and others, believes that loan is likely to be
13 worthless. Likewise, the claim of that entity we believe is
14 likely to be worthless.

15 Q And then to the extent the assets, you say, have a rough
16 value of \$300 million, you alluded to significant professional
17 fees, bankruptcy costs, administrative fees, the Debtor is
18 burning cash. My question is, If it's \$300 million today
19 roughly of total value of assets, what's your current best
20 estimate of the total amount that will be available to be
21 distributed to the creditors net of those -- that burning of
22 cash and the admin fees and the other issue that you
23 mentioned? What is your current expectation of the total
24 amount that will be able to be distributed to the creditors?

25 MR. MORRIS: Your Honor, just -- I just object to

1 this line of inquiry. It's like free discovery, as Your Honor
2 suggested earlier. I don't know what it has to do with Mr.
3 Seery's work, his qualifications, the compensation
4 arrangements. And I think it's inappropriate.

5 THE COURT: Okay. I'll overrule and allow this one
6 remaining question, but that's going to be it, unless your
7 next questions pertain to the employment or compensation
8 structure.

9 THE WITNESS: Yeah, I don't have a crystal ball as to
10 what the assets are going to be worth. I think that they are
11 fairly marked right now, and we have significant discovery
12 that we've had with respect to a number of the assets and
13 marked at views as to their value. So I think that we're at a
14 pretty good base value, assuming that we don't rush into
15 forced sales of assets.

16 So, as I know the Court is aware and I hope you're aware,
17 when you look at asset values, and you look at them on a
18 liquidation basis, the numbers are normally much lower than
19 when you look at them as selling them on a more controlled
20 basis. If you have liquid securities, that's not the case.
21 So if I have \$500 million of Apple at \$363 today, it's
22 probably a good chance that it'll be worth something different
23 in a month, something different in two months. But if I need
24 to move my position, I can do that.

25 These assets are much more difficult to move. And the act

1 of selling them often changes the value, which is why we
2 engage professional bankers to help move, first, those assets.

3 So I just don't have a good crystal ball. I think the
4 valuations that we have now are pretty good. I think they've
5 been scrubbed well. But that doesn't mean that certain of
6 these assets will maintain the exact value they have. So, I
7 gave a good example of Carey Limousine, which is a very small
8 asset but it's an easy one to understand because everybody can
9 relate to a car service company that does, you know, a little
10 bit more high-end and is focused on the airport travel and how
11 that's been impacted.

12 That asset value has gone down precipitously, even though
13 it was small, because of that. So I don't -- I don't really
14 have a great crystal ball as to what's going to happen. If
15 we're very successful in the fourth quarter and the economy
16 stabilizes and the COVID vaccines are out in record time and
17 move forward, then I think we've got potential for upside.
18 But right now, in the current environment, I think we're
19 marked fairly.

20 BY MR. CLUBOK:

21 Q Yeah. But my question really wasn't about the value of
22 the assets. I realize those could go up or down. And you
23 think they're fairly marked. My question was, What's the
24 total amount of setoff from those assets to the extent the
25 bankruptcy fees you alluded to, the burning of cash on the

1 other businesses, you know, how much, you know, net -- what's
2 the amount that will come off of those assets or that should
3 be -- that we should assume will be deducted from those assets
4 because of the professional fees that have been incurred or
5 you predict will be incurred through the end of the year and
6 the burn of cash that you mentioned, et cetera?

7 I'm trying to understand how you supervised -- because
8 you've managed those expenses as well as the assets, right?
9 And so I just think it's important for us to understand, at
10 the end of six months, and then how things are set for the
11 rest of the year, what's the total amount of, you know, call
12 it liabilities or costs associated with running the business,
13 running the business and at a cash burn rate, bankruptcy fees,
14 et cetera, that we --

15 THE COURT: Okay. I'm going to cut it off. I'm
16 going to cut it off. That, in my view, is going a little too
17 far afield. That's a discussion outside the courtroom. So,
18 thank you, and we're going to see: Does the Committee have
19 anything they want to ask?

20 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
21 the Committee.

22 I certainly do not have any questions to ask. I do have a
23 couple of statements that I want to make, but I don't know if
24 now is the appropriate time or if there's going to be further
25 testimony.

1 THE COURT: Okay. I think there might be another
2 witness or two, but we'll let you make your comments at the
3 appropriate time.

4 EXAMINATION BY THE COURT

5 THE COURT: Mr. Seery, I meant to ask, I forgot to
6 ask: You've mentioned a couple of times the Debtor, Highland,
7 has 70-ish employees. Has the number gone down since the case
8 was filed, is Highland losing employees, or is it staying
9 stable?

10 THE WITNESS: We lost -- we lost seven employees.
11 There were some that were severed for performance reasons.
12 That happens every year. There were some that just moved on
13 because they decided to move on. And that some -- and then we
14 had some that, because of the bankruptcy, we lost. We added,
15 I think, one or two employees that we're pretty excited about
16 in the fund valuation area, which is a pretty critical area
17 for the shared services. Unfortunately, they haven't been
18 able to go to the office, but fortunately, they've been able
19 to work.

20 So we're down, Your Honor, probably eight total, and so
21 we're more of the low to mid-60 area right now.

22 THE COURT: Okay. And --

23 MR. SEERY: And we were a little bit north of 70 when
24 we took the case.

25 THE COURT: Okay. And the COVID situation, I mean,

1 if you walked into the office, would there be people around in
2 masks, or are people still working at home?

3 MR. SEERY: People -- so, in -- yeah. So, in March,
4 very early on, as things started to shut down, Brian Collins,
5 who's the director of human resources and an accomplished
6 professional, came to the Board and basically said, you know,
7 yeah, Texas is better, but it's not immune. We need to come
8 up with a program.

9 And with Russ Nelms and John Dubel and I, we developed a
10 program, with Brian -- with Brian driving it, to figure out
11 exactly how to approach going into the office; how we would
12 maintain the office; and then, if something were to happen,
13 what we would do.

14 We had an employee who, with her family, got COVID in --
15 we believe in New York, came back. And as soon as we found
16 out that person wasn't feeling good in the office, it was the
17 first day they were back, a protocol with thermometers and --
18 at that time, thermometers were thought to be valuable -- we
19 immediately sent that employee home. We then brought in a
20 cleaning crew to clean up the office with EPA and FDA-approved
21 materials, and then had several days off and brought folks
22 back the following week.

23 We found that to be, frankly, unwieldy as COVID started to
24 continue to creep a bit through March and into April. At that
25 point, we did have other employees, not who came into the

1 office, but who had contracted COVID, so we shut down HCMLP.
2 When we cleaned the office, we shut it down completely.
3 Nobody could go in.

4 When -- since then, we have set the office up where we had
5 initial (inaudible) when things were pretty good, so we
6 divided the move into -- into basically 20 percent could be in
7 the office at any one time. And then, since that time, as
8 things have gotten worse, we found that we were, one, working
9 extremely well offsite; and two, that it was just a better
10 environment for the employees. So we've been working
11 continually offsite.

12 If folks need to go in, because either they need more
13 advanced systems that they can't go to plug-and-play at home,
14 or because there's just materials that they want to get,
15 they're able to do in. We have tons of disinfectant
16 everywhere. We have masks available. We put in dividers,
17 Plexiglas dividers between the work stations to assure that if
18 someone was at a station for a long time, it didn't -- it was
19 less likely that you could have transmission.

20 I will tell Your Honor that HCMLP is not reporting to the
21 office. Some of the affiliated businesses, and I don't know
22 the percentage, have been. So those businesses, which we
23 don't control, are going in.

24 From my perspective, as long as the numbers are where they
25 are in Texas, from both a business perspective in terms of

1 making sure that the employee base doesn't contract COVID in
2 material amounts -- first, any amount -- but in material
3 amounts that would impact our ability to run the business.
4 And then with respect to the civic part of it, which is we
5 don't want to be a part of forcing the spread or causing the
6 spread of this disease, we know we can work from home. We're
7 going to continue to do that until we believe it's very safe
8 to go back.

9 Notwithstanding that we have the ability and have been
10 doing it with extensive cleaning, extensive disinfectant, and
11 with dividers, until we are very comfortable that we can go
12 back and protect our employees and that it's the right civic
13 thing to do, we're not going to go back, particularly since it
14 doesn't impact our ability to perform.

15 THE COURT: Okay. I really want to, you know, get to
16 the rest of our hearing soon, but I heard something that made
17 me have a question. You said there are other entities we
18 don't control whose employees are going in. Could you tell me
19 exactly what you meant by that?

20 THE WITNESS: There's -- away from HCMLP, there's
21 approximately another 75 to 80 -- it may be slightly more --
22 employees at the other entities that are NexPoint, NexBank,
23 NexPoint Advisors. They are under different protocols that
24 neither I nor Russ nor John control. The office --

25 THE COURT: Let me just stop you.

1 THE WITNESS: Please.

2 THE COURT: So it's just Nex -- well, NexPoint-
3 related companies?

4 THE WITNESS: Uh-huh.

5 THE COURT: NexPoint and --

6 THE WITNESS: Yes.

7 THE COURT: -- affiliates of NexPoint?

8 THE WITNESS: Correct, Your Honor. The office, the
9 HCMLP offices are huge. And when we were there pre-COVID,
10 with the full complement of folks, it felt like they were
11 relatively empty. I shouldn't say -- they felt like there was
12 plenty of space.

13 What we found, with both sets, our employees and then the
14 NexPoint-related employees, when 140 or 150 people were in
15 that office, which pre-COVID felt comfortable, post-COVID
16 didn't feel so comfortable. So our employees, we started, as
17 I mentioned, with the shift-working. And then we decided to
18 go completely mobile unless somebody feels they have to be in
19 the office, and we want to make sure that they follow the
20 protocols when they do.

21 With respect to the non-HCMLP related entities, those
22 entities, some percent of those employees are still going into
23 the office.

24 Now, when they're there, to be frank, what I said was a
25 pretty comfortable place with 140 people is a pretty empty

1 place if there's only 50. But our employees, we felt it was
2 important, since we were able to execute from home, we didn't
3 need, on most parts, the extra systems to be able to execute
4 in the office, that we could largely perform from home to make
5 sure that we weren't taking any risks with the business but
6 also taking -- one, taking risks for the employees; two,
7 taking any risks for the business; and three, as I mentioned,
8 the civil perspective.

9 THE COURT: Okay. We're going to have to take a
10 five-minute break here in just a second, but let me kind of
11 elaborate on why I was drilling down on that question about
12 NexPoint. I mean, isn't it Highland employees who service
13 NexPoint? Or am I wrong about that?

14 THE WITNESS: Highland employees service a lot of
15 NexPoint. But NexPoint, NexBank, the various funds, NXRT,
16 there's a number of businesses: They have their own employees
17 as well.

18 THE COURT: Okay.

19 THE WITNESS: So the whole complex is about 150
20 employees.

21 THE COURT: Okay.

22 THE WITNESS: Highland Management is about 70.

23 THE COURT: Okay. All right. Well, are we finished
24 with Mr. Seery's testimony, Mr. Morris?

25 MR. MORRIS: Yes, Your Honor. Our next witness after

1 the break will be John Dubel.

2 THE COURT: Okay. Very good.

3 MR. MORRIS: And we --

4 THE COURT: Mr. Seery, again, this has been extremely
5 helpful for me, and I hope for others. I hope you'll stick
6 around, because when we circle back to the mediation
7 discussion at the end of today, I really would like you to be
8 involved in that discussion. I may want your input on one or
9 two things. So can you stick around?

10 THE WITNESS: Absolutely, Your Honor. Other than
11 getting some water and maybe turning the air conditioning back
12 on in this room, I'll stay.

13 THE COURT: You must not be in Texas if you don't
14 have your air conditioning on. I assume you're in New York.
15 All right. Five-minute break. We'll be back.

16 THE WITNESS: It's hot, but not Texas hot.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE CLERK: All rise.

20 (A recess ensued from 3:16 p.m. until 3:22 p.m.)

21 THE CLERK: All rise.

22 THE COURT: All right. Please be seated. We're back
23 on the record in Highland.

24 Mr. Morris, you were going to call Mr. Dubel next?

25 MR. MORRIS: Yes, the Debtor calls John Dubel.

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1 THE COURT: Dubel?

2 MR. DUBEL: Your Honor, may I have just one minute to
3 -- my air conditioner.

4 THE COURT: All right. Mr. Dubel, I said your name
5 wrong. Could you say Testing 1, 2?

6 MR. DUBEL: I can do that, Your Honor. Testing 1, 2.

7 THE COURT: Okay. Very good. Please raise your
8 right hand.

9 JOHN DUBEL, DEBTORS' WITNESS, SWORN

10 THE COURT: All right. Thank you. Mr. Morris, you
11 may proceed.

12 MR. MORRIS: Thank you, Your Honor. As Mr. Pomerantz
13 previewed, Mr. Dubel's testimony is going to largely cover the
14 corporate governance-type issues concerning the evolution of
15 the motion, the discussions or the, you know, beginning of the
16 discussions, and how the proposal itself evolved.

17 If I may, Your Honor, just to perhaps move this along, I
18 might lead the witness a little bit. If it's a problem,
19 you'll let me know, okay?

20 THE COURT: Okay. I will let you know if it's a
21 problem.

22 MR. MORRIS: Okay.

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good afternoon, Mr. Dubel. You're a member of the Board

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1 of Strand today; is that right?

2 A I am.

3 Q And you've held that position since mid-January; is that
4 right?

5 A Since January 9th, yes.

6 Q Okay. And you understand that we're here today on the
7 Debtors' motion to appoint Mr. Seery as the Debtors' CEO, CRO,
8 and the Foreign Representative?

9 A I do understand that, yes, sir.

10 Q Does the Board unanimously support the motion?

11 A I think the Board does, and specifically the compensation
12 committee, because of obviously the conflict that Mr. Seery
13 might have, you know, but the Board fully supports it, and the
14 compensation committee is comprised of Mr. -- Judge -- Judge
15 Nelms and myself.

16 Q Okay. And do you believe that -- withdrawn. Does the
17 Board believe that it's in the Debtors' best interests to
18 retain Mr. Seery on the terms proposed?

19 A We do.

20 Q And why does the Board believe that?

21 A Well, as the Court has heard from the testimony of Mr.
22 Seery today, he has a tremendous amount of skills and
23 experience in the area of asset management. He's effectively
24 been serving as the CEO since -- well, in a lot of ways, since
25 January 9th, when we asked him to step up and take on some

1 additional responsibilities, but very clearly since the middle
2 of February, and specifically, the middle of March.

3 And as the Court noted, he is -- knows these assets very
4 well. He knows the operations. He's done an exemplary job of
5 handling all of the issues. He has spent a tremendous amount
6 of time working with the Committee members, trying to develop
7 good lines of communications.

8 And, you know, Russ -- having, you know, served in a C
9 Suite position for 25 years of my 30-plus years of
10 restructuring experience, and 15 years as a CEO, we need a
11 good leader, an operational leader to run the organization.
12 So we can support him because you need to have someone in
13 there who can make decisions; work quickly; obviously,
14 communicate well with the Board, which he has been doing for
15 quite some time. So, all the -- all of the reasons why we are
16 very pleased to have him take on this role.

17 Q Okay. Let's talk a little bit about what led to this
18 particular motion. Do you recall when the idea of appointing
19 a CEO first arose?

20 A I would say it was back in December, before the
21 Independent Board was put together, when we first started
22 intervening with the creditors and with the Debtor. It was
23 raised to me in my interview, would I be, you know, willing to
24 step in as a CEO if asked to? And I'm assuming it was also
25 asked of Mr. Seery. I didn't ask him that. And it was all

1 obviously coming, you know, out of the protocols that were
2 being developed where Mr. Dondero would step down as the CEO
3 and the Independent Board would basically be responsible for
4 the operations of the company. But we had the opportunity to
5 go out and seek either one of the three Independent Board
6 Members as the CEO or go outside to the marketplace and try
7 and find an independent or a third-party CEO.

8 Q And to the best of your recollection, was that flexibility
9 built into the term sheet that was part of the corporate
10 governance settlement?

11 A It was.

12 Q All right.

13 MR. MORRIS: Your Honor, this is where we're going to
14 test our technological capabilities. I'm going to ask Ms.
15 Canty to put up and to share Exhibit 1, and let's see if we're
16 able to do that.

17 THE COURT: Okay. But if anything goes wrong, I
18 actually do have the docket up on my screen. I can pull them
19 up. But, oh, even better. Even better. Okay.

20 MR. MORRIS: All right. It looks like it worked.
21 Ms. Canty, if you could turn to Page 2, please. I think
22 that's Page 1.

23 (Pause.)

24 MR. MORRIS: I think it's stuck.

25 THE COURT: Hmm.

1 THE WITNESS: If need be, I have a teenager who could
2 probably figure this out, because I sure can't.

3 MR. MORRIS: I'm impressed that La Asia got to this
4 point already. Okay. Good. Just the one on the right. Is
5 there a way to focus in on the top paragraph on the right?

6 THE WITNESS: I'll put my glasses on and I'll be able
7 to read it.

8 MR. MORRIS: Okay. Right there. Perfect.

9 BY MR. MORRIS:

10 Q Is -- are you familiar with the provisions generally in
11 the term sheet relating to the opening of CEO?

12 A I am.

13 Q And is this the provision that you were referring to
14 earlier?

15 A It is.

16 Q And does this provision, to the best of your
17 understanding, provide the Board with the flexibility, in
18 consultation with the UCC, to exercise its business judgment
19 and appoint a CEO if it determined that to be in the Debtors'
20 best interest?

21 A It does. It's consistent with the discussions had -- that
22 were had prior to our appointment, and it obviously was
23 incorporated in the term sheet that was approved by the Court
24 on January 9th.

25 Q And this also reflects the understanding that you

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1 described earlier, where one of the Independent Directors
2 could, in fact, be selected as the CEO; is that right?

3 A That is correct.

4 MR. MORRIS: All right. Let's just take that down,
5 please, Ms. Canty.

6 BY MR. MORRIS:

7 Q Mr. Dubel, has Mr. Seery, in fact, taken on day-to-day
8 operational responsibilities for the Debtor?

9 A Yeah. Yes, he has. And I think early on the Board
10 realized that, between the three Board members, we would try
11 and divvy up the responsibilities, as Mr. Seery referred to
12 earlier, and it was definitely like drinking from a fire hose
13 in the early stages of the case, where the new Board was put
14 in place. And we tried to divvy up our responsibilities,
15 taking into consideration each of the Board Members'
16 expertise.

17 But it was pretty clear that the main business operations
18 required somebody with the skill set that Mr. Seery had, and
19 it would be much more efficient, as we progressed forward, to
20 coalesce around one individual as a CEO.

21 MR. MORRIS: Ms. Canty, can you pull up Exhibit 2?

22 BY MR. MORRIS:

23 Q And while we're doing that, Mr. Dubel, do you recall early
24 on that the Board asked Mr. Seery to become involved in the
25 trading of the prime accounts?

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1 A I do, yes.

2 Q Okay.

3 MR. MORRIS: La Asia, I don't know if you can scroll
4 down just to --

5 Your Honor, these are minutes from the Board's very first
6 meeting. And if we go to the next page, right here, you'll
7 see there's a discussion in the second paragraph.

8 BY MR. MORRIS:

9 Q Mr. Dubel, does that reflect the Board's deliberation and
10 decision, really, on the first day, to give Mr. Seery, you
11 know, the responsibility for dealing and overseeing the prime
12 accounts?

13 A It does. And what I was saying is, prior to the
14 appointment, in doing all of our diligence prior to joining
15 the Board, we realized there were all these issues that needed
16 to be dealt with. And so we came in on the very first day,
17 ready to recognize that there were certain things that needed
18 sort of expertise. And they were presented to us by DSI and
19 the management of HCMLP as areas that needed some additional
20 handling and oversight. And so we asked Mr. Seery to step
21 into that role on the very first day, which he -- which he
22 agreed to and the Board approved it.

23 Q Okay. Let's get to the meat and potatoes here. Did there
24 come a time when the Board and Mr. Seery actually began
25 discussing the possibility of his serving as the CEO?

1 A Yes, there did.

2 Q And can you share with the Court your recollection of how
3 that began?

4 A So, there were informal discussions, I would say, through
5 the month of February, as we started to realize that there
6 were -- the decision-making was going to be cumbersome,
7 having, you know, three parties involved. As I said earlier,
8 having spent 15 years or so my career as a chief executive
9 officer, I understand where you really want to have one person
10 be responsible for these issues.

11 And so we were conversing with Mr. Seery to see if he
12 would take on that role. And, obviously, we had felt very
13 comfortable, Mr. Nelms and I felt very comfortable with the
14 communications that he was having with us on things that we
15 had asked him to do. There was a very free and open
16 discussion with the Board members. So we continued, you know,
17 to look at opportunities where it might make sense.

18 And then, you know, towards the beginning of March, it was
19 pretty obvious that we were going to want to coalesce around
20 the motion. We thought about whether or not that would be
21 some third party. But having, again, experience of having to
22 go out in the marketplace to find CEOs when I'd been either,
23 you know, a director or involved in companies, we realized
24 that can be very time-consuming, would take us months to find
25 somebody.

1 And so we continued to discuss it with Mr. Seery. And
2 around the middle of March or so, right around the time that
3 we had a Creditors' Committee meeting in New York, we asked
4 Mr. Seery if he would take that role on, and he agreed to, to
5 take that role.

6 Q And that's -- and is that why the Debtor is seeking
7 authority to retain Mr. Seery nunc pro tunc back to March
8 15th?

9 A We are. I mean, effectively, he really started the role
10 in the February time frame. But we officially asked him about
11 this in -- right after that meeting on March -- I think it was
12 March 11th or so.

13 Q So, is it fair to say that's when the Board had a meeting
14 of the minds with respect to not necessarily the terms but at
15 least the engagement of Mr. Seery as CEO?

16 A Yes, that is fair to say.

17 Q Okay.

18 A And that's when he really did step up and take on all of
19 those responsibilities, you know, with the acknowledgement and
20 understanding that we would work out the appropriate terms for
21 his engagement.

22 Q Okay. And a couple of weeks later, do you recall that Mr.
23 Seery made a written proposal to you and Mr. Nelms?

24 A He did make a written proposal after, you know, having
25 discussions with us orally about various issues and roles and

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1 responsibilities. I think it was around April 4th or so that
2 he presented us with a written proposal.

3 MR. MORRIS: All right. Ms. Canty, can you call up
4 Exhibit 3, please? (Pause.) Okay. If you'll scroll down.

5 BY MR. MORRIS:

6 Q Mr. Dubel, is this the April, the early April e-mail that
7 you were referring to in which Mr. Seery made a proposal for
8 the terms of his engagement as CEO?

9 A Yes. This document refreshes my recollection. It wasn't
10 April 4th. It was April (audio gap). But yes, that's the
11 document I was referring to.

12 Q Okay. What happened next, after -- after the -- after
13 this was presented to you and Mr. Nelms? What did you guys
14 do?

15 A So, what we wanted to do is understand what was our
16 responsibility as a board. So we reached out to counsel to
17 figure out how the process should work. We set up a
18 compensation committee. It's called a comp committee; it's
19 more I would call it a nomination committee or a governance
20 committee also, because it was all about retaining Mr. Seery
21 in that role.

22 We got advice from counsel on what the process should be.
23 We reached out to our compensation consultant at Mercer, who
24 had been providing us assistance in other areas of the
25 company's compensation program, to talk to them about what the

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1 various market comps, you know, compensation programs were and
2 what would be an appropriate market comp for Mr. Seery's
3 compensation, and, you know, moved forward that way.

4 MR. MORRIS: Ms. Canty, can you pull up Exhibit 4,
5 please?

6 BY MR. MORRIS:

7 Q Do you know what this document is, Mr. Dubel?

8 A Yes. This looks like the minutes from the meeting of our
9 first compensation committee on April 8th, compensation
10 committee of Strand Advisors.

11 Q And this was a meeting between you and Mr. Nelms, with
12 counsel; is that right?

13 A That is correct.

14 Q And this was precipitated by Mr. Seery's written proposal
15 that was made a few days before that; is that fair?

16 A Well, I would say it was precipitated by the advice we had
17 gotten through counsel that we should set up a compensation
18 committee and consider what would be the appropriate way of
19 retaining Mr. Seery, you know, as a chief executive officer.
20 His proposal came in a couple of days earlier than that, and
21 so this was our first official time to get together as a
22 committee and review it and discuss the issue.

23 Q And was this a contemporaneous record of the steps that
24 the compensation committee took to do its due diligence with
25 respect to the proposal?

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1 A It is.

2 Q Okay. Did the compensation committee --

3 MR. MORRIS: You can take that down, Ms. Canty.

4 BY MR. MORRIS:

5 Q Did the compensation committee communicate with the
6 Creditors' Committee with respect to these matters?

7 A We did.

8 Q Can you --

9 A As a part of the protocols, one of the things I -- and I'd
10 go back and re-read the protocol language, but one of the
11 things it said was work with the UCC to determine who would be
12 an appropriate CEO. And so we realized we would do that, and
13 we started to reach out to the various members of the
14 Creditors' Committee to discuss that.

15 Q Okay. And do you recall whether the compensation
16 committee or the Debtor generally shared Mr. Seery's proposal
17 with the Committee?

18 A We did. I don't recall the exact date, but we did share
19 it with the UCC through the UCC counsel.

20 Q Do you recall if the report that was commissioned by the
21 Debtor with respect to Mercer, the Mercer Report, was that
22 shared with the Committee?

23 A It was.

24 Q Can you describe for Judge Jernigan your recollection as
25 to, you know, the Committee's reaction and, you know, position

1 with respect to the proposed retention of Mr. Seery as CEO?

2 A We shared the report from Mercer with the Committee in --
3 I think it was early May. And we spent time with them in the
4 April time frame talking about the fact that we were going to
5 be seeking Mr. Seery's appointment as CEO and telling them
6 that we were going to be commissioning a report to make sure
7 we had what we thought was market compensation.

8 The Committee was generally very supportive. They had
9 been obviously experiencing Mr. Seery taking on that role of
10 effectively the CEO for a period of time, so they understood
11 where, you know, where he was coming from and what -- how he
12 was going to operate the business.

13 They understood, to my knowledge and in my discussions,
14 they understood the benefits of having a single person as the
15 CEO rather than trying to manage the business by committee.
16 We discussed with them why it made sense.

17 And so, you know, they were supportive of it. Obviously,
18 we had to negotiate the terms of the compensation.

19 Q And did that take some time, to negotiate the compensation
20 terms?

21 A It did. Initially, it was being done through myself and
22 Mr. Nelms, working directly with the Committee. But, again,
23 having been in that position of having to negotiate with the,
24 you know, the committee on terms of my own personal
25 compensation -- not this committee, but in other cases -- we

1 recognized that it was probably more efficient for Mr. Seery
2 to speak directly with the Committee, Committee members. And
3 so we asked him to pick up that, you know, responsibility
4 also. And he did. He kept us informed every step of the way.
5 And I, as the de facto chairman of the compensation committee,
6 also spoke directly with the various members of the Committee
7 during this time frame, where there was (echoing)
8 communication about compensation.

9 Q Mr. Pomerantz mentioned it in his opening remarks, but do
10 you recall kind of what the bigger issues were with respect to
11 the proposed compensation terms with the Committee?

12 A Sure. The Committee -- well, there was always negotiation
13 going on, obviously. The Committee, at the end of it, they
14 had no problems with the monthly compensation, recognizing
15 that whatever his board compensation would be would
16 effectively be wrapped into the monthly compensation.

17 What the issues really came down to for them revolved
18 around the restructuring fee that was being proposed, success
19 fee, you know, what have you. And there was a lot of
20 different views, as you can imagine, between the four members
21 of the Committee as to how that should be set up.

22 Mr. Nelms and I were very cognizant that we did not want
23 to have Mr. Seery (echoing) -- I'm sorry. I'm getting a lot
24 of background noise here.

25 THE COURT: Yes. I'm not sure who needs to mute

1 their phone, but someone needs to mute their phone. Okay.

2 THE WITNESS: Thank you.

3 THE COURT: Uh-huh.

4 (Echoing subsides.)

5 THE WITNESS: So we were very concerned that
6 structures not be put in place that could cause the potential,
7 the appearance of a conflict between the role that Mr. Seery
8 was playing and his compensation.

9 It's always a, you know, a challenging issue here, to make
10 sure that, you know, a CEO of any company is looking out for
11 the best interests of the estate and not looking out
12 specifically for any particular creditor, equity, or group of
13 creditors, just because that's the way the compensation was
14 designed. And so that was a challenge.

15 At the end of the day, we wanted to have what we felt was
16 fair compensation for the success fee and restructuring fee
17 for Mr. Seery, because we wanted him incented to get the job
18 done, as he has alluded to in his prior testimony as to what
19 he's trying to do here. And so there did come a point where
20 we could not get to a meeting of the minds and so we chose to
21 move forward on the compensation with just the monthly agreed
22 to. Mr. Seery was good enough to agree to that for just the
23 monthly, and that we would put forward the restructuring fee
24 at a later date.

25 BY MR. MORRIS:

1 Q Okay. Thank you. In addition to the CEO title, the
2 Debtor is asking for the Court to appoint Mr. Seery as the CRO
3 and the Foreign Representative; is that right?

4 A That is correct.

5 Q And why is the Debtor seeking that relief?

6 A Well, initially, the CRO was brought in, I believe it was
7 the middle of October, when the case was filed and before the
8 Independent Board was put in place. And there were reasons
9 why, you know, the Committee had asked for the CRO to have
10 certain responsibilities. Those carried through in the
11 protocols.

12 And obviously, you know, we had no issues with those, but
13 what we also felt, Mr. Nelms and I, and in consultation with
14 Mr. Seery, was that it would be more appropriate to have one
15 person be responsible for all of the issues within the
16 company. And since there was an Independent Board, and since
17 one of those Independent Board Members was becoming the CEO,
18 the need for another individual to be the CRO might send
19 conflicting signals inside the organization. And so we
20 decided that it would be appropriate to put those
21 responsibilities into Mr. Seery's lap. And we spoke with Mr.
22 Sharp from DSI, and he agreed. And so that's the reason why
23 we moved it forward that way.

24 Q Okay. I understood you to say that the meeting of the
25 minds, at least conceptually, was somewhere around March 12th

1 in New York, or March 11th. I think the Judge may have asked
2 the question or at least implied that she wanted to know kind
3 of why it took so long to get the motion on file. I think
4 you've discussed some of the issues, but just kind of in a
5 bullet-point way, can you give the Judge an explanation as to,
6 you know, why it took several months to get this motion in
7 front of the Court if a meeting of the minds occurred back in
8 March?

9 A Sure. I believe the motion was filed on the -- I think it
10 was the 22nd or so of June.

11 Q Okay.

12 A And so we -- we asked Mr. Seery. He accepted the
13 responsibility in the middle of March. Right at that point in
14 time was when the whole pandemic issue was, you know, really
15 coming hot and heavy at the company. As Mr. Seery testified
16 earlier, he had -- he was spending a tremendous amount of time
17 just focusing on the operations of the business, focusing on
18 the assets, dealing with the prime accounts, the select
19 accounts, working with Jeff Reeves, working with the other
20 individual investments that we had, to make sure that those
21 were under control.

22 I would say I applaud him for putting the business first
23 in front of him, and then I think probably at 1:00 o'clock in
24 the morning he was able to finally sit down and put together
25 his own compensation request.

1 We did need time to go through with the Mercer folks and
2 get, you know, the market information, and that took a lot of,
3 you know, a lot of time.

4 And then, more importantly, we wanted to make sure we
5 could get something in front of the Court that was agreed to
6 by the Committee. So we did share the information with the
7 Committee. We spent a lot of time in negotiations with the
8 Committee, trying to get to a resolution. As I said earlier,
9 we asked Mr. Seery to step in and there be, you know, one-on-
10 one discussions to maybe shortcut some of that.

11 And finally, at the point in time where we realized we
12 could not get a full, you know, fully-agreed compensation
13 program, we asked him to just break it down into the monthly,
14 and then come back for a restructuring bonus at the end of the
15 case.

16 And so all of that, while trying to manage the business in
17 the COVID era, is what took such a long period of time.

18 Q Did it also take some time to obtain appropriate D&O
19 insurance for Mr. Seery as the CEO?

20 A It did. We had to, as the Board of Strand, we had to set
21 up a D&O program for the Board members when we first got
22 involved back in January. That took a tremendous amount of
23 time. It was very difficult to obtain in the marketplace, for
24 any number of reasons, but mainly because the insurance market
25 understood what Highland was all about and the various

1 players, and they were very reticent to insure Highland.

2 So, because we were Strand, because there were other
3 protections that were afforded to the Independent Directors,
4 we were able to obtain it.

5 When we asked the various carriers to add Mr. Seery on as
6 the CEO for HCMLP, it was very challenging to put folks on.
7 We were eventually able to get our first layer to sign on, the
8 first-layer insurer. The second layer would not do it, and we
9 had to go find a third carrier who would do it. And we
10 actually got that done at some time in the latter part of
11 June, right after we had filed the motion.

12 Q Okay.

13 MR. MORRIS: Your Honor, I've got just a few more
14 questions, but they're going to be devoted to the DSI motion.
15 I don't know if you wanted to ask -- if you had any questions
16 on the motion with respect to Mr. Seery or I should just
17 continue on.

18 THE COURT: I do not have questions. You can
19 continue.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Okay. So, let's just finish up, Mr. Dubel. There is a
23 second motion in front of the Court, and this one is for the
24 appointment of DSI as financial advisor. Are you familiar
25 with that motion?

1 A I am.

2 Q Does the Board unanimously support that motion?

3 A We do.

4 Q Has the Board concluded, in an exercise of its independent
5 business judgment, that the engagement of DSI as financial
6 advisor is in the Debtors' best interests?

7 A We have. Yes.

8 Q Can you explain to the Court why the Board reached that
9 conclusion?

10 A Well, we do need the services of a financial advisor.
11 It's very important in this case to have an independent, you
12 know, restructuring, you know, financial advisor to assist us.
13 As Mr. Seery testified earlier, they have been very
14 instrumental in helping him prepare the financial analysis
15 that has been part of what he's been using to start
16 negotiating and working forward on the -- putting together a
17 plan of reorganization.

18 They've also spent a tremendous amount of time acting as a
19 bridge to FTI, the Committee's financial advisors, which is
20 very common in these types of cases. And so that's been
21 extremely helpful. And that role needs to continue.

22 They also are handling all of -- all the administrative
23 bankruptcy issues, the SOFAs, the MORs. They're doing a lot
24 of work for us, not necessarily specifically on the large
25 claims, but on helping us analyze and review all of the other

1 myriad of -- I think it's two hundred something claims that
2 have been filed in the case.

3 So they've been here since -- I guess they came in pre-
4 filing. They have a lot of history and knowledge, and we want
5 to continue to utilize that knowledge as we continue to move
6 forward. So that's why. And the Board is very comfortable
7 with the job they've been doing, and so we felt it was
8 appropriate to continue to use them as the financial advisor,
9 just in a slightly different role.

10 MR. MORRIS: Your Honor, I have no more questions of
11 Mr. Dubel.

12 THE COURT: All right. Well, I'm going to just jump
13 in and ask my own questions, and then I will -- I'll, you
14 know, offer him up for cross if people will promise to
15 restrict it to employment terms.

16 EXAMINATION BY THE COURT

17 THE COURT: So, what -- my question is about Mr.
18 Sharp. As I recall, the compensation is not going to change
19 at all, even though the role is changing. He won't be CRO
20 anymore, Mr. Sharp. He won't be the Foreign Representative
21 anymore. But obviously, he and his firm will remain very
22 engaged as financial advisor.

23 What I'm getting at is there was a \$100,000 per month flat
24 fee for Mr. Sharp, and then other professionals at DSI will
25 bill by the hour. Tell me why the Board thinks that's still

1 the appropriate compensation package with the modified role of
2 Mr. Sharp. I'm getting at, \$100,000 a month, is that still
3 the right thing, or hourly compensation, did you discuss that,
4 and why is --

5 THE WITNESS: We did, Your Honor. And I'll be
6 (inaudible) with you. I don't know who negotiated that
7 originally for -- with, you know, with DSI, but I find it to
8 be a very fair-to-the-Debtor compensation package of \$100,000
9 for Mr. Sharp, but it also includes Mr. Caruso, who Mr. Seery
10 has referenced earlier. I think it was a very good
11 negotiation that was had by the Debtor.

12 So when we looked at it, we said, if we switch to a
13 straight hourly, based upon the amount of time and effort
14 that's being put in by the two of those individuals, it might
15 cost us a little bit more. So we chose to continue it at that
16 level.

17 And I know Mr. Seery will continue to lean on those two
18 folks and get his money's worth. I'm confident of that.

19 THE COURT: Okay. You just reminded me of something
20 that I did not remember, I guess. Mr. -- we're getting two
21 for the price of one, is basically the -- Mr. Caruso does not
22 bill by the hour?

23 THE WITNESS: They -- they work together. It's their
24 compensation. I would imagine they keep hours internally,
25 just to keep track of it, but what they bill us for the two

1 individuals, Mr. Caruso and Mr. Sharp, is a flat fee of
2 \$100,000 for the two of them.

3 THE COURT: Okay. All right. And do you remember,
4 by comparison, the financial advisor to the Committee -- is it
5 FDI? Whoever it is.

6 THE WITNESS: It -- it --

7 THE COURT: How are they getting compensated? Is it
8 strictly on an hourly basis, or is there also a combo flat fee
9 and hourly?

10 THE WITNESS: (echoing) on an hourly basis, and I
11 have one of their most recent charts. It was the May fee
12 application that they just filed, and they -- they bill in a
13 range from \$1,245 an hour for, you know, senior managing
14 directors, to \$875 an hour for managing directors, down to,
15 you know, \$690 an hour for directors. Yeah. A very fair and
16 appropriate marketplace compensation, but I think what we are
17 incurring under the structure that we have for DSI is below
18 that.

19 THE COURT: If those two guys were billing normal
20 market hourly fees, you think it would be busting \$100,000 a
21 month, perhaps?

22 THE WITNESS: I think it -- I think it would be well
23 in excess of \$100,000, --

24 THE COURT: Okay.

25 THE WITNESS: -- based upon the hours that we have

1 seen to date from them, Your Honor.

2 THE COURT: Okay. Now, does anyone else have
3 questions for Mr. Dubel related to these employment
4 arrangements proposed?

5 (No response.)

6 THE COURT: I guess not. I actually have one more
7 question. I think it will be for my benefit, but maybe for
8 benefit of parties in interest, I hope. You made a comment
9 about getting insurance for Mr. Seery, and you said it was a
10 bit of a challenge because insurers in the marketplace kind of
11 knew what Highland was about. I think those were your words.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Here is my question. As far as knowing
14 what Highland is about, other persons, not me, have used the
15 words that people were Mr. Dondero's puppet master, or he was
16 the puppet master, had his hands all over this, here and
17 there. And we obviously endeavored to change that with the
18 new Board in place. What would you say if people out there
19 think Dondero still might be a puppet master? What -- I mean,
20 is there any concern there that you could address?

21 THE WITNESS: Sure. And let me, let me take it in
22 two parts, because I think it's important for you to
23 understand from a third-party insurer's point of view. The
24 D&O marketplace has seen a lot of litigation surrounding the
25 Highland Capital name. And because of that, that obviously

1 causes them concern. Their business is to write insurance and
2 never pay a dime. I ran an insurance company for six years,
3 and you never want to pay a dime out, you just want to collect
4 premiums.

5 THE COURT: Yes. And I probably prefaced this in a
6 confusing way. I'm really not going back to the insurance. I
7 just said that comment, when you were talking about insurance,
8 made me want to ask, for my benefit and for other parties'
9 benefit: How much control, if any, does Dondero have? In
10 theory, he was not supposed to have any control over the
11 Debtor anymore, but can you say something to make us all feel
12 comfortable that, if he ever was a puppet master, he's not a
13 puppet master anymore?

14 THE WITNESS: Well, I won't use that terminology.
15 What I will say is, since January 9th --

16 THE COURT: Yes. It was someone else's term, not
17 mine. I'm just repeating it.

18 THE WITNESS: That's okay. Since January 9th, when
19 the Independent Board was put in place, the Independent Board
20 has had the responsibility, is responsible for the operations
21 of this business. Mr. Dondero, as Mr. Seery alluded to
22 earlier in talking about the number of people in the
23 organization, has other businesses that he's involved with
24 that operate out of the offices through shared services. But
25 it's very clear to all the employees that the Independent

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1 Board is responsible for HCMLP and that since, really, you
2 know, the early March time frame, that Mr. Seery is the CEO.

3 So there is no concern on my part that Mr. Dondero is
4 having undue influence. He is still our portfolio manager,
5 but Mr. Seery is working with him as appropriate, and I have
6 no concern that Mr. Seery is not getting the job done and
7 getting any undue influence from Mr. Dondero.

8 THE COURT: All right. Thank you.

9 Mr. Morris, do you have any redirect?

10 MR. MORRIS: I do not, Your Honor. I appreciate the
11 question, and I think Mr. Dubel answered it appropriately.

12 THE COURT: All right. Thank you, Mr. Dubel. I do
13 appreciate your testimony today. It was helpful.

14 All right. Mr. Morris, --

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: -- what else do you have? You have Mr.
17 Sharp on your witness list. Did you want to --

18 MR. SHARP: I'm here, Your Honor.

19 THE COURT: -- put him on?

20 MR. MORRIS: I'm intending to do that. If Your Honor
21 thinks it's not necessary, I don't need to ask more questions.
22 It's a relatively brief examination that will just focus on
23 the slight change in his role.

24 THE COURT: All right. Well, if you feel the need to
25 make a record, you may. I just have one question I want to

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1 ask him, to shore up the record.

2 MR. MORRIS: So perhaps, Your Honor, could we swear
3 him in, you ask your question, and then I'll see if there's
4 (echoing)?

5 THE COURT: All right. Mr. Sharp, I see you there.
6 Please raise your right hand.

7 (Echoing.)

8 BRADLEY SHARP, DEBTORS' WITNESS, SWORN

9 THE COURT: Thank you. We were getting some
10 distortion there. So, again, if you're not Mr. Sharp, please
11 put your phone on mute.

12 EXAMINATION BY THE COURT

13 THE COURT: All right. Mr. Sharp, I just wanted to
14 hear from you how many hours a month do you think that you and
15 Mr. Caruso are working on the Highland matter?

16 THE WITNESS: I don't have the hours in front of me,
17 Your Honor, but I think Mr. Dubel unfortunately alluded to
18 poor negotiating on DSI's part. That'd be my responsibility,
19 because I'm the one that did that.

20 From October through May, if you look at the time for Mr.
21 Caruso and myself, DSI has provided about a \$730,000 discount.
22 So if we were actually being paid on our hourly rate, our fees
23 would be \$730,000 more than the \$100,000 a month. We
24 typically run -- my rate is \$720 an hour. I think Mr.
25 Caruso's is about the same. The time for the two of us each

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1 month runs about \$200,000, which we then write down to
2 \$100,000.

3 THE COURT: All right.

4 THE WITNESS: (echoing) a month.

5 THE COURT: Okay. That answers my question. Mr.
6 Morris, is there anything you wanted to put on the record?

7 DIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Sharp, are you the person who was (echoing) with the
10 (echoing) CRO (echoing) Seery (echoing)?

11 A Yes, I am. I think it's much more efficient, frankly.
12 We've worked very well with Mr. Seery since the beginning,
13 since January 9th. That's going to continue. I think it
14 takes away some confusion, both internally and externally, in
15 that, you know, Mr. Seery is the CEO, the CRO, and everyone
16 knows that we are providing the analytical and support for him
17 with whatever he needs.

18 Q And I want to focus just for a second on DSI's (echoing).
19 Is DSI's responsibilities in the case changing at all?

20 A No. No. We have been working for the Board and
21 responding directly to Mr. Seery. You know, as Mr. Seery
22 testified, he works directly with myself and directly with my
23 team, and that's not going to change.

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

25 THE COURT: All right. Anyone have any questions

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1 regarding the employment terms?

2 (No response.)

3 THE COURT: All right. Well, I thank you, Mr. Sharp.
4 We appreciate it.

5 All right. Mr. --

6 MR. MORRIS: The Debtor rests, Your Honor.

7 THE COURT: Okay. Well, I presume no one else had a
8 witness to call. Again, we didn't have any responsive
9 pleadings on this.

10 So, with that, I am going to turn to the Committee counsel
11 at this point. Mr. Clemente, I know you said early on that
12 you wanted to make some comments, so this is your opportunity.

13 MR. CLEMENTE: Well, thank you, Your Honor. Matt
14 Clemente from Sidley on behalf of the Committee.

15 And just very briefly, Your Honor, as you know, we did not
16 file an objection. It sounds from what we heard today that
17 Mr. Seery and the Board are working hard, which is, frankly,
18 what I think you expect and what we expect of them.

19 We don't have an objection to the retention of Mr. Seery
20 as CEO at \$150,000 a month, which is inclusive of director
21 fees. And as Mr. Pomerantz said, the Committee does not agree
22 -- in fact, that was the source of quite a bit of the
23 negotiation of the last couple of months -- with the bonus
24 proposal. But, again, we understand that that will be
25 addressed by a separate motion.

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1 Your Honor, we appreciate Mr. Seery's testimony to advise
2 you and to create the record for purposes of today's
3 uncontested matter. And obviously, the Committee -- there's
4 no live objection. And while the Committee may have different
5 views of what Mr. Seery said -- for example, the working of
6 the protocols, the sophistication of the advisors to the
7 Committee -- again, for purposes of the matter before the
8 Court today, we're not going to take any issue with any of
9 those statements, Your Honor, but reserve the right to do so
10 again in future if it becomes necessary.

11 So, with that, Your Honor, I have no further comments, but
12 I did want to make those couple comments for the record, to
13 make sure Your Honor understood where the Committee is coming
14 from.

15 THE COURT: Okay. Thank you. Does anyone else wish
16 to make comments about the applications before the Court?

17 (No response.)

18 THE COURT: All right. Mr. Morris, I'll turn it back
19 to you.

20 I found in my notes one question that I had. Looking at
21 your Exhibit 3 is what made me decide I have this question.
22 The Exhibit 3 was the e-mail exchange of Sunday, April 5th
23 amongst the Board members. Let me ask you this. There was
24 something in there regarding Mr. Seery, this would be a full-
25 time position, but he would be permitted to serve on outside

1 boards of directors. Is that a term that survived, or no?

2 And if it did, I want to ask how many outside board

3 memberships does he have? Again, I expect, like I think

4 everyone, that it's going to be very full-time, so I don't

5 want to hear that he's on 12 other boards. How did that --

6 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

7 Since I was the one who actually was involved in negotiations

8 more than Mr. Morris, --

9 THE COURT: Okay.

10 MR. POMERANTZ: -- maybe I can answer. I believe it

11 was something that survived. I am not aware of any other

12 boards that Mr. Seery is on. And if he has actually been able

13 to do anything meaningful while performing what is I think

14 probably 200 hours a month and being available 24/7, I take my

15 hat off to him. But I would ask him to confirm if he has any

16 other material role, but I have not seen anything.

17 THE COURT: All right. What about that, Mr. Seery?

18 MR. SEERY: I -- currently, I'm not on any other

19 outside boards except two charities.

20 THE COURT: Okay.

21 MR. SEERY: One is a foundation called the

22 (inaudible) Foundation, which is a charity for (inaudible)

23 individuals, disabled folks, and -- most of whom are abused.

24 And I'm also involved with a charity, I'm not on the board but

25 on a funding committee for Team Rubicon, which is a reference

1 -- reference service, assistance in disasters. So they don't
2 take time like this, and so I'm not going to be involved in
3 any --

4 THE COURT: Okay. Thank you. That's what I would
5 hope to hear. I didn't want to hear that you were on, you
6 know, 12 other for-profit boards.

7 So, all right. So, Mr. Morris, Mr. Pomerantz, do you have
8 anything to say before we wrap up this topic?

9 MR. POMERANTZ: Your Honor, I'm happy to give Your
10 Honor a closing statement if you think it's necessary. I
11 think you know what I would say, to summarize. But I think
12 we've been at this a while, so (inaudible).

13 So unless Your Honor has any questions for me, I would
14 just say that the evidentiary record, I believe, supports the
15 entry of an order approving both the Motion to Employ Mr.
16 Seery as the Chief Executive Officer, CRO, and Foreign
17 Representative, and the Motion to Appoint DSI as the Financial
18 Advisor.

19 THE COURT: All right. Well, I am going to grant
20 both of these motions. Again, as for Mr. Seery, it's as
21 modified per the agreements with the Committee, that
22 modification being that, as for any bonuses, we're just
23 deferring to another day whether Mr. Seery is going to get any
24 bonuses related to a plan, what kind of plan it might be, a
25 case resolution plan or a monetization vehicle plan.

1 You know, I really hope, frankly, Mr. Seery is before me
2 seeking a bonus in the very near future and we're all happy
3 about the prospect of paying him a bonus because a plan has
4 been achieved, hopefully a case resolution plan. I will just
5 tell you right now, I will have a big smile on my face and
6 will warmly consider that if we get a great result here.

7 But it's deferred to another day. So I do find it's --
8 the evidence amply shows a sound business justification and
9 reasonable business judgment on the part of the Debtor in
10 proposing that Mr. Seery be CEO and CRO, essentially, and a
11 foreign representative, where necessary, at the base pay of
12 \$150,000 per month, again, with bonuses to be considered at
13 appropriate times down the road if we feel that that is a good
14 thing for Mr. Seery to be paid.

15 And I likewise find that, under 327, 328, 363, the amended
16 application with regard to DSI Specialists and Mr. Sharp and
17 Mr. Caruso should be granted, it appearing to be reasonable
18 business judgment and in the best interests of the estate and
19 appropriate in all ways under those Code sections.

20 All right. So we are going to look for orders on those
21 two matters.

22 Now, unless you have other housekeeping matters you want
23 to talk about, I want to circle back to the mediation topic.
24 Mr. Pomerantz, Mr. Morris, anything you wanted to raise?

25 MR. POMERANTZ: There is actually one other

1 housekeeping matter that Ms. Patel and I have been speaking
2 about and we said we would raise before Your Honor.

3 As Your Honor heard at the last hearing, we had filed an
4 objection to the Acis claim. We initially set the objection
5 for August 6th. Ms. Patel reached out to us, I understand, I
6 remember at the last hearing indicated that August 6th was
7 difficult for her. And especially since we were having the
8 mediation, we had talked to her about a rescheduling. So we
9 are intending put the matter on the September 10th calendar.
10 We have also granted Acis an extension to file a response to
11 July 31st.

12 What I think we would like the Court's input on, and not
13 now, but we would suggest having it done at the next hearing,
14 which is July 21st, as I'm sure Your Honor has not yet read
15 our objection, but it's a quite lengthy objection, I think 55,
16 60 pages. There's a lot of issues there. There are some
17 factual issues, some -- there are some legal issues. There
18 are some combination of factual and legal issues.

19 We think it would be helpful to the process to set up a
20 status conference with Your Honor -- again, to be held perhaps
21 on July 21st, because discovery motions are pending -- where
22 we could walk through with Your Honor what exactly everyone
23 would intend to accomplish on September 10th. We don't
24 believe it should just be a status conference. We searched
25 other dates. On the other hand, I think both parties will

1 have different views on what exactly will be at issue. But I
2 think it would be helpful, from both sides, to hear Your
3 Honor's expectations and to get some ground rules so we can
4 make a hearing, if necessary, on September 10th as productive
5 as possible.

6 THE COURT: All right. So, in writing down dates,
7 did you tell me what -- a deadline you have given Acis, or
8 what is the deadline that would apply under the Rules versus
9 what you have agreed to? Is there something different you've
10 agreed to?

11 MR. POMERANTZ: Sure. I believe, for a hearing on
12 August 6th, based upon when we filed it, I believe their
13 objection would have been due July 23rd or thereabouts. They
14 have asked us for July 31st, and I don't want to be as
15 presumptuous, Your Honor, to say that I have given them the
16 extension. I know that's up to you, Your Honor, to do so.
17 The Debtor does not have any opposition to an extension in
18 that respect, especially given the fact that we're not going
19 to have a hearing until September, although it's obviously
20 going to be important to be able to move forward with
21 negotiations to understand what their specific position is,
22 and, of course, for a mediator to look at both as well.

23 So, again, it's July 31st, September 10th, and then
24 setting up something with Your Honor, whether it be July 21st
25 or some other date, to walk through Your Honor what that

1 hearing will look like so it could be most efficient.

2 THE COURT: All right. Well, I am agreeable to that
3 set of dates and deadlines. Ms. Patel, did you want to say
4 anything about it?

5 MS. PATEL: No, Your Honor. Mr. Pomerantz hit the
6 salient terms. Yes, July 31st is the agreed response date.
7 And that allows, frankly, parties to -- an opportunity --
8 allows Acis the opportunity to meaningfully brief the issues,
9 as Mr. Pomerantz indicated.

10 It's a 60-page objection. It's very weighty. There's a
11 lot of issues that require due consideration. So we have
12 agreed on that extended date. It's in sufficient time to
13 allow the parties time to read a response and analyze it ahead
14 of a mediation in August.

15 And as Mr. Pomerantz indicated, yes, the parties would
16 like -- effectively, I think he -- he might have referred to
17 it as a status conference. Apologies, my WebEx is cutting in
18 and out a little bit this afternoon. But I think it's
19 probably a status conference/scheduling conference so we can
20 talk about what the trial of the claim objection is going to
21 look like and how it should be structured. And I think, as
22 Mr. Pomerantz alluded to, parties may have very different
23 contexts with respect to that, but we want to just run it by
24 Your Honor, and ultimately it is going to be up to Your Honor
25 with respect to how the trial goes forward.

1 THE COURT: All right. Well, I hope that you all are
2 going to have lots of specific thoughts to share on what the
3 hearing on September 10th would look like, because, holy cow,
4 a \$70 million proof of claim that -- I haven't looked at your
5 proof of claim, but it is presumably based on the 34 counts in
6 the adversary proceeding filed in the Acis case, and maybe
7 then some.

8 So, you know, I don't know how in the world, if we had to
9 have a contested hearing on September 10th, we could get that
10 all done in one day.

11 MR. POMERANTZ: Your Honor, Jeff Pomerantz again.
12 Without getting ahead of ourselves, at least the Debtors' view
13 is there are some threshold legal issues --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- that are raised in the objection.
16 And then there are, of course, a series of issues that are
17 factual-intensive.

18 So what we intend to present is how we think we can
19 efficiently deal with it. Again, it's not our expectation to
20 have a lengthy trial on the entire claim objection. But,
21 again, Ms. Patel and I agreed that what we weren't going to do
22 is turn this into a status conference.

23 THE COURT: Okay.

24 MR. POMERANTZ: To the effect that neither party was
25 ready. I would just leave it at that --

1 THE COURT: Okay.

2 MR. POMERANTZ: -- and say we'd be prepared to talk
3 with you on the 21st.

4 THE COURT: Okay. Well, we -- we'll use that setting
5 partly as a status conference to talk about the September 10th
6 hearing. And, again, I hope you both will have some specific
7 ideas to give me.

8 So, July 21st, we have -- remind me what we have. We are
9 so busy, I haven't looked one week ahead to --

10 MR. POMERANTZ: I believe, and Mr. Morris could
11 correct me if I get ahead of ourselves. I know there's been
12 discussions between us and the Committee on two very -- two,
13 in some sense, the opposite sides of the coin -- discovery
14 motions that are pending before Your Honor. I thought July
15 21st may have been pre-obtained. Again, I could be ahead of
16 my partner there.

17 THE COURT: Okay. That sounds like something that
18 I've set on an expedited basis in the past few days. Mr.
19 Morris, Mr. Clemente -- Mr. Clemente filed a motion, or
20 someone from their shop filed a motion --

21 MR. CLEMENTE: Your Honor? Your Honor?

22 THE COURT: -- during the middle of our last hearing,
23 as I recall. And I was kind of surprised to get out of court
24 and learn about it. But you're saying you haven't gotten
25 information you've been asking for for months, and we also

1 have a motion for a protective order.

2 So, just give me a short -- I'm trying to figure out how
3 much time we're going to be in court next week on the 21st.

4 It's a discovery dispute.

5 MR. POMERANTZ: And I'll --

6 THE COURT: So, Mr. Pomerantz? Go ahead.

7 MR. POMERANTZ: Your Honor, if my colleague, Paige
8 Montgomery, is on, she's in a better position to address that.
9 I don't know if Ms. Montgomery is on.

10 MS. MONTGOMERY: I'm here. I don't -- my WebEx has
11 been cutting in and out, but I think (inaudible) hear me.

12 THE COURT: We can hear you, but we can't --

13 MR. POMERANTZ: Yes, we can.

14 THE COURT: Oh, there you are. We can now see you as
15 well. So, --

16 MS. MONTGOMERY: Yes, Your Honor. I think the amount
17 of time that might be required for the discovery motions is
18 going to be dependent on the number of third-party objections
19 that may or may not be filed tomorrow. We've been in
20 communication with a number of different parties over the last
21 couple of days, trying to resolve those.

22 But I think, if it were just the two motions and the two
23 parties that filed those, John, I don't know if you disagree,
24 but I'd say that's probably an hour. I just don't know how
25 many other people -- I don't know how many other people will

1 want to participate, Your Honor.

2 THE COURT: Okay. Well, it's going to be whatever
3 it's going to be, but we're going to have -- the main event on
4 the 21st is going to be this document discovery contest, and I
5 guess there's a related motion for protective order. But I
6 don't know how much it's going to be about resisting producing
7 documents versus we'll produce documents if we have a
8 protective order.

9 Mr. Morris, can you, in, you know, a few seconds, answer
10 that?

11 MR. MORRIS: Sure. As the Debtor, we're trying to --
12 we've got certain interests to protect. We thought we were in
13 a different place in the middle of June, and, you know, this
14 proposal that the Committee made for the first time on July --
15 on June 26th is really what, from my perspective, prompted us
16 to be here.

17 But we've made a proposal to the Committee. We haven't
18 received a response to that. We're trying to address these
19 issues. But it's not, you know, it's not contentious. I
20 think our interests are legitimate. I think the motion that
21 we made is either for a protective order or for an order
22 directing us to produce the documents. Because as the motion
23 itself sets forth, Your Honor, the Debtor has certain
24 contractual and other obligations to some third parties. We
25 have given notice to those third parties of our -- of our

1 intent to make this motion, because we are kind of between a
2 rock and a hard place. We can't produce the documents
3 without, you know, potentially violating obligations to third
4 parties.

5 And so we'd just ask the Court to be the referee here, to
6 make the decision as to how it gets resolved. And we've given
7 notice to these third parties so that they fairly have an
8 opportunity to be heard, too. And I've been in communication
9 with some of them as well, and I've encouraged them to speak
10 with the Debtor, because ultimately, you know, if the Debtor
11 and the third parties can come to an agreement on the
12 production of the documents, you know, that will resolve, you
13 know, a substantial piece of the issue.

14 MR. POMERANTZ: You mentioned the -- you meant the
15 Committee, John, not the Debtor.

16 MR. MORRIS: I apologize. Yes. Thank you.

17 MR. POMERANTZ: Thank you, John.

18 THE COURT: Okay. Well, I hope you have this largely
19 worked out. Obviously, I hope that. You know, I just
20 remember doing a very quick pass through the Committee's
21 motion, but I do remember them saying they've been trying to
22 get these documents for a very long time, and I think I recall
23 there's pressure building now because I gave you a 90-day
24 deadline to either file a lawsuit regarding the CLO Holdco
25 issues that we had a hearing on a few weeks ago, a couple of

1 weeks ago, or I'm probably going to release the money in the
2 registry of the Court. And so that's part of why you're
3 trying to get these documents as soon as possible, right, Ms.
4 Montgomery?

5 MS. MONTGOMERY: Yes, Your Honor.

6 THE COURT: Okay. All right. You all try to work
7 this out. Okay?

8 MR. CLEMENTE: Thank you.

9 THE COURT: Well, I was partly pressing the issue of
10 what's July 21st going to look like because I think we may
11 carry over the discussion about mediation. We're going to
12 start it right now, but I think we may have to carry it over
13 to the 21st, and I hope finally kind of get a game plan
14 together on that day.

15 So, I wanted Mr. Seery to be available. Mr. Seery is --
16 if you're still there somewhere. You're very important, in my
17 view, to mediation potentially being successful here -- and
18 the whole Board is, for that matter -- because -- well, let me
19 digress a minute.

20 Mediation is going to be very tough here. We all know
21 that mediation tends to be more likely to succeed if we've got
22 face-to-face, in-person participation. And as I said last
23 week, I just don't know how I can order people to be in face-
24 to-face mediation right now. I just -- we've got people
25 spread out, and I think it would be very, very bad to order

1 face-to-face mediation right now.

2 But on the topic of mediation, you know, I've heard some
3 things that, you know, we all know, but I've heard some things
4 from Mr. Seery that are important to stress today. This isn't
5 the type of case that needs to be in bankruptcy for months and
6 months and months and months. Okay? We have the issue of the
7 professional fees accruing, of course, like every case. But
8 we have a company where -- it's a strange fit for bankruptcy,
9 right, this kind of company. And it's so dependent on people
10 to provide value. And people can bolt. You know, people can
11 get weary of the bankruptcy and want to be somewhere else
12 where that taint is not there in the marketplace.

13 The issue of the UCC protocols was brought up by Mr.
14 Seery, and I know that is something that is going to be
15 cumbersome, you know, for this company to be in bankruptcy
16 long-term.

17 So, I want to go to Mr. Seery, and it may be unusual for
18 me to reach out to you and ask this, but I want to hear from
19 you: Do you think mediation is a waste-of-time pipe dream,
20 for lack of a better term? I really want mediation to happen,
21 because I don't know how we quickly get a confirmed plan if we
22 have, well, the voting issue, for one, right? We have to, at
23 a minimum, figure out what is UBS's voting claim. What's its
24 claim for voting purposes? What is Acis's claim for voting
25 purposes? A looming, huge issue in my mind. So I feel like

1 we've got to have mediation. We've got to get a strong shot
2 at getting these two claims liquidated, at least for voting
3 purposes, if not overall.

4 So, is this a pipe dream, Mr. Seery, in your view, that
5 mediation might get to resolution on these two claims? What
6 do you think about it?

7 MR. SEERY: The quick answer, Your Honor, is I don't
8 think it's a pipe dream. I think there's a legitimate shot to
9 move parties together.

10 Let me just say one thing that -- reflecting on what Mr.
11 Clemente said. I want to make clear for the record that, to
12 the extent I misspoke, and it would have been misspeaking, I
13 have no negative implication regarding the sophistication,
14 professionalism, or focus of Sidley --

15 THE COURT: Uh-huh.

16 MR. SEERY: -- or FTI or any of the professionals. I
17 know these folks. They're really good. They're very
18 sophisticated. I have the highest professional and personal
19 respect for them. So, to the extent that I misspoke, I
20 apologize.

21 THE COURT: I don't think you did, and that's not how
22 I heard it --

23 MR. SEERY: Okay.

24 THE COURT: -- and that's certainly not how I meant
25 it. It's just a fact of bankruptcy that it's expensive.

1 Okay? So, --

2 MR. SEERY: Yeah.

3 THE COURT: Right.

4 MR. SEERY: I just wanted that to be clear.

5 I think, particularly with respect, Your Honor, to the
6 Acis and UBS claims, our professionals have done a lot of work
7 on them. Obviously, the professionals for Acis and UBS have
8 done a lot of work on them. There may be things that we know,
9 the perspectives that we have, and perspectives that the other
10 side has, that may not be as well-founded as each side thinks.
11 It could be very valuable to have a third-party objective
12 observer, cajoler, somebody who's strong, to help move the
13 parties off of certain positions.

14 We would like to think, as a Board, Independent Board, and
15 I'd like to think as an Independent Director and now as a CEO,
16 I didn't really have a -- the proverbial dog in that fight for
17 either of those claims. I wasn't -- I'm not a Highland
18 employee. I don't have any animus towards any of the sides.
19 I don't have any history with any of the sides.

20 But I'm realistic that I take a perspective around certain
21 claims and how they're brought, the factual and legal basis
22 for them. And I get a lot of that information from Highland
23 employees, and we use that information to then perform the
24 analysis with our professionals.

25 Likewise, these parties have been involved in, on the

1 other side, very entrenched disputes with Highland and
2 Highland employees. And they've dug in on their positions.

3 Having a third party hear each side and start to move
4 could give us the chance to break it open. I think there's --
5 and there's two really important aspects. One is the claim
6 amount, and then, obviously, the distributions on the claims:
7 How to make those, how much are they, when are they made? We
8 can work on both of those, and I think we need some help
9 moving us both on the claim amounts and on how to make the
10 distributions.

11 We've made progress with Redeemer because even though they
12 had -- they had an arbitration award, so we knew what the
13 outside would be. Now, Redeemer and their attorneys are very
14 good and very creative. They could stretch the outside in
15 those discussions. I won't get into what they are. But we
16 were able to more easily fashion around the particulars of
17 that claim because there was that judgment from the
18 arbitrators that, while it hasn't been entered, gave us much
19 more guidelines as to where we could look. The other claims
20 are much more amorphous, at least at this stage, and having a
21 third party help us develop perhaps closer goal lines would be
22 useful, in my opinion.

23 But, again, I think it's very important that we do it
24 quickly. I think we -- you know, somebody who is focused,
25 strong. I'm sure they'll be highly intelligent and versed in

1 the field, but somebody who's got the opportunity and time to
2 do it. And then, if it's unsuccessful, then, as Mr. Pomerantz
3 and Ms. Patel alluded to, then perhaps we may need some
4 judicial help to move those goal lines a little bit.

5 But I do think that mediation -- and I apologize for the
6 length of my answer -- could be a very helpful way to do it,
7 provided we get there quickly.

8 THE COURT: All right. I guess my other question I
9 wanted your view on is structure. You know, when someone --
10 Mr. Pomerantz, I think -- told me that he or others had
11 reached out to our judges in Houston, Judge Jones and Judge
12 Isgur, my initial reaction -- and, frankly, my continued
13 thought on that -- is they just don't have meaningful time,
14 because I don't think one day of cajoling is going to be
15 enough to get -- you know, you're a billion dollars apart on
16 UBS, right? The Debtor, I guess, thinks zero is the amount of
17 their claim, and UBS thinks it's a billion, and it's been
18 litigated for 11 years. And then I personally know, you know,
19 how Acis feels about its positions.

20 So, anyway, what I'm getting at is structure. I in some
21 ways think what we need here is sort of a master statesman-
22 type person who would spend meaningful time, not just a day or
23 two, but days or even weeks trying to reach a grand
24 compromise.

25 On the other hand, in my experience -- I've never done

1 that in a case as judge. But as a lawyer, I felt like that
2 kind of person can hijack a case, and we don't need that here.
3 We have wonderful professionals, a wonderful Board, a
4 wonderful CEO. We don't need that kind of help, I worry.

5 So, I guess where I'm evolving, you know, we've got the
6 two-sitting-judge option that would be free mediators that
7 could give you a day or two. Maybe. And then we have kind of
8 the master statesman who might be in there for weeks, trying
9 to help you reach a grand compromise.

10 Another option, I think, is one or two mediators who just
11 zero in, you know, on the UBS claim versus -- and the Acis
12 claim. And I have a couple of private mediators in mind that
13 have very good video capabilities to have a sophisticated
14 video mediation.

15 So, all of this rambling to say, Do you think we need to
16 just zero in on Acis and UBS and maybe have one or two people
17 to do formal video mediation with those two parties, or do we
18 need sort of more of a grand pooh-bah, grand compromise-type
19 person?

20 MR. SEERY: My view, Your Honor, is that we should
21 focus on the claims, but they're not just going to be two-
22 party, because we do have other active constituents. I think
23 Redeemer, with their party in interest status, is going to
24 want to be part of it.

25 I think if we can focus on those, we have the

1 professionals to help drive the grander bargain that I've
2 alluded to in some of those discussions we've been having. So
3 they haven't progressed as far as I would like, but they have
4 progressed. We do need the bottom line number for where
5 claims are going to come out. But also that will help frame a
6 little bit as to what parties expect in terms of distributions
7 on their claims.

8 And I think the reason that we had some impetus behind a
9 sitting judge -- frankly, I didn't know that sitting judges
10 couldn't be paid. I think that's -- there should be a
11 standard rate, because we shouldn't take people's time for
12 free in these cases, and I know judges work extremely hard and
13 if they're going to put in extra time, then they should maybe
14 be compensated, but that's a whole different issue.

15 I don't think we should get too hung up on the cost. We
16 are -- the costs of this case are extremely high, and we are,
17 with best intents, sometimes getting ourselves wrapped up in
18 things that should be, I think, more swiftly and economically
19 dealt with and dispatched.

20 So, if we can get a good mediator, and I think the reason
21 folks think about a judge is -- a sitting judge, it's not just
22 the vast experience that folks -- judges like yourself have,
23 Your Honor, and in particular with these issues, but also the
24 requirement that all the participants, notwithstanding the
25 professionals and -- that you see here, the requirement that

1 all the participants know that they're dealing with a sitting
2 judge, there's a certain decorum that's required. But that, I
3 think we get anyway. But there's also a -- there's less
4 willingness to go to the furthest reaches of your argument
5 when you have someone who's on the bench who sees those types
6 of positions taken frequently and can dispatch with them more
7 readily.

8 So, I think there are a number of individuals that I've
9 dealt with in the past who would have the ability, the
10 gravitas, for lack of a better term, to be able to help push
11 the parties in the right direction. And I think it's a matter
12 of finding somebody, as you said, with both the capabilities,
13 which we'll find, but also the capacity in terms of the time
14 to do it. And then, in the video age, maybe some facility in
15 being able to make that happen both rapidly and effectively on
16 screen.

17 THE COURT: Okay.

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
19 And I'd just make a couple of comments.

20 THE COURT: Okay.

21 MR. POMERANTZ: You know, as Mr. Seery said, we were
22 predisposed towards a sitting judge. And while we did share
23 the same concerns about the timing of Judge Jones and Isgur,
24 we understand you've probably been in communication with them,
25 and if that's not going to work, we appreciate it. We want

1 this mediation to be effective and we want someone to spend
2 the time with it. And if you didn't feel that they, you know,
3 could commit to that, we totally appreciate that.

4 We thought long and hard about the people that you
5 identified at the last hearing, former Judge Peck and Sylvia
6 Mayer. We've done our diligence. The Debtor would be willing
7 to mediate before Sylvia Mayer. We think that, based upon our
8 diligence, the people we've spoken to, that she, if she
9 otherwise had the time and the abil... the time to devote to
10 it, that being a former big-firm lawyer in permanent practice
11 now as a mediator, that the Debtor would find her acceptable.

12 THE COURT: All right. Does anyone else wish to
13 comment? Because I have a very positive view of Sylvia Mayer,
14 and certainly her video capabilities, I think, are far and
15 away better than a few other people I've chatted with.

16 MS. PATEL: Your Honor?

17 MR. CLEMENTS: Your Honor? Oh, I'm sorry.

18 MS. PATEL: Go ahead.

19 MR. CLEMENTE: Your Honor, --

20 THE COURT: Not that I would ever, you know, put that
21 ahead of, you know, overall abilities, but it just is an added
22 plus, a huge plus right now during COVID.

23 Go ahead.

24 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
25 the Committee. Just a couple observations, building a little

1 bit on what Mr. Seery said.

2 We had consensus among the Committee around Judge Isgur
3 and Judge Jones. I think the view, the consensus view -- and,
4 again, I use the word consensus and not unanimity because I
5 want Your Honor to understand that -- is that having a sitting
6 judge, ideally, given the personalities as you've expressed
7 and I think as Mr. Seery has expressed, provides the best
8 possibility for a successful mediation. It may not be that
9 overlord that spends three weeks, but, you know, it is a
10 strong personality that -- not that any of the names that have
11 been raised aren't tremendously to be respected, but that
12 would be respected by all of the parties simply by the fact
13 that they're a sitting judge.

14 With that said, Your Honor, and, again, the speed. Again,
15 I don't have unanimity from the Committee, but there is
16 consensus to see if Sitting Judge Green from the Southern
17 District of New York would have the time and the capability to
18 spend. And I know Your Honor has concerns about the time. I
19 think Judge Isgur and Judge Jones occupy a special place in
20 terms of how busy they are, but at least among the Committee
21 members, there's been discussion that that may be a suitable
22 approach in terms of identifying a mediator and accomplishing
23 the objectives of having a very strong mediation, mediator, on
24 a timely basis, that has the best possibility of success.

25 That being said, Your Honor, based on what Mr. Pomerantz

1 said, if Mr. Green is not acceptable or if Your Honor doesn't
2 wish for us to go in that direction, I do have consensus among
3 the Committee members to move forward with Ms. Mayer as
4 mediator.

5 So, a little -- maybe a little convoluted in my comments
6 there, Your Honor, but the main thrust is I think there is
7 consensus among the Committee to consider a sitting judge, and
8 Judge Green would be someone who would be satisfactory. And
9 if he's not acceptable, or I should say acceptable but not
10 able to do it, Ms. Mayer would be acceptable to the Committee.

11 THE COURT: All right. Well, let me put this out
12 there. I talked on a no-names basis with Ms. Mayer last
13 Friday. And it was actually more in the nature of making
14 inquiries about how an organization she's connected with, the
15 AAA -- you've heard of the American Arbitration Association;
16 they, of course, do mediation -- what their experience and
17 capabilities were with many, many parties and video mediation.
18 And as you might guess, they have a lot of experience already
19 -- you know, a number well in excess of a hundred; I can't
20 remember -- of doing video mediations with many parties and
21 having the different constituencies in this caucus room and
22 that caucus room. And, very importantly, having lots of IT
23 staff to give instructions, to give help, to, you know, tackle
24 technology problems.

25 But in that discussion, I learned that there is a panel

1 that AAA has put together of 12 mediators that have bankruptcy
2 expertise. And, of course, Sylvia Mayer is one of those
3 people. But Retired Bankruptcy Judge Gropper -- is it Groper
4 or Gropper from the Southern District of New York? I always
5 forget which way he pronounces his name. Anyway, he is on
6 that. He is on that panel of 12.

7 Mr. Seery, you're grinning like you want to say something
8 about this.

9 MR. SEERY: No. Only on the Gropper/Groper, because
10 there's a professional that I know that is similarly named,
11 and I believe -- and I believe Judge Groper -- I may have it
12 wrong, but I think it's -- it's Judge Groper and Dan Gropper.
13 But that's the best I --

14 MR. NEIER: It's Dan Groper and Judge Gropper. I
15 actually had a mediation with the two of them when they argued
16 about the pronunciation of their name.

17 THE COURT: Okay. Well, Gropper. So we -- it's
18 Gropper. Okay.

19 A VOICE: Yes.

20 THE COURT: My point was, without -- I've not talked
21 to him at all. And by the way, I haven't personally reached
22 out to Jim Peck, but we'll stop that discussion about him.
23 But after getting off the call with Sylvia Mayer and a couple
24 of other people at the AAA Friday, I put together in my brain,
25 maybe we could have a Sylvia Mayer/Allan Gropper tag team, two

1 mediators. Okay? I don't know how that would affect the
2 cost, but that might be the way to go in such a complex case.
3 You know, maybe they could divvy up among themselves. One
4 would be the primary mediator on Acis, one would be the
5 primary mediator on UBS, but they would both work together.

6 If you all want to think on that, digest that a little,
7 and we, you know, decide definitely next week on the 21st, we
8 could do that. Or we could just all say, yeah, that's a good
9 game plan, and I can get on the phone after this. Or it
10 actually may be tomorrow, because I have a terrible hearing
11 that I've got to prepare for at 9:30 in the morning tomorrow.
12 It may be tomorrow.

13 But do people want to let that soak in a little bit, or
14 shall -- I mean, --

15 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

16 THE COURT: -- frankly, I can order it either way. I
17 can order it. But I just really want to be conciliatory to
18 the parties who are owed the money and have to pay the money,
19 if you want to think on it some.

20 MR. POMERANTZ: Your Honor, it's Jeff Pomerantz.
21 Having my newly-minted CEO on the phone, Mr. Seery, I would
22 ask him, and if he says that it would be okay, then it would
23 be okay with me.

24 MR. SEERY: Be fine with me.

25 THE COURT: Okay.

1 MR. SEERY: Yeah, I think the key is moving forward.
2 I know it's much harder with a Committee, and I respect, you
3 know, Matt Clemente's job there of having to get consensus.
4 But from our perspective, if we were to push it off, you know,
5 on the 21st, Your Honor, we -- we would request you to order
6 something, because I don't want this to delay.

7 THE COURT: Okay.

8 MR. CLUBOK: Your Honor, if I may, speaking for UBS,
9 it's Andrew Clubok. You'll be happy to know I think that
10 we're in agreement with Mr. Seery, and I guess, derivatively,
11 Mr. Pomerantz. We think the most important thing is to move
12 it along quickly, and we trust -- you know, we're familiar
13 with Judge -- or, with Mayer, and whether it's Groper or
14 Gropper, I lost track, but I'm sure he is also going to be
15 equally capable. We do kind of think that two is probably
16 necessary, given, you know, the sort of multi-layer
17 (inaudible).

18 But, really, our position has simply been we'll happily
19 mediate with any, you know, effective mediator as quickly as
20 possible, because we do think the sooner we do that, the
21 sooner we might have a chance to get to yes. So, I'm -- we're
22 prepared to just say yes to the idea.

23 THE COURT: All right. Does anyone else want to
24 comment?

25 MS. PATEL: Your Honor? And can you hear me? I'm

1 sorry. It's --

2 THE COURT: Yes.

3 MS. PATEL: Again, I'm still having WebEx problems.

4 THE COURT: Yes.

5 MS. PATEL: Your Honor, again, for the record, Rakhee
6 Patel.

7 Acis is fine with the proposal, Your Honor. We've been
8 amenable to virtually every proposal, and have been trying to
9 hopefully be helpful with respect to getting this moved to
10 mediation as quickly as possible. We equally think that we
11 should get to mediation as quickly as we can.

12 And, you know, the only -- the only -- and I appreciate
13 Your Honor's contemplativeness on this. As you know, at least
14 in connection with the Acis case, you know, we've been through
15 two unsuccessful mediations so far. So we're really hoping
16 that the third time will go much better than the prior two.

17 So, anyway, this is my very long way of saying we're fine
18 with the proposal and are happy to kind of sign off on it. We
19 don't need until July 21st to respond on that.

20 THE COURT: Okay. Anyone else?

21 (No response.)

22 THE COURT: All right. Well, very good. I'm going
23 to move ahead on this and will confirm to you, hopefully
24 before the 21st, through my courtroom deputy. And, again,
25 given the late hour, I think it's going to be tomorrow before

1 I pick up the phone and reach out to Sylvia Mayer and former
2 Judge Gropper.

3 But, again, I did, in speaking generically with Sylvia
4 Mayer, asking her, Have you ever done like a two-mediator
5 mega-mediation, and she said, Oh, sure. You know, that's --
6 she acted like it was quite common. It's not something that I
7 have seen very often, but I think we'll be in business with
8 this game plan.

9 Because, you know, I know everyone on this call knows
10 this, but maybe not everyone's client knows this: If we don't
11 -- if we don't have a successful mediation of both of these
12 claims, or at least one of these claims, it's going to be
13 years and years and years. I mean, I know it's already been
14 years for UBS, but it will -- it will be many, many more
15 years. And that's not what we're supposed to do in
16 bankruptcy. We're supposed to stop burdensome litigation and
17 solve problems. And I can't imagine your clients want to go
18 on with three or four more years of litigation. But that's
19 exactly what it will be, it's exactly what it will be, many
20 more years of litigation, if we don't have mediated
21 settlements.

22 So, all right.

23 MS. PATEL: Your Honor, if I may very quickly. I
24 just wanted to make sure the Court was aware of something. In
25 the context of mediation and as it relates to Acis's claim,

1 yesterday counsel for Mr. Dondero filed a joinder in the
2 Debtors' objection to Acis's claim. So, again, just thinking
3 about this in the context of mediation, I think, with that
4 joinder, they will be a necessary party. So, going back to
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing
12 further, we'll see you on the 21st. And, again, my courtroom
13 deputy may be reaching out before then if we've got things
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oOo--

17

18

19

20

21 CERTIFICATE

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

24 **/s/ Kathy Rehling**

07/16/2020

25 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 18

EXHIBIT 45

002750

AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT

THIS AMENDED AND RESTATED INVESTMENT ADVISORY AGREEMENT (this “*Agreement*”), dated to be effective from July 1, 2014 is entered into by and between **Charitable DAF Fund, L.P.**, a Cayman Islands exempted limited partnership (the “*Fund*”), **Charitable DAF GP, LLC**, a limited liability company organized under the laws of the State of Delaware (the “*General Partner*”), the general partner of the Fund, and **Highland Capital Management, L.P.**, a limited partnership organized under the laws of the State of Delaware (the “*Investment Advisor*”).

RECITALS

WHEREAS, the Fund, the General Partner and the Investment Advisor are parties to that certain Investment Advisory Agreement dated January 1, 2012 (the “*Original Agreement*”);

WHEREAS, the parties desire to amend and restate the Original Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Investment Advisory Services. Subject to Section 7, the Investment Advisor shall act as investment advisor to the Fund, the General Partner with respect to the Fund and its subsidiaries and shall provide investment advice with respect to the investment and reinvestment of the cash, Financial Instruments and other properties comprising the assets and liabilities of the Fund and its subsidiaries.

2. Custody. The Financial Instruments shall be held in the custody of Jefferies & Company, Inc. or one or more banks selected by the General Partner (each such bank, a “Custodian”). The General Partner will notify the Investment Advisor promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the General Partner. At no time shall the Investment Advisor have possession of or maintain custody over any of the

Financial Instruments. The Investment Advisor shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

3. Authority of the Investment Advisor. Subject to Section 7 of this Agreement, the Investment Advisor shall advise the General Partner on behalf of the Fund and/or its subsidiaries with respect to:

(a) investing, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in

real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "*Financial Instruments*"), and the sale of Financial Instruments short and covering such sales.

- (b) engaging in such other lawful Financial Instruments transactions;
- (c) research and analysis;
- (d) purchasing Financial Instruments and holding them for investment;
- (e) entering into contracts for or in connection with investments in Financial Instruments;
- (f) investing in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;
- (g) possessing, transferring, mortgaging, pledging or otherwise dealing in, and exercising all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Fund and/or its subsidiaries;
- (h) lending, either with or without security, any Financial Instruments, funds or other properties of the Funds, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Fund;
- (i) opening, maintaining and closing accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;
- (j) opening, maintaining and closing accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combining purchase or sale orders on behalf of the Fund with orders for other accounts to which the Investment Advisor or any of its affiliates provides investment services (“*Other Accounts*”) and allocating the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts;

(l) entering into arrangements with brokers to open “average price” accounts wherein orders placed during a trading day are placed on behalf of the Fund and Other Accounts and are allocated among such accounts using an average price;

(m) organizing one or more corporations and other entities formed to hold record title, as nominee for the Fund and/or its subsidiaries (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Fund and/or its subsidiaries;

(n) causing the Fund and/or its subsidiaries to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Investment Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engaging personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants and investment bankers); and

(p) voting of Financial Instruments, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

4. Policies of the Fund. The activities engaged in by the Investment Advisor on behalf of the Fund and/or its subsidiaries shall be subject to the policies and control of the General Partner.

The Investment Advisor shall submit such periodic reports to the General Partner regarding the Investment Advisor’s activities hereunder as the General Partner may reasonably request and a representative of the Investment Advisor shall be available to meet with the

General Partner and/or any other representative of the Fund or its subsidiaries as reasonably requested by the General Partner.

In furtherance of the foregoing, the General Partner hereby appoints the Investment Advisor as the Fund's attorney-in-fact, with full power of authority to act in the Fund's name and on its behalf with respect to the Fund, as follows:

(a) to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner;

(b) to execute and combine purchase or sale orders on behalf of the Fund with orders for Other Accounts and allocate the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts; *provided, however*, that such purchase or sale orders shall be market rates;

(c) to direct the Custodian to deliver funds or the Financial Instruments, but only in the course of effecting trading and investment transactions for the Fund and subject to such restrictions as may be contained in the custody agreement between the Custodian and the Fund;

(d) to enter into contracts, provide certifications or take any other actions necessary to effect any of the foregoing transactions; and

(e) to select brokers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker-dealer's expertise in the relevant market or sector; the extent to which the broker-dealer makes market in the security or has an access to such market; the broker-dealer's skill in positioning the relevant market; the broker-dealer's facilities, reliability, promptness and financial stability; the broker-dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; and other factors deemed appropriate by the Investment Advisor.

5. Valuation of Financial Instruments. Financial Instruments will be valued in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided to the General Partner upon request.

6. Status of the Investment Advisor. The Investment Advisor shall, for all purposes, be an independent contractor and not an employee of the General Partner or the Fund or its subsidiaries, nor shall anything herein be construed as making the Fund or its subsidiaries or the General Partner, a partner, member or co-venturer with the Investment Advisor or any of its affiliates or clients. The Investment Advisor shall have no authority to act for, represent, bind or obligate the Fund or its subsidiaries or the General Partner except as specifically provided herein.

7. Investments. ALL ULTIMATE INVESTMENT DECISIONS WITH RESPECT TO THE FUND AND ITS SUBSIDIARIES SHALL AT ALL TIMES REST SOLELY WITH THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY, IT BEING EXPRESSLY UNDERSTOOD THAT THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY SHALL BE FREE TO ACCEPT AND OR REJECT ANY OF THE ADVICE RENDERED BY THE INVESTMENT MANAGER HEREUNDER FOR ANY REASON OR FOR NO REASON.

8. Reimbursement by the General Partner. The Investment Advisor may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the General Partner with respect to the Fund and/or its subsidiaries (any such appointee, a "*Sub-Advisor*"), including, but not limited to, any affiliate of the Investment Advisor, but payment for any such services shall be assumed by the Investment Advisor, and, therefore, neither the General Partner nor the Fund or any of its subsidiaries shall have any liability therefor; *provided, however*, that the Investment Advisor, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the General Partner with respect to the Fund and/or its subsidiaries

hereunder, and the Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

9. Expenses.

(a) The Fund shall pay or reimburse the Investment Advisor and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Fund, any taxes imposed upon the Fund (including, but not limited to, collateralized debt obligations managed by the Investment Advisor or its affiliates), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Investment Advisor. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Investment Advisor's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Fund are paid by the Investment Advisor or by any Sub-Advisor, the Fund shall reimburse the Investment Advisor (or Sub-Advisors, as applicable) for such expenses so long as such expenses are at market rates.

10. Fees. Without limiting the expense reimbursements set forth above, the Investment Advisor shall provide the Fund with the services described herein for 100 bps per annum (25 bps per quarter) of the market value of the Equity Investments (defined below) and 50 bps per annum (12.5 bps per quarter) of the market value of the Debt Investments (defined

below), calculated as of the last business day of each calendar quarter (the "**Calculation Date**"), payable quarterly in arrears by the 45th business day following the end of each quarter, provided that the Investment Advisor shall deliver to the General Partner on or before the 30th business day following the end of each calendar quarter a statement showing the calculation of the fee for such quarter. For purposes hereof, the "**Equity Investments**" shall mean those Financial Instruments which are equity investments held by the Fund (either directly or indirectly through a subsidiary vehicle) on the Calculation Date, and "**Debt Investments**" shall mean those Financial Instruments which are debt investments held by the Fund (either directly or indirectly through a subsidiary vehicle) on the Calculation Date. For the avoidance of doubt, the Financial Instruments shall be valued as of each Calculation Date in accordance with the then current valuation policy of the Investment Advisor. Notwithstanding the foregoing, neither the term "Equity Investments" nor the term "Debt Investments" shall include any Financial Instruments with respect to which the Investment Advisor or any affiliate thereof already receives management fees.

11. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Investment Advisor, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the General Partner or the Fund or any of its subsidiaries or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the General Partner or the Fund, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the General Partner or the Fund, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the General Partner or the Fund or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on

behalf of the General Partner or the Fund or any of its subsidiaries, (iii) any act or omission by the General Partner or the Fund or any of its subsidiaries, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the General Partner or the Fund or any of its subsidiaries selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the General Partner or the Fund or any of its subsidiaries or in furtherance of the business of the General Partner or the Fund or any of its subsidiaries in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the General Partner and the Fund and its subsidiaries shall indemnify and hold harmless Covered Persons (the "*Indemnified Party*"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnified Party and arise out of or in connection with the business of the General Partner or the Fund or any of its subsidiaries, any investment made under or in connection with this Agreement, or the performance by the Indemnified Party of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnified Party in connection with the General Partner or the Fund or any of its subsidiaries, provided that an Indemnified Party shall not be entitled to indemnification hereunder to the extent the Indemnified Party's conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Party's conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnified Party in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the General Partner prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnified Party is not entitled to be indemnified hereunder.

(f) The right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnified Party's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Investment Advisor and each Indemnified Party will generally not be liable to the General Partner or the Fund for any act or omission (or alleged act or omission), absent bad faith, willful misconduct, fraud or gross negligence, and the General Partner and the Fund will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the General Partner, the Fund or its subsidiaries, absent bad faith, willful misconduct, fraud or gross negligence. As a result of these provisions, the General Partner, the Fund and its subsidiaries, as applicable (not the Investment Advisor or any other Indemnified Party) will be responsible for any Losses resulting from trading errors and similar human errors, absent bad faith, willful misconduct,

fraud or gross negligence or the ability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Investment Advisor and its affiliates on behalf of the Fund and/or its subsidiaries, the General Partner acknowledges that trading errors (and similar errors) will occur and that the General Partner will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Investment Advisor or its affiliates.

12. Activities of the Investment Advisor and Others. The Investment Advisor, and its affiliates may engage, simultaneously with their investment management activities on behalf of the Fund, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Fund. Notwithstanding the foregoing, the Investment Advisor and its affiliates shall devote as much time to provide advisory service to the General Partner with respect to the management of the Fund's assets as the Investment Advisor deems necessary and appropriate. In addition, the Investment Advisor or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, the investment advice provided by the Investment Advisor to the General Partner with respect to the Fund. The Investment Advisor may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from advice given to, or securities recommended or bought for, the Fund, even though their investment objectives may be the same or similar. The Investment Advisor may recommend transactions in securities and other assets in which the Investment Advisor has an interest, including securities or other assets issued by affiliates of the Investment Manager. Each of the General Partner and the Fund acknowledges that it has received a copy of Part 2 of the Investment Advisor's Form ADV, which further describes conflicts of interest, including the Investment Advisor, its affiliates and their respective advised accounts.

13. Term. This Agreement shall remain in effect through an initial term concluding December 31, 2014 and shall be automatically extended for additional one-year

terms thereafter, except that it may be terminated by the Investment Advisor, on the one hand, or by the General Partner and the Fund, on the other hand, upon at least 90 days' prior written notice to the General Partner or the Investment Advisor, as the case may be, prior to General Partner's fiscal year-end.

14. Miscellaneous.

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Investment Advisor, to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Telephone Number: (972) 628-4100
Facsimile Number: (972) 628-4147

If to the General Partner or the Fund, to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Telephone Number: (919) 854-1407
Facsimile Number: (919) 854-1401

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Fund. The failure of a party to insist upon strict adherence to any term of this Agreement on

any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the General Partner, the Fund, the Investment Advisor, each Indemnified Party and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (e.g., officers, partners and personnel of the Investment Advisor and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; provided; however, that the Investment Advisor may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(e) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed in that State.

(f) Arbitration. (i) Any controversy or claim or dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (a "**Disputed Matter**") shall be handled exclusively pursuant to the following procedures. In the event of any Disputed Matter, the parties agree that upon written notice of such Disputed Matter sent by one party to the party, the parties shall arbitrate the Disputed Matter pursuant to this Section 14(f) unless the parties expressly agree in writing to resolve the Disputed Matter in another manner through mediation or otherwise. The arbitration shall be conducted pursuant to the commercial arbitration rules of the American Arbitration Association in Dallas, Texas. Any arbitration pursuant to this Agreement unless otherwise agreed to by the parties shall be conducted by a panel of three (3) arbitrators mutually selected by the parties from a list of

arbitrators determined in accordance with the American Arbitration Association's arbitrator selection procedure.

(ii) The judgment upon the award rendered in any such arbitration shall be final and binding upon the parties and may be entered in any court having jurisdiction thereof. All fees and expenses of the arbitrator and all other expenses of the arbitration shall be paid by the non-prevailing party in such arbitration. The arbitrator shall have no authority to impose any punitive or consequential damages.

(iii) Nothing in this Section 14(f) shall be construed to limit either party's right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10, 11 and 14 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons' firm or company may require in the context thereof.

(k) Arm's-Length Agreement. The General Partner and the Fund have approved this Agreement and reviewed the activities described in Section 12 and in the Investment Advisor's Form ADV and the risks related thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: August 26, 2014

CHARITABLE DAF GP, LLC

By:  _____

Name: Grant J. Scott

Title: Managing Member

Date: August 26, 2014

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By:  _____

Name: Grant J. Scott

Title: Managing Member

Date: August 26, 2014

EXHIBIT 19

EXHIBIT 46

002766

AMENDED AND RESTATED SERVICE AGREEMENT

THIS AMENDED AND RESTATED SERVICE AGREEMENT (this "*Agreement*") entered into to be effective from the 1st day of July, 2014 (the "*Effective Date*") by and among Highland Capital Management, L.P., a Delaware limited partnership ("*HCMLP*"), Charitable DAF Fund, L.P., a Cayman Islands exempted limited partnership (the "*Fund*"), Charitable DAF GP, LLC, a Delaware limited liability company (the "*General Partner*"), and any affiliate of the General Partner that becomes a party hereto. Each of the signatories hereto is individually a "*Party*" and collectively, the "*Parties*".

RECITALS

A. HCMLP, the Fund and the General Partner are parties to that certain Shared Services Agreement dated January 1, 2012 (the "*Original Agreement*");

B. The Parties desire to amend and restate the Original Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

C. Since the inception of the Fund, the Parties have intended that the Fund and the General Partner would incur reasonable arm's-length fees in connection with the operation of the Fund and management and reporting activities with respect to Fund assets;

D. HCMLP has incurred substantial expenses on behalf of the Fund and the General Partner in performing the Services (as defined below) during the term of the Original Agreement for which HCMLP has not been compensated;

E. The Parties agree that it is in their mutual best interests for HCMLP to continue to provide the Services to the General Partner, the Fund and other Recipients (as defined below) and for HCMLP to be provided sufficient financial incentives to continue to provide the Services;

F. The General Partner and the Fund desire to provide HCMLP sufficient compensation for performing the Services and to reimburse HCMLP for expenses incurred on their behalf;

G. During the Term (as defined below), HCMLP will provide to the General Partner, on behalf of the Fund and/or its subsidiaries, certain services as more fully described herein, subject to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I DEFINITIONS

"*Affiliate*" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"*Agreement*" has the meaning set forth in the preamble.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“*Effective Date*” has the meaning set forth in the preamble.

“*Fee*” has the meaning set forth in Section 3.01.

“*Governmental Entity*” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“*Liabilities*” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“*Loss*” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term “*Loss*” will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“*Net Assets*” has the meaning set forth in Section 3.01.

“*New Service*” has the meaning set forth in Section 2.03.

“*Party*” or “*Parties*” has the meaning set forth in the preamble.

“*Person*” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“*Recipient*” means the General Partner, the Fund, and any of the Fund’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Services.

“*Service Provider*” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Services.

“*Service Standards*” has the meaning set forth in Section 4.01.

“*Services*” shall have the meaning set forth in Section 2.01.

“*Subsidiary*” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“*Tax*” or “*Taxes*” means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the

Services; and (ii) tax-related surcharges or fees that are related to the Services identified and authorized by applicable tariffs.

“Term” has the meaning set forth in Section 5.01.

ARTICLE II
SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Services, each as requested by Recipient and as described more fully on Annex A attached hereto (the “Services”).

Section 2.02 Changes to the Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Service in order to reflect new procedures, processes or other methods of providing such Service, including modifying the applicable fees for such Service to reflect the then current fair market value of such service (a “Change”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “Change Request”).

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Service in any material respect or increase Recipient’s cost for such Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Services not otherwise specifically listed in Section 2.01 (a “New Service”). Any agreement between the Parties on the terms for a New Service must be in accordance with the provisions of Article III and Article IV hereof, will be deemed to be an amendment to this Agreement and such New Service will then be a “Service” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
PAYMENT OF FEES; TAXES

Section 3.01 Fees.

(a) The Fund shall pay the Service Provider a one-time continuation fee in the amount of \$ \$947,171.51, plus for the calendar quarter beginning July 1, 2014, and each calendar quarter thereafter during the term, a quarterly fee (the "Fee") equal to 18 bps per annum (4.5 bps per quarter) of the Net Assets, payable in arrears at the end of each calendar quarter. The "Net Assets" at any date shall mean the excess of the fair value of securities owned, cash, receivables, and other assets over the liabilities of the Fund calculated on an accrual basis in accordance with accounting principles generally accepted in the United States. The Fee shall be prorated for partial periods and any applicable excess fees should be returned to the Fund by the Service Provider.

(b) Payments due to the Service Provider shall be made by wire transfer to:

Bank Name: Compass Bank
ABA #: 113010547
FBO: Highland Capital Management, L.P. (Master Operating Account)
Acct #: 0025876342

Section 3.02 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Services provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Services as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Services, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 7.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 3.02 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE IV
SERVICE PROVIDER RESPONSIBILITIES

Section 4.01 Service Provider General Obligations. Service Provider will provide the Services to Recipient, subject to the requirements under Sections 3.01 and 3.02 herein and subject to reimbursement of permitted expenses in accordance with the Investment Advisory Agreement entered into concurrently herewith, on a non-discriminatory basis and will provide the Services in the same manner as if it were providing such services on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 4.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records with respect to the Services in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Services, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 4.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE V
TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 7.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
LIMITED WARRANTY

Section 6.01 Limited Warranty. Service Provider will perform the Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Services under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Services for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Service, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or Recipient or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. No Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. Subject to Section 7.14, this Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Chief Legal Officer
Fax: (972) 628-4147

If to the General Partner or the Fund, addressed to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Fax: (919) 854-1401

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

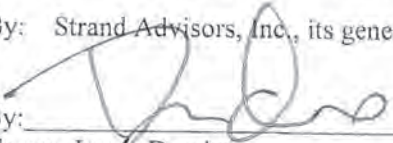
Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to," "respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

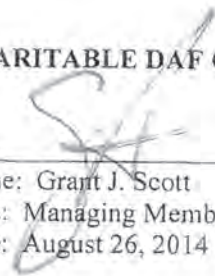
IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

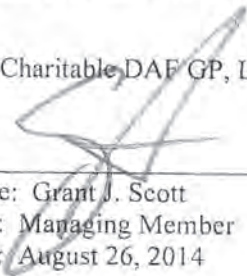
By: 
Name: James Dondero
Title: President
Date: August 26, 2014

CHARITABLE DAF GP, LLC

By: 
Name: Grant J. Scott
Title: Managing Member
Date: August 26, 2014

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: 
Name: Grant J. Scott
Title: Managing Member
Date: August 26, 2014

Annex A

Services

Finance & Accounting

- Book keeping
- Cash management
- Cash forecasting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management
- Valuation

Tax

- Tax audit support
- Tax planning
- Tax prep and filing

Legal

- Document review and preparation

Trading

- Trade execution
- Risk management
- Trade settlement
- General operations

Facilities

Public Relations Support

Information Technology Infrastructure Support

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 13**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
§
_____ §

INDEX

**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

*Vol. 1
000001*

000004

000006

Vol. 2

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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000578

			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

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004874

004882

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:)
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹)
) Case No. 19-34054-sgj11
)
Debtor.)
)
)

**DEBTOR’S SECOND AMENDED WITNESS AND EXHIBIT LIST WITH
RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JUNE 8, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following second amended witness and exhibit list with respect to the *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket

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

No. 2248], which the Court has set for hearing at 9:30 a.m. (Central Time) on June 8, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James P. Seery, Jr.
2. Grant Scott (by deposition designation)
3. James Dondero (by deposition designation)
4. Any witness identified by or called by any other party; and
5. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Transcript of January 9, 2020 Hearing		
2.	Transcript of February 2, 2021 Hearing		
3.	Debtor’s Motion for an Order to Enforce the Order of Reference [Docket 2351-4]		
4.	DAF/CLO Holdco Structure Chart (GScott000007) [Dondero June 1, 2021 Deposition Exhibit 1]		
5.	CLO Holdco, Ltd.’s Notice of Appearance and Request for Copies [Docket No. 152]		
6.	Certificate of Service [Docket No. 296]		
7.	Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures For Operations in the Ordinary Course [Docket No. 339]		
8.	Certificate of Service [Docket No. 345]		

Letter	Exhibit	Offered	Admitted
9.	Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 774]		
10.	Certificate of Service [Docket No. 779]		
11.	Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 854]		
12.	Redline of Fifth Amended Plan of Highland Capital Management, L.P. (AS MODIFIED) [Docket No. 1809]		
13.	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Docket No. 1943]		
14.	Transcript Designations from the January 21, 2021 Deposition of Grant Scott		
15.	Transcript Designations from the June 1, 2021 Deposition of Grant Scott		
16.	James Dondero June 1, 2021 Deposition Transcript		
17.	Transcript of January 21, 2020 Hearing		
18.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
19.	All exhibits necessary for impeachment and/or rebuttal purposes		
20.	All exhibits identified by or offered by any other party at the Hearing		

Dated: June 7, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Melissa S. Hayward
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 16

1 Dondero - 6-1-2021

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

4	In Re:)	
)	
5	HIGHLAND CAPITAL	)	Case No.
	MANAGEMENT, LP,	)	19-34054 L.P.
6		)	Chapter 11
	Debtor,)	
7	-----))	
	HIGHLAND CAPITAL MANAGEMENT,)	
8	LP,)	
)	
9	Plaintiff,	)	Adversary No.
		)	21-03003-sgi
10	vs.)	
)	
11	JAMES D. DONDERO,)	
)	
12	Defendant.)	

13
14 REMOTE DEPOSITION OF

15 JAMES DONDERO

16 Volume 3

17 Pages 283 - 385

18 Dallas, Texas

19 Tuesday, 1st day of June, 2021
20
21
22

23 Reported by:

24 Daniel J. Skur, Notary Public and CSR

25 Job No. 194691

1 Dondero - 6-1-2021

2

3

4

5

6

7 1st day of June, 2021

8 9:34 a.m. - 12:01 p.m.

9

10

11 Remote Deposition of JAMES DONDERO,
12 located in Dallas, Texas before Daniel J.
13 Skur, Notary Public and Certified Shorthand
14 Reporter in and for the State of Texas
15 located in Waxahachie, Texas.

16

17

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21

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24

25

1 Dondero - 6-1-2021

2 R E M O T E A P P E A R A N C E S :

3 Pachulski Stang Ziehl & Jones
4 Attorney(s) for Debtor
5 780 Third Avenue

6 New York, New York 10017

7 BY: John Morris, Esq.

8 Gregory Demo, Esq.

9 Sidley Austin
10 Attorney(s) for The Committee
11 2021 McKinney Avenue

12 Dallas, Texas 75201

13 BY: Paige Montgomery, Esq.

14 Juliana Hoffman, Esq.

15 Matthew Clemente, Esq.

16 Alyssa Russell, Esq.

17 Kelly Hart & Pitre
18 Attorney(s) for Mark Patrick
19 400 Poydras Street

20 New Orleans, Louisiana 70130

21 BY: Amelia Hurt, Esq.

22 Bonds Ellis Eppich Schafer Jones
23 Attorney(s) for The Witness
24 420 Throckmorton Street

25 Fort Worth, Texas 76102

BY: Clay Taylor, Esq.

1 Dondero - 6-1-2021

2

3 R E M O T E A P P E A R A N C E S (continued)

4 Sbaiti & Company
5 Attorney(s) for Charitable DAF, CLO HoldCo
6 and Sbaiti & Company
7 2200 Ross Avenue

8 Dallas, Texas 75201

9 BY: Mazin Sbaiti, Esq.

10

11

12 ALSO PRESENT:

13 La Asia Canty, Paralegal

14 Debra Dandeneau, Baker & McKenzie

15 J. Pomerantz

16 Lauren Drawhorn, Wick Phillips

17 Mark Patrick

18

19

20

21

22

23

24

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1 Dondero - 6-1-2021

2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the respective
4 parties herein, that filing and sealing be and
5 the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to and
12 signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.

16 - oOo -

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1 Dondero - 6-1-2021
2 P R O C E E D I N G S
3 R E M O T E O R A L D E P O S I T I O N O F
4 J A M E S D O N D E R O

5 (REPORTER NOTE: This deposition is
6 being conducted remotely in accordance with
7 the Current Emergency Order regarding the
8 COVID-19 State of Disaster.

9 Today's date is the 1st day of
10 June, 2021. The time is 9:34 a.m. Daylight
11 Savings Time. The witness is located in
12 Dallas, Texas.)

13 JAMES DONDERO,
14 having been duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, testified as follows:

17 (9:33 A.M.)

18 EXAMINATION

19 BY MR. MORRIS:

20 Q. Good morning, Mr. Dondero. Can you
21 hear me?

22 A. Yes.

23 Q. Your microphone is a little soft as
24 well.

25 Can you tell me where you're located

1 Dondero - 6-1-2021

2 right now?

3 A. 4940 Chase Tower.

4 (Interruption by reporter.)

5 (Pause.)

6 BY MR. MORRIS:

7 Q. Good morning, Mr. Dondero.

8 (Audio distortion.)

9 (Interruption by reporter.) 00:-01

10 BY MR. MORRIS: 00:-01

11 Q. Good morning, Mr. Dondero.

12 Can you hear me now?

13 A. Yes.

14 Q. You understand we're here today for
15 your deposition in connection with next week's
16 contempt proceeding; is that right?

17 A. Yes.

18 Q. Okay. We have a few documents to
19 put up on the screen today; and as usual, if
20 there's anything that you need to see, will you
21 let me know that?

22 A. Yes.

23 Q. All right. I want to start with
24 some background.

25 MR. MORRIS: Can we please put up

1 Dondero - 6-1-2021

2 the first exhibit, the organizational
3 chart?

4 MR. TAYLOR: John, before we start,
5 I just wanted to note that this is going to
6 be limited to two hours.

7 MR. MORRIS: I'm not sure where you
8 get that from, but let's just proceed.

9 MR. TAYLOR: You specifically asked
10 for two hours of time, and I told you we'd
11 give two hours of time, and so we're
12 limiting it to two hours.

13 MR. MORRIS: You do whatever you
14 need to do, Clay.

15 (Exhibit 1 introduced.)

16 BY MR. MORRIS:

17 Q. Mr. Dondero, have you seen this
18 document before, sir?

19 A. Yes.

20 Q. Do you know what it is?

21 A. It's the org chart of the DAF and
22 CLO HoldCo.

23 Q. Do you know why this structure was
24 set up the way it was?

25 MR. TAYLOR: Objection, form.

1 Dondero - 6-1-2021

2 A. Only generally.

3 BY MR. MORRIS:

4 Q. Can you tell me your general
5 understanding of why this structure was set up
6 the way it was?

7 A. To be compliant for tax purposes.

8 Q. Was this structure set up at your
9 request?

10 MR. TAYLOR: Objection, form.

11 A. Set up at my request. No.

12 BY MR. MORRIS:

13 Q. Who decided to set up this
14 structure; do you know?

15 A. Mark Patrick.

16 Q. And do you know if anybody asked
17 Mark Patrick to set up this structure?

18 A. The -- he was tasked with setting up
19 a charitable entity for Highland at that time,
20 for Highland and my -- for Highland and the
21 partners to -- to foster charitable giving and
22 provide the appropriate tax deductions for
23 such.

24 Q. And who gave him that task, if you
25 know?

1 Dondero - 6-1-2021

2 A. I believe I did.

3 Q. Okay. So, you tasked Mr. Patrick
4 with setting up an organizational structure to
5 carry out the charitable giving on behalf of
6 Highland Capital Management, L.P., and its
7 partners?

8 Do I have that right?

9 A. Yes.

10 Q. Okay. Looking at the top line, do
11 you see that there's four foundations that are
12 identified as third parties?

13 A. Yes.

14 Q. Are you familiar with those
15 foundations?

16 A. Yes.

17 Q. And do you serve as an officer or
18 director of any of those foundations?

19 A. I -- I believe I have or I could be
20 with regard to Dallas Foundation, but I'm not
21 certain.

22 Q. Okay. Do you know if you have any
23 role with any of the other three foundations
24 that are on there?

25 A. I do not believe so.

1 Dondero - 6-1-2021

2 Q. Okay. Looking at the next row,
3 there's four incorporated or there's four
4 entities that are identified as supporting
5 organizations.

6 Do you see that?

7 A. Yes.

8 Q. Do you have an understanding of what
9 a "supporting organization" is?

10 A. No, and I don't know the difference
11 between that first line and the second line,
12 and I don't know if my involvement with Dallas
13 Foundation was at the first line or the second
14 line.

15 Q. Do you know when Mr. Patrick set up
16 this structure?

17 A. Many years ago at the beginning of
18 the -- I don't think it's changed over the
19 years. As far as I know, the general -- or
20 this -- this structure was put in place at the
21 beginning, I believe, sometime in the late
22 2000s.

23 Q. Do you know what the Donor Advised
24 Funds are, the DAF funds?

25 MR. SBAITI: I'm going to object to

1 Dondero - 6-1-2021

2 the form of the question.

3 John, if you could be clear as to
4 which line -- are you talking about
5 charitable DAF HoldCo, or are you talking
6 about charitable DAF Fund, L.P.?

7 MR. TAYLOR: If you could be as
8 specific as possible, and he'll try to
9 answer as specifically as possible. I'm
10 not sure which box you're talking about.

11 MR. MORRIS: All right, Clay. Thank
12 you.

13 BY MR. MORRIS:

14 Q. Mr. Dondero, are you familiar with
15 the phrase "DAF"?

16 A. Yes.

17 Q. Have you used that phrase before?

18 A. Yes.

19 Q. When you refer to -- when you use
20 the phrase "DAF," what are you referring to?

21 A. It would depend.

22 Q. On what?

23 A. What the question is.

24 Q. What's -- do you have an
25 understanding of what the Charitable DAF GP,

1 Dondero - 6-1-2021

2 LLC, is?

3 A. The exact structural differences,
4 I -- I -- I -- I don't know.

5 Q. So when you use the phrase "DAF,"
6 what are you referring to?

7 A. In general, when I use the
8 expression, it's the -- the overall entity, the
9 overall pool of capital and/or the overall
10 entity that makes the donations from the pool
11 of capital.

12 Q. And which entity -- withdrawn.
13 Do you have an understanding as to
14 which entity holds the pool of capital?

15 A. No. It's -- no, I don't know for
16 sure.

17 Q. Do you know if it's CLO HoldCo,
18 Ltd.?

19 MR. SBAITI: Objection, asked and
20 answered.

21 A. I don't know.

22 BY MR. MORRIS:

23 Q. Do you know if Charitable DAF Fund,
24 L.P., holds any assets?

25 MR. SBAITI: Objection, relevance,

1 Dondero - 6-1-2021

2 no foundation.

3 A. I -- I don't know which entities
4 hold which of the assets.

5 BY MR. MORRIS:

6 Q. Did you -- did you approve of the
7 organizational structure that Mr. Patrick
8 created at your request?

9 A. Yes.

10 MR. TAYLOR: Objection, vague.

11 BY MR. MORRIS:

12 Q. I'm sorry. Did -- did you answer,
13 sir?

14 A. Yes.

15 Q. Okay. Who is Grant Scott?

16 A. I understand he was the trustee of
17 the DAF for a number of years.

18 Q. When you say "he was the trustee of
19 the DAF," what are you referring to?

20 A. I always refer to him as "trustee,"
21 but I see it's labeled here as "managing
22 member."

23 Q. Do you know how he came to be
24 appointed the trustee of the DAF?

25 A. I believe it was on my

1 Dondero - 6-1-2021

2 recommendation.

3 Q. Who did you make the recommendation
4 to?

5 A. It would have been Mark Patrick.

6 Q. Did Mark Patrick have the authority
7 to appoint Mr. Scott as the trustee of the DAF?

8 MR. SBAITI: Objection, vague.

9 Object to the extent it calls for a legal
10 conclusion.

11 A. Yeah, I don't know.

12 BY MR. MORRIS:

13 Q. Well, you've known Mr. Scott since
14 high school; isn't that right?

15 A. Yes.

16 Q. You went to UVA together; isn't that
17 right?

18 A. Yes.

19 Q. You were housemates together in
20 college; isn't that right?

21 A. Yes.

22 Q. He was the best man at your wedding;
23 isn't that right?

24 A. Yes.

25 Q. You picked Mr. Scott to serve as the

1 Dondero - 6-1-2021

2 trustee of the DAF; isn't that right?

3 MR. TAYLOR: Objection. That's not
4 what he stated.

5 A. I -- on the original formation, I
6 recommended Grant Scott.

7 BY MR. MORRIS:

8 Q. And you recommended Mr. Scott to
9 Mr. Patrick?

10 A. That's my recollection, I believe,
11 but I don't remember specifically.

12 Q. Do you remember if Mr. Patrick held
13 any role in any entity on the chart that stands
14 before you?

15 Withdrawn.

16 Do you know if Mr. Patrick held any
17 role with any entity prior to January 1st,
18 2021?

19 MR. SBAITI: Objection, vague.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. Why did you make the recommendation
23 to Mr. Patrick?

24 A. Initially? You're saying the
25 initial recommendation when it was set up?

1 Dondero - 6-1-2021

2 Q. Correct.

3 A. 13, 14, 15 years ago.

4 The -- it -- we thought -- I thought
5 at the time he would be suitable.

6 Q. But why did you select Mr. Patrick
7 as the person to whom to make your
8 recommendation?

9 A. Because he was responsible for
10 setting up the overall structure.

11 Q. Did he -- were you seeking his
12 approval when you made the recommendation to
13 him?

14 A. I -- I don't know the roles he was
15 playing at the -- at that moment, so I -- I
16 don't know.

17 Q. At the time that you recommended
18 Mr. Scott to serve as the trustee of the DAF,
19 did you have any understanding as to who had
20 the authority to actually appoint Mr. Scott?

21 A. I did not specifically.

22 Q. Did you ever learn who had the power
23 to appoint the trustee of the DAF?

24 A. I did not.

25 Q. As you sit here today, do you have

1 Dondero - 6-1-2021
2 any understanding as to who has the power to
3 appoint the trustee of the DAF?

4 MR. TAYLOR: I'll instruct the
5 witness not to answer to the extent it
6 would require him to reveal privileged
7 communications with counsel.

8 MR. MORRIS: I'm not asking him for
9 any communications, to be clear.

10 MR. TAYLOR: Or anything he heard
11 from counsel.

12 (Audio distortion.)

13 MR. MORRIS: Please don't -- Clay,
14 you're a very good lawyer, please don't
15 coach the witness. He's a very
16 sophisticated witness.

17 BY MR. MORRIS:

18 Q. Do you have any understanding, as
19 you sit here today, sir, as to who has the
20 authority to appoint the trustee of the DAF?

21 A. I know it's complicated. I know it
22 has to do with shares. I know it's -- I know
23 it's multiple levels, but I don't have specific
24 knowledge.

25 Q. Do you know if Mr. Patrick ever

1 Dondero - 6-1-2021

2 considered appointing -- withdrawn.

3 MR. MORRIS: Could we please put up
4 the next exhibit, Patrick File 6,
5 Document 1?

6 (Exhibit 2 introduced.)

7 MR. SBAITI: John, is that document
8 you put up a labeled exhibit for the, like
9 Exhibit 1 or something, the one you have up
10 right here.

11 MR. MORRIS: Yeah, that will be
12 marked as Exhibit 1, thank you.

13 So, now we're going to put up
14 Exhibit 2.

15 BY MR. MORRIS:

16 Q. Do you see that that's the Amended
17 and Restated Limited Liability Company
18 Agreement of the Charitable DAF GP, LLC?

19 A. Yes.

20 Q. And do you see that it's dated
21 effective as of January 1st, 2012?

22 A. Yes.

23 Q. So, that's approximately nine plus
24 years ago.

25 Do I have that right?

1 Dondero - 6-1-2021

2 A. Yes.

3 Q. Okay.

4 MR. MORRIS: Can we go to the last
5 page, please?

6 BY MR. MORRIS:

7 Q. Is that your signature on that page,
8 sir?

9 A. Yes.

10 Q. And do you understand that, pursuant
11 to this agreement, Mr. Scott replaced you as
12 the managing member of the DAF GP, LLC?

13 A. I -- I don't have a recollection of
14 that.

15 Q. Do you remember that you served as
16 the managing member of the DAF GP, LLC?

17 A. I don't -- I don't recall that.

18 Q. Now, Mr. Scott is a lawyer, correct?

19 A. Yes.

20 Q. He's a patent lawyer. Do I have
21 that right?

22 A. Yes.

23 Q. He has no experience or expertise in
24 finance, does he, to the best of your
25 knowledge?

1 Dondero - 6-1-2021

2 A. I would not say he has expertise. I
3 wouldn't say he's an expert in it, but I -- I'd
4 say he's more sophisticated than the average
5 layperson.

6 Q. Well, at the time that you
7 recommended him to Mr. Patrick, did you do so
8 because you thought he had valuable experience
9 and expertise in finance or investment?

10 MR. SBAITI: Objection, assumes
11 facts not in evidence before the witness.

12 BY MR. MORRIS:

13 Q. That wasn't one of the reasons you
14 recommended Mr. Scott, is it?

15 A. He wasn't going to be the investment
16 advisor. DAF had a separate investment
17 advisor.

18 Q. And who was going to be the
19 investment advisor?

20 A. Highland.

21 Q. And you owned and controlled
22 Highland at the time, correct?

23 MR. TAYLOR: Objection.

24 BY MR. MORRIS:

25 Q. Withdrawn.

1 Dondero - 6-1-2021

2 You controlled Highland at the time,
3 correct?

4 A. Yes.

5 Q. Did Mr. Scott have any experience or
6 expertise running charitable organizations, to
7 the best of your knowledge?

8 A. No.

9 Q. Had he ever, to the best of your
10 knowledge, made any decisions concerning
11 collateralized loan obligations?

12 A. No.

13 Q. Can you tell me why you recommended
14 to Mr. Patrick that Mr. Scott serve as the
15 trustee of DAF?

16 MR. TAYLOR: Objection, asked and
17 answered.

18 A. I -- I thought he would be a good
19 fit for the position.

20 BY MR. MORRIS:

21 Q. Why?

22 A. It required -- I don't -- in my
23 mind -- or I believed it would require a lawyer
24 and someone with legal skills, and I thought he
25 would be good at the position.

1 Dondero - 6-1-2021

2 Q. And you trusted him; is that right?

3 A. I -- yes.

4 Q. And you had a life-long relationship
5 with him; isn't that right? Isn't that one of
6 the reasons why you recommended him for this
7 position?

8 A. Yes.

9 Q. Do you know whether Mr. Patrick --
10 withdrawn.

11 Is Mr. -- do you believe that
12 Mr. Patrick is the person who appointed
13 Mr. Scott as your successor as managing member
14 in 2012?

15 MR. SBAITI: Objection, asked and
16 answered, calls for speculation; and object
17 to the extent it calls for a legal
18 conclusion.

19 A. I could -- I could repeat the answer
20 again.

21 I don't know the formal process, but
22 I do remember recommending to Mark Patrick that
23 Grant would be a good candidate. Now, how --
24 what mechanism and how the process works and
25 who actually approved that, I -- I don't know.

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2 BY MR. MORRIS:

3 Q. Did you recommend anybody else, or
4 was Mr. Scott the only person that you
5 recommended?

6 A. I don't -- I don't remember. I
7 don't remember. I don't remember recommending
8 anybody else or if the process required it. I
9 don't remember the process.

10 Q. Was anybody involved in the process
11 other than you and Mr. Patrick?

12 MR. TAYLOR: Objection to the extent
13 it calls for speculation.

14 BY MR. MORRIS:

15 Q. Withdrawn.

16 Do you know -- do you know if
17 anybody was in the process -- involved in the
18 process other than you and Mr. Patrick?

19 A. Again, I don't know the process and
20 the mechanism, if there were offshore boards
21 involved or if the four underlying charities
22 were involved. It was -- it was complicated,
23 and I delegated the process to Mark Patrick.

24 Q. Okay. I'm not asking you to
25 speculate. I'm just asking for your knowledge.

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2 Can you identify any person or
3 entity who was involved in the appointment of
4 Mr. Scott as your successor as managing member
5 of the DAF GP, LLC, other than yourself and
6 Mr. Patrick?

7 MR. SBAITI: Objection, assumes
8 facts.

9 A. Yeah, I don't -- I don't have
10 specific knowledge.

11 BY MR. MORRIS:

12 Q. Okay. Do you understand that in
13 addition to becoming the managing member of the
14 Charitable DAF GP, LLC, that Mr. Scott also
15 became the sole director of the Charitable DAF
16 HoldCo, Ltd., Charitable DAF Fund, L.P., and
17 CLO HoldCo, Ltd.?

18 MR. TAYLOR: Objection, assumes
19 facts not before the witness.

20 A. No.

21 BY MR. MORRIS:

22 Q. Do you know if he ever held the
23 directorship of any of those entities?

24 MR. SBAITI: Objection, vague.

25 A. I -- I don't know what his exact

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2 role is now, but I -- I thought I was informed
3 that that's -- his role now has something to do
4 with directorship.

5 BY MR. MORRIS:

6 Q. Can we put the chart back up,
7 Exhibit 1, please?

8 (Exhibit 1 on screen.)

9 BY MR. MORRIS:

10 Q. Do you know whether Mr. Scott held
11 any position at all with Charitable DAF HoldCo,
12 Ltd., at any time?

13 A. I don't know.

14 Q. Can you identify any person who's
15 ever -- who you believe had the authority to
16 act on behalf of the Charitable DAF HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. SBAITI: Objection, assumes
19 facts not in evidence.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. You can't name anybody in the world
23 who was authorized on behalf of -- who was
24 authorized to act on behalf of the Charitable
25 DAF HoldCo, Ltd., prior to March 1st, 2021?

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2 MR. TAYLOR: Objection, asked and
3 answered.

4 MR. SBAITI: Objection, calls for a
5 legal opinion.

6 A. I don't know.

7 BY MR. MORRIS:

8 Q. How about the Charitable DAF Fund,
9 L.P.; can you identify anybody in the world who
10 was authorized to act on behalf of that entity
11 prior to March 1st, 2021?

12 MR. SBAITI: Objection, calls for a
13 legal opinion.

14 A. I mean, other than Grant Scott, the
15 org chart seems to roll up back up to him.

16 BY MR. MORRIS:

17 Q. Okay. So, you're willing to say
18 that Grant Scott acted on behalf of that
19 entity?

20 Do I have that right?

21 MR. TAYLOR: That's not --
22 mischaracterizes his statements. He's
23 giving you his general --

24 MR. MORRIS: Just object to the form
25 of the question. Please, no speaking

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2 objections. It's very simple.

3 MR. TAYLOR: So, John, I'm going to
4 make my record. If you don't like it, then
5 bring it up with the Judge.

6 BY MR. MORRIS:

7 Q. Mr. Dondero, do you understand that
8 Mr. Scott was authorized to act on behalf of
9 the Charitable DAF Fund, L.P., prior to
10 March 1st, 2021?

11 MR. TAYLOR: Objection, calls for a
12 legal conclusion.

13 A. I -- I don't know.

14 BY MR. MORRIS:

15 Q. Okay. Do you know if anybody was
16 authorized to act on behalf of CLO HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. TAYLOR: Objection, calls for a
19 legal conclusion.

20 A. I -- I don't know the specifics on
21 how this operated.

22 BY MR. MORRIS:

23 Q. But you can't identify any person,
24 do I have that right, you don't know the
25 identity of any person who was ever authorized

1 Dondero - 6-1-2021
2 to act on behalf of CLO HoldCo, Ltd., prior to
3 March 1st, 2021; is that right?

4 MR. TAYLOR: Objection, calls for a
5 legal conclusion.

6 MR. MORRIS: I'm not asking for a
7 legal conclusion. I'm asking for
8 Mr. Dondero's knowledge of the facts or his
9 understanding of the facts.

10 MR. TAYLOR: With all due respect,
11 it calls for a legal conclusion.

12 MR. MORRIS: I cannot wait -- I
13 cannot wait until next Tuesday. This is
14 going to be brilliant.

15 BY MR. MORRIS:

16 Q. Mr. Dondero, let me try one last
17 time.

18 Can you identify any person who you
19 believed was authorized to act on behalf of CLO
20 HoldCo, Ltd., prior to March 1st, 2021?

21 A. I need to answer the question this
22 way: My knowledge begins and ends with Grant
23 as the trustee, or on this org chart, managing
24 member; and his control, it looks like it flows
25 down through all those entities. Now -- or --

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2 or ownership, at least, or maybe control or
3 agreement.

4 Now, what other people or boards or
5 trustees or -- or entity he had to go through,
6 whether US Cayman Guernsey, et cetera, to get
7 things done and where the assets were held, I
8 do not have specific knowledge and I don't know
9 the names of the people or the entities that
10 were on those boards or -- supervisory or
11 holders of shares, or whatever. I wasn't
12 specifically involved in the operation of this
13 structure.

14 Q. Did the Charitable DAF Fund, L.P.,
15 and Highland Capital Management, L.P., enter
16 into an Amended and Restated Investment
17 Advisory Agreement, to the best of your
18 knowledge?

19 A. There was an Investment Advisory
20 Agreement, as far as I knew.

21 Q. And what is your understanding of
22 the purpose of the Investment Advisory
23 Agreement?

24 A. Excuse me.

25 To provide portfolio management to

1 Dondero - 6-1-2021
2 achieve adequate returns on the portfolio to
3 support the charitable giving of the DAF.

4 Q. Did Mr. Scott lack the capability to
5 provide portfolio management services to the
6 Charitable DAF Fund, L.P., to the best of your
7 knowledge?

8 A. I would not say that.

9 Q. So why -- why did -- withdrawn.

10 Was the -- did you participate in
11 the negotiation -- withdrawn.

12 Can we please put up the next
13 exhibit? We'll call it Exhibit 3.

14 (Exhibit 3 introduced.)

15 BY MR. MORRIS:

16 Q. Do you see this is an Amended and
17 Restated Investment Advisory Agreement between
18 the Charitable DAF Fund, L.P.; the Charitable
19 DAF, GP, LLC; and Highland Capital Management,
20 L.P.?

21 A. Yes.

22 Q. Is this the agreement you were just
23 referring to?

24 A. Unless there was another amended
25 one. I believe there was always one -- best

1 Dondero - 6-1-2021

2 practice is to have an investment advisory
3 group.

4 Q. And do you know who prepared this
5 document?

6 A. No.

7 Q. Do you know if it was the subject of
8 any negotiation?

9 A. I don't know.

10 Q. Do you know if the Charitable DAF
11 Fund, L.P., or the Charitable DAF GP, LLC, had
12 independent counsel in connection with the
13 negotiation and execution of this Amended and
14 Restated Investment Advisory Agreement?

15 A. I don't know.

16 Q. Do you know if the Charitable DAF
17 Fund, L.P., or the Charitable DAF GP, LLC, ever
18 hired independent counsel prior to the
19 commencement of Highland's bankruptcy in
20 October 2019?

21 A. I don't know.

22 Q. Did those entities also enter into a
23 Shared Services Agreement with Highland Capital
24 Management?

25 A. I believe there was a Shared

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2 Services Agreement. I don't know which DAF
3 entities entered it.

4 Q. Before we get to that, pursuant to
5 the Investment and Advisory Agreement, did
6 Highland Capital Management, L.P., manage the
7 assets of the DAF and CLO HoldCo?

8 MR. TAYLOR: Objection, vague.

9 A. Can you repeat the question again?

10 BY MR. MORRIS:

11 Q. Sure. Is it your understanding that
12 pursuant to this agreement, HCMLP managed the
13 assets of the DAF and CLO HoldCo?

14 A. This agreement discusses the DAF,
15 right?

16 This disagreement doesn't discuss
17 CLO HoldCo, right?

18 Q. Do you know whether HCMLP ever had
19 any agreement of any kind with CLO HoldCo
20 pursuant to which it managed CLO HoldCo's
21 assets?

22 A. I don't know for certain.

23 Q. Do you have any understanding at all
24 as to whether such an agreement existed?

25 A. I -- I don't know for certain. I'm

1 Dondero - 6-1-2021

2 willing to be refreshed.

3 Q. Do you know who provides --
4 withdrawn.

5 Do you know whether anybody provides
6 independent -- withdrawn.

7 Do you know whether anybody has an
8 agreement with the Charitable DAF Fund, L.P.,
9 or the Charitable DAF GP, LLC, today similar to
10 the type that had been previously entered into
11 with HCMLP?

12 MR. TAYLOR: Objection, vague.

13 A. I believe Skygate has a similar --
14 similar agreements in place.

15 BY MR. MORRIS:

16 Q. Is it your understanding that
17 Skygate effectively replaced HCMLP as the
18 investment advisor to the DAF?

19 A. Let me clarify that for a second.

20 I believe Skygate has the Shared
21 Services Agreement. I don't know whether it's
22 Skygate or NexPoint has the Investment Advisory
23 Agreement or if it was another entity. I
24 don't -- I don't know. I -- I don't know the
25 specifics.

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2 Q. Okay. While Mr. Scott served -- I
3 think you said as the trustee of the DAF, can
4 you identify any investment decision that HCMLP
5 had recommended that Mr. Scott rejected?

6 A. No.

7 Q. Can you think of any investment that
8 Mr. Scott made on behalf of the DAF that didn't
9 originate with HCMLP?

10 A. He wasn't the investment advisor,
11 but, no, I don't -- I don't recall.

12 Q. Let's just speed this up a bit.

13 Do you recall that in October 2019,
14 the debtor filed for bankruptcy?

15 A. Yes.

16 Q. And do you recall that after the
17 debtor filed for bankruptcy, CLO HoldCo, Ltd.,
18 retained John Kane to act as counsel on its
19 behalf?

20 A. I -- I know he was retained. I
21 don't know which entities in particular.

22 Q. Do you have any understanding as to
23 who Mr. Kane represented?

24 A. My understanding was that he
25 represented the DAF. Now, whether it included

1 Dondero - 6-1-2021
2 all entities, CLO HoldCo, the offshore
3 entities, which entities, I -- I don't know.

4 Q. Do you know if -- do you know how
5 Mr. Kane came to be retained by the DAF?

6 MR. SBAITI: Objection to the extent
7 it calls for the DAF's confidential
8 privileged information (inaudible.)

9 A. I -- I don't remember. I know the
10 lawyers -- I let the legal department or
11 lawyers find and identify good -- I let them go
12 through the process of identifying and vetting
13 law firms.

14 BY MR. MORRIS:

15 Q. And are the lawyers that you're
16 referring to in-house counsel at HCMLP?

17 A. I -- I don't know which lawyers were
18 involved.

19 Q. Well, you just said that you let the
20 lawyers do the vetting. Which lawyers were you
21 referring to?

22 A. It could have been the HCMLP
23 lawyers, it could have been NexPoint lawyers.
24 I don't know.

25 Q. Could it have been any other lawyers

1 Dondero - 6-1-2021

2 besides the HCMLP lawyers and the NexPoint
3 lawyers?

4 A. I mean -- yes. I mean, sometimes we
5 get recommendations from outside counsel
6 regarding other outside counsel. The
7 recommendation could have come from one of the
8 other bankruptcy attorneys involved in the
9 case. I don't know.

10 Q. Do you recall that in October 2020,
11 Mr. Scott caused CLO HoldCo to amend its proof
12 of claim?

13 MR. TAYLOR: Objection, assumes
14 facts not before the witness.

15 A. Yeah, I don't -- I don't know.

16 BY MR. MORRIS:

17 Q. Let me take it out of the --
18 (Simultaneous conversation.)

19 BY MR. MORRIS:

20 Q. Okay. Let me take it out of the
21 time frame.

22 Do you recall that there came a
23 moment in time when Mr. Scott caused CLO HoldCo
24 to amend its proof of claim by reducing the
25 value of the claim to zero dollars?

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2 A. I -- I know there was ultimately a
3 settlement agreement. I don't know how that
4 manifested itself.

5 Q. Okay. So, just to be clear, you
6 don't have any memory of CLO HoldCo --
7 withdrawn.

8 Do you have a memory of CLO HoldCo
9 filing its original proof of claim in the
10 amount of approximately \$11 million?

11 A. I -- I don't recall the amount. I
12 do remember that the DAF was overbilled by
13 Highland and there was a claim. Whether it was
14 a POC or an administrative claim or -- I don't
15 know how that manifested itself in the
16 bankruptcy. It's -- yeah.

17 Q. Okay. And regardless of the form of
18 the claim, do you remember that there came a
19 point in time when Mr. Scott amended the claim
20 to reduce the value to zero?

21 A. I -- I heard a hundred thousand
22 dollars, but it's essentially zero, I guess.

23 Q. And did you know that Mr. Scott was
24 going to amend the proof of claim in that
25 manner prior to the time that he actually did

1 Dondero - 6-1-2021

2 so?

3 MR. TAYLOR: Objection to the extent
4 it calls for him to invade the
5 attorney-client privilege.

6 A. I don't -- I don't have knowledge of
7 what you just said. I -- my recollection is
8 there was a legitimate overbilling that
9 Highland did to multiple parties who have
10 pursued multiple -- those multiple claims
11 against the estate, but I don't have -- I don't
12 have specific knowledge of why the 11 was
13 reduced to zero, but --

14 BY MR. MORRIS:

15 Q. Did you ever discuss with Mr. Scott
16 his decision to reduce the claim to zero?

17 A. Not -- not before he did it.

18 Q. At any time, did you ever discuss
19 with Mr. Scott his decision to reduce the claim
20 to zero?

21 A. I believe afterwards.

22 Q. And what do you recall about your
23 discussions with Mr. Scott afterwards?

24 A. That he had given up bona fide
25 claims against the debtor, and I didn't

1 Dondero - 6-1-2021

2 understand why.

3 Q. Did he explain to you why he thought
4 he was not giving up bona fide claims --
5 withdrawn.

6 What did he say in response?

7 MR. SBAITI: Objection, calls
8 for legal --

9 (Audio distortion.)

10 BY MR. MORRIS:

11 Q. If anything?

12 A. I don't remember him having an
13 explanation.

14 Q. Was anybody else -- did anybody else
15 participate in this discussion?

16 A. No.

17 Q. Did this discussion occur in a
18 singular phone call, or was it in multiple --
19 during multiple conversations?

20 A. A couple, one or two.

21 Q. Do you remember anything about your
22 discussions with Mr. Scott concerning his
23 decision to amend CLO HoldCo's proof of claim
24 by reducing it to zero, other than what you've
25 testified to so far?

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2 MR. TAYLOR: Objection, vague.

3 A. No, but I'm willing -- I'm willing
4 to be refreshed or answer more questions, but
5 those are the only things that come to mind.

6 BY MR. MORRIS:

7 Q. Okay. So, I think what you've told
8 me--and I just want to make sure that I have
9 this right--that after the amendment was filed,
10 you had several conversations with Mr. Scott in
11 which you told him that you believed he had
12 given up bona fide claims against the debtor,
13 but that you don't recall what, if anything, he
14 said in response.

15 Have I missed anything?

16 A. You used "several." It's -- I said
17 "a couple."

18 Q. Okay.

19 A. But otherwise, that's -- that's my
20 testimony.

21 Q. Do you recall that sometime after
22 that, CLO HoldCo had filed an objection to the
23 proposed HarbourVest Settlement?

24 A. Yes.

25 Q. And did you subsequently learn that

1 Dondero - 6-1-2021
2 CLO HoldCo withdrew its objection to the
3 HarbourVest Settlement?

4 A. Yes.

5 Q. Do you recall if you learned that
6 before or after CLO HoldCo withdrew its
7 objection -- withdrawn.

8 That wasn't a good question.

9 Did you know, prior to the time that
10 CLO HoldCo announced that it was withdrawing
11 its objection, that it intended to do so; or
12 did you learn about that after -- you know, as
13 the announcement was being made?

14 MR. SBAITI: Objection, compound.

15 MR. TAYLOR: Objection, compound.

16 BY MR. MORRIS:

17 Q. You can answer.

18 A. I learned about it at the hearing.

19 BY MR. MORRIS:

20 Q. Were you surprised?

21 A. Yes.

22 Q. And why were you surprised?

23 A. It was inappropriate.

24 Q. Why did you believe it was
25 inappropriate?

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2 A. The night before, Counsel had
3 confirmed with other counsel.

4 MR. TAYLOR: Instruct the witness
5 not to reveal any privileged information.

6 THE WITNESS: Okay.

7 BY MR. MORRIS:

8 Q. Mr. Dondero, you and I have done
9 this many, many times. I hope that you
10 understand that I'm never, ever asking or
11 hoping that you'll mistakenly divulge
12 attorney-client communications.

13 A. Yeah. Let me rephrase.

14 Q. Yeah. So, having said that, you
15 said that you believed it was inappropriate;
16 and the question is really simple: Why did you
17 believe it was inappropriate?

18 A. There was legal basis or legal
19 interpretation, I believed, in the governing
20 partnership agreement justifying the objection;
21 and I also believed there were duties under the
22 Advisors Act to -- for the DAF to continue with
23 its -- or to argue its objections.

24 Q. And after you learned that Mr. Scott
25 instructed his attorneys to withdraw CLO

1 Dondero - 6-1-2021

2 HoldCo's objection to the HarbourVest
3 Settlement, did you have a conversation with
4 Mr. Scott about his decision?

5 MR. TAYLOR: Objection, assumes
6 facts not in evidence.

7 A. Yeah, I don't agree with the first
8 part of that question, so I need you to
9 rephrase it, please.

10 BY MR. MORRIS:

11 Q. After you -- after you learned that
12 CLO HoldCo withdrew the objection, did you
13 speak with Mr. Scott about that?

14 A. Yes.

15 Q. Okay. Did you have one conversation
16 or more than one conversation with Mr. Scott
17 concerning CLO HoldCo's withdrawal of its
18 objection to the HarbourVest Settlement?

19 A. I -- I only recall one.

20 Q. Did anybody participate in that
21 conversation besides the two of you?

22 A. No.

23 Q. Did that conversation take place on
24 the telephone or in some other form?

25 A. I -- I don't know.

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2 Q. Do you know how long after the
3 conclusion of the hearing the conversation took
4 place? Was it the same day? Was it
5 afterwards?

6 A. I believe it was the same day or
7 shortly thereafter.

8 Q. And what do you recall -- please
9 tell me everything you recall about the
10 conversation, everything that you said and
11 everything that he said.

12 A. The only two points I remember was
13 that it was inappropriate for the DAF to change
14 direction an hour before the hearing without
15 informing anybody else when it was -- yeah,
16 when it was a reversal of the direction he had
17 been going in for weeks and that it was also
18 inappropriate to -- well, no, that's -- that
19 was -- that was really -- that was really it, I
20 guess.

21 Q. Do you recall what, if anything,
22 Mr. Scott said in response?

23 MR. SBAITI: Objection calls --
24 (inaudible.)

25 MR. MORRIS: What's the basis for

1 Dondero - 6-1-2021

2 the objection?

3 MR. TAYLOR: Objection, calls for
4 hearsay.

5 MR. SBAITI: Calls for hearsay.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. That he had done it based on advice
9 of counsel.

10 Q. Did you have any reason to doubt
11 that?

12 A. It -- it didn't -- it didn't make
13 sense that counsel would change their opinion
14 between the night before and the morning of the
15 hearing, but I guess that -- that is a reason
16 to doubt it.

17 Q. Do you think -- do you think
18 Mr. Scott acted in good faith when he made the
19 decision to withdraw CLO HoldCo's objection to
20 the HarbourVest Settlement?

21 A. Can you ask that question -- ask
22 that question again, please?

23 Q. Sure. Do you believe that Mr. Scott
24 acted in good faith when he made the decision
25 to withdraw the CLO HoldCo objection to the

1 Dondero - 6-1-2021

2 HarbourVest Settlement?

3 A. I don't believe he operated in the
4 best interest of the DAF or CLO HoldCo by
5 withdrawing the claims or withdrawing the
6 objectives -- objections.

7 Q. Did you -- did the subject of the
8 Advisors Act come up during this conversation?

9 A. I don't -- I don't remember if it
10 specifically came up.

11 Q. Do you recall if the subject of
12 "fiduciary duties" came up in this
13 conversation?

14 A. Not using those words, but reminding
15 him he needed to do what was in the best
16 interest of the DAF was definitely part of the
17 conversation.

18 Q. Earlier you said -- and I -- if I
19 miss -- if I don't get this right, please feel
20 free to correct me; but I believe you said that
21 it was inappropriate for the DAF to change
22 direction without informing anybody else.

23 Do I have that right?

24 A. Yes.

25 Q. And who do you believe Mr. Scott

1 Dondero - 6-1-2021

2 needed to inform of his decision?

3 A. There was some coordination and
4 cooperation among lawyers representing
5 different parties and I believe there was some
6 obligation -- some professional obligation as
7 part of that to inform and keep people abreast
8 of it.

9 Q. And would the lawyers at Bonds
10 Ellis, your personal counsel, be among those
11 lawyers that you believed he had the
12 professional obligation to inform?

13 MR. SBAITI: Objection --

14 A. I don't know.

15 MR. SBAITI: -- lacks foundation.

16 A. I don't know who was in the
17 coordination group.

18 BY MR. MORRIS:

19 Q. Do you believe that he had an
20 obligation to inform you in advance?

21 MR. SBAITI: Objection, vague.

22 A. I don't know if I would use the word
23 "obligation," but, again, as the founder or the
24 primary donor and continued donor to the DAF
25 and as the investment advisor fighting for

1 Dondero - 6-1-2021
2 above-average returns on a daily basis for the
3 fund, significant decisions that affect the
4 finances of the fund would be something I would
5 expect typically a trustee to discuss with a
6 primary donor.

7 BY MR. MORRIS:

8 Q. And which primary donor are you
9 referring to?

10 A. Highland, prior to bankruptcy, and
11 myself or NexPoint post-bankruptcy.

12 Q. Is Dugaboy -- The Dugaboy Investment
13 Trust a donor to the DAF?

14 MR. SBAITI: Objection, relevance.

15 A. I -- I believe it's been a donor
16 over the years. It wasn't the initial donor, I
17 don't believe.

18 BY MR. MORRIS:

19 Q. How about the Get Good Trust? Is
20 the Get Good Trust a donor to the DAF?

21 MR. SBAITI: Objection, relevance.

22 A. I don't know.

23 BY MR. MORRIS:

24 Q. Do you know if either the Get Good
25 Trust or the Dugaboy Trust has any beneficial

1 Dondero - 6-1-2021

2 interest in any of the DAF entities?

3 A. It does not -- or they do not.

4 Q. Do you know if either of the Get
5 Good or Dugaboy trusts have an interest in the
6 CLO HoldCo, Ltd., entity?

7 A. They -- they do not. They do not.

8 Q. Do you recall that a short while
9 later or -- or maybe even within the same
10 month, the debtor commenced a lawsuit against
11 the entities that we've referred to previously
12 as the Advisors, the Funds, and CLO HoldCo,
13 Ltd.?

14 A. Which litigation is that?

15 Q. That was the one where the debtor is
16 seeking injunctive relief; and there was a
17 hearing in late January on the debtor's motion
18 for preliminary injunction against the Funds,
19 the Advisors, and CLO HoldCo?

20 A. There's -- there's -- which
21 specifically?

22 Q. Do you remember that there came a
23 point in time when -- when Mr. Scott, on behalf
24 of CLO HoldCo, reached a settlement with the
25 debtor that resolved the debtor's claim against

1 Dondero - 6-1-2021

2 CLO HoldCo, Ltd.?

3 A. I'm aware there was a settlement
4 that resolved most of his -- the -- most of the
5 issues with the debtor.

6 Q. Okay. And do you recall how you
7 learned about that settlement?

8 MR. TAYLOR: Objection to the extent
9 it invades any attorney-client privilege.

10 A. I learned about it after it was
11 done.

12 BY MR. MORRIS:

13 Q. Okay. And do you have an
14 understanding of the basic terms of the
15 settlement?

16 A. I think that was the hundred
17 thousand I spoke of earlier that the -- as the
18 11 or \$12 million of overbilling that every
19 other entity has pursued, you know, for -- the
20 overbilling was traded for a hundred thousand
21 dollars, and the -- I think Grant agreed to not
22 pursue some historic actions and not pursue
23 replacement of HCMLP as manager, regardless of
24 whether it was in the best interest of the DAF
25 or not.

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2 Q. And did you ever have a conversation
3 with Mr. Scott about his decision to enter into
4 that settlement on behalf of CLO HoldCo, Ltd.?

5 A. Yes.

6 Q. And did that -- did the
7 communications take place in one conversation,
8 more than one conversation, or in some other
9 form?

10 A. It was a couple times.

11 Q. Do you recall if anybody --
12 (Simultaneous conversation.)

13 BY MR. MORRIS:

14 Q. I'm sorry, were you finished?

15 A. It might have been just once, but
16 either one or two times.

17 Q. Okay. And did anybody participate
18 in that conversation other than the two of you?

19 A. No.

20 Q. Can you recall everything that was
21 discussed during that conversation, everything
22 that you recall saying in sum or substance and
23 everything that you can recall Mr. Scott
24 saying?

25 A. My message was what I just

1 Dondero - 6-1-2021

2 articulated, that -- that the compromise or the
3 settlement wasn't in the best interest of the
4 DAF, it wasn't in the best interest of the
5 investments in the DAF.

6 Q. Do you recall how long the
7 conversation lasted?

8 A. No. It wasn't that long.

9 Q. Do you recall that shortly after
10 Mr. Scott reached the settlement on behalf of
11 CLO HoldCo, that he gave notice of his intent
12 to resign from his positions with the DAF
13 entities and CLO HoldCo, Ltd.?

14 A. Yes.

15 Q. And do you recall that there was a
16 telephone conversation between and among you
17 and Mr. Scott and certain lawyers at around the
18 same time?

19 A. I don't -- I don't remember that
20 specifically with the lawyers.

21 MR. MORRIS: Can we please put up
22 the next exhibit, which I think we're
23 marking as Exhibit 4, which is Scott Bates
24 No. 11?

25 (Exhibit 4 introduced.)

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2 BY MR. MORRIS:

3 Q. So, I'll represent to you,
4 Mr. Dondero, that the hearing at which the CLO
5 HoldCo, Ltd., settlement was presented took
6 place on January 26th. And so, this is the
7 following Sunday.

8 And do you see there's a list of
9 people who were going to participate in a
10 conference call on Sunday, January 31st?

11 A. Yes.

12 Q. And you and Mr. Scott are among
13 those people?

14 A. Yes.

15 Q. Do you recall if this phone call
16 took place?

17 A. Yes.

18 Q. Do you recall the purpose of the
19 phone call?

20 A. Yes. It didn't have anything to do
21 with his resignation, this phone call.

22 Q. So, what was the purpose of this
23 call?

24 A. Earlier, I stated that to make -- to
25 pivot the plans or what he was -- or to

1 Dondero - 6-1-2021

2 withdraw without telling anybody, to reach
3 settlements without telling anybody that had a
4 material negative impact on the DAF was
5 inappropriate. And I believe the purpose of
6 this call was his representation that John Kane
7 had, in fact, told everybody, so -- but when I
8 spoke with everybody else, everybody said he
9 hadn't talked to them, and so to figure out --
10 to try and figure out what the truth was, we
11 had a conference call with everybody.

12 Q. Did you figure out what the truth
13 was during that conference call?

14 MR. TAYLOR: Objection. I'm going
15 to have to instruct the client not to
16 answer. This was a conversation with
17 attorneys that were acting in concert under
18 joint-defense agreement, or at least had a
19 common interest in litigation at that point
20 in time.

21 MR. MORRIS: I think it's a little
22 late for that.

23 BY MR. MORRIS:

24 Q. And there's no lawyer for you on
25 this call, at least that's identified on this

1 Dondero - 6-1-2021

2 email string, correct?

3 MR. TAYLOR: That's incorrect.

4 You'll see -- note that Judge Lynn's -- why
5 it was his email, I don't know, but Judge
6 Lynn's email address is on there.

7 MR. MORRIS: Okay. I think having
8 told me the purpose of the call, I think he
9 ought to be able to disclose what the
10 result of the call was. So I'm going to
11 ask my question again.

12 BY MR. MORRIS:

13 Q. And that is, did you learn the truth
14 as to whether or not Mr. Kane had given advance
15 notice to any of the lawyers on this email
16 string about any of the decisions you're
17 referring to?

18 MR. TAYLOR: I'm going to renew my
19 objection. You can answer the question,
20 but I do want to state for the record we
21 believe it's inappropriate and if brought
22 up in later proceedings, we'll move to
23 strike.

24 A. None of the lawyers on this email or
25 that participated in the call acknowledged any

1 Dondero - 6-1-2021

2 advanced conversations with Kane.

3 BY MR. MORRIS:

4 Q. Do you remember anything else about
5 the phone call that's referred to on this
6 exhibit?

7 MR. TAYLOR: I'm just going to renew
8 my objection.

9 A. No.

10 BY MR. MORRIS:

11 Q. And do you recall that Mr. Scott
12 gave notice of his intent to resign on the same
13 day?

14 A. I -- I didn't know it was exactly
15 the same day, but I knew it was on or around
16 that time.

17 Q. Okay.

18 MR. MORRIS: Can we pull up the next
19 exhibit, please, Exhibit Number 5, which is
20 Bates stamped Scott 18 and start at the
21 bottom.

22 (Exhibit 5 introduced.)

23 BY MR. MORRIS:

24 Q. Do you recall receiving this email
25 from Mr. Scott on January 31st, in the

1 Dondero - 6-1-2021

2 afternoon?

3 A. Yes.

4 Q. Do you know why Mr. Scott gave
5 notice of his resignation at that time?

6 MR. TAYLOR: Objection, calls for
7 speculation.

8 A. No. It -- you would have to
9 answer -- I have my own speculation, but you
10 would have to ask him.

11 BY MR. MORRIS:

12 Q. Did you ever have a conversation
13 with Mr. Scott where he informed you of the
14 reasons for his decision to give notice of his
15 resignation?

16 MR. TAYLOR: Objection, calls for
17 hearsay.

18 A. I knew he was suffering from anxiety
19 and health issues regarding the challenges and
20 the confrontation.

21 MR. MORRIS: I move to strike.

22 I just want you to listen carefully
23 to my question, sir.

24 BY MR. MORRIS:

25 Q. Did Mr. Scott tell you why he had

1 Dondero - 6-1-2021

2 decided to give notice of his intent to resign?

3 MR. TAYLOR: Objection, calls for

4 hearsay.

5 A. He told me he was suffering from

6 health and anxiety issues regarding the

7 confrontation and the challenges of

8 administering the DAF, given the bankruptcy.

9 BY MR. MORRIS:

10 Q. I'm sorry, did you use the word

11 "confrontation"?

12 A. Yes.

13 Q. Do you have an understanding as to

14 what confrontation he was referring to?

15 MR. TAYLOR: Objection, calls for

16 speculation.

17 A. I believe it was the interaction,

18 challenges of dealing with your firm.

19 BY MR. MORRIS:

20 Q. Did you have any advanced notice

21 that Mr. Scott would be sending this email to

22 you?

23 A. Not exactly. But a couple days

24 beforehand, he did propose it, that he was

25 considering resigning.

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2 Q. Did you ever ask him to reconsider?

3 A. No.

4 Q. You'll see in the third paragraph,
5 he states, quote: My resignation will not be
6 effective until I approve of the
7 indemnification provisions and obtain any and
8 all necessary releases.

9 Do you see that?

10 A. Yes.

11 Q. Did he ever explain to you why his
12 release wouldn't become -- his resignation
13 wouldn't become effective until those things
14 happened?

15 MR. TAYLOR: Objection, calls for
16 hearsay.

17 A. No.

18 BY MR. MORRIS:

19 Q. Did he ever tell you who he wanted a
20 release from?

21 MR. TAYLOR: Objection, calls for
22 hearsay.

23 A. No.

24 BY MR. MORRIS:

25 Q. Do you know if there is any

1 Dondero - 6-1-2021
2 agreement today that relates to the
3 indemnification and release provisions cited in
4 Mr. Scott's email?

5 MR. SBAITI: Objection, calls for a
6 legal conclusion, lacks foundation, lacks
7 relevance.

8 A. There's no new agreement that I'm
9 aware of. There's an existing agreement from
10 when he was originally put in place.

11 BY MR. MORRIS:

12 Q. Did you ask for Mr. Scott's
13 resignation?

14 A. No.

15 Q. Did Mr. Scott or anybody acting on
16 his behalf ever explain to you or anybody
17 acting on your behalf why he wanted the
18 indemnification and release provisions?

19 MR. TAYLOR: Objection, hearsay.

20 A. No.

21 BY MR. MORRIS:

22 Q. Did you ever say or suggest to
23 Mr. Scott that he had breached his fiduciary
24 duties to anybody at any time?

25 A. I -- I don't -- I don't remember if

1 Dondero - 6-1-2021

2 I spoke to anybody else about it.

3 Q. I'm just asking if you ever -- if
4 you or anybody on your behalf ever told that to
5 Mr. Scott or anybody acting on Mr. Scott's
6 behalf, like Mr. Kane.

7 MR. SBAITI: Objection, compound.

8 A. I -- I believe I testified already
9 that I told him he didn't do what was in the
10 best interest of the fund.

11 BY MR. MORRIS:

12 Q. And did you ever tell him, in sum or
13 substance, that you believed he had breached
14 his fiduciary duties to anybody in the world by
15 not acting in the best interest of the fund?

16 MR. SBAITI: Objection, vague.

17 A. I don't recall if I had those
18 discussions with somebody else. I mean -- no,
19 that's -- I don't -- I don't recall if I've had
20 those conversations with anybody else.

21 BY MR. MORRIS:

22 Q. Did you ever threaten to sue
23 Mr. Scott?

24 A. Did I -- no.

25 Q. Did you ever tell Mr. Scott that you

1 Dondero - 6-1-2021

2 were considering suing him?

3 A. I remember telling him he needed to
4 do what was in the best interest of the funds.
5 That's -- that's as far as I remember.

6 Q. Did you ever tell Mr. Scott that you
7 believed that the fund had claims against him?

8 A. I believe anytime you're a trustee
9 and you don't do what's in the best interest of
10 the funds, you leave yourself open for that,
11 potentially.

12 Q. I appreciate that that's your
13 perspective, but I'm asking you whether you
14 ever told Mr. Scott that you believed that the
15 fund could assert claims against him.

16 A. I don't recall that.

17 Q. Do you recall if you ever told
18 Mr. Scott that you believed the fund should
19 assert claims against him?

20 A. No, I don't recall that.

21 Q. Okay. Did you ever tell Mr. Scott
22 that you believed anybody in the world had
23 potential causes of action against him for
24 actions or inactions taken on behalf of the DAF
25 or CLO HoldCo?

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2 MR. SBAITI: Objection, vague.

3 A. I don't recall that.

4 BY MR. MORRIS:

5 Q. What did you do after you received
6 this email?

7 Withdrawn.

8 Did you do anything in response to
9 receiving this email?

10 MR. TAYLOR: For the record, we're
11 talking about Exhibit 5?

12 MR. MORRIS: Yes, I believe so.

13 Is that right, La Asia?

14 MR. TAYLOR: For that -- sorry, 4.

15 MS. CANTY: I'm sorry, John. Repeat
16 that.

17 MR. MORRIS: Is this document on the
18 screen Exhibit 5?

19 MS. CANTY: It's going to be
20 Exhibit 5, but what we had -- we had
21 premarked them. So, we skipped one in
22 sequence. So, when I upload it, it will be
23 5.

24 MR. MORRIS: Okay. Thank you.

25 MS. CANTY: You're welcome.

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2 MR. MORRIS: Yes, Clay, we're going
3 to -- ultimately, this will be marked as
4 Exhibit 5.

5 MR. TAYLOR: Thank you.

6 MR. MORRIS: Yeah.

7 BY MR. MORRIS:

8 Q. So, the question, Mr. Dondero, is:
9 Do you recall doing anything after receiving
10 this email?

11 MR. TAYLOR: Objection, vague.

12 A. I don't remember doing anything with
13 it. I -- I didn't know what to do with it. I
14 didn't know how the DAF structure worked when
15 there was a resignation.

16 BY MR. MORRIS:

17 Q. Did you ask Mr. Scott why he chose
18 to send it to you?

19 A. No.

20 Q. Did you forward it to anybody?

21 A. I don't recall.

22 Q. Did you notify anybody that you had
23 received this?

24 A. I -- I don't remember.

25 MR. MORRIS: Can we scroll up to

1 Dondero - 6-1-2021

2 Mr. Dondero's response?

3 (Scrolling.)

4 BY MR. MORRIS:

5 Q. You can see --

6 MR. MORRIS: That's perfect right
7 there.

8 BY MR. MORRIS:

9 Q. You can see in the first sentence of
10 Mr. Scott's email there's a reference to
11 resigning and divesting. Do you see that? I'm
12 summarizing.

13 A. Yes.

14 Q. And you responded, and you requested
15 clarification that -- the next morning; is that
16 fair?

17 That's the first question.

18 A. Yes.

19 Q. And then you tried to explain to
20 Mr. Scott what your view was of the phrase
21 "divestment" or "divest."

22 Do I have that right?

23 A. Yes. Divest has a different meaning
24 in investments than it does, I guess, in legal
25 structuring; and I just wanted to make sure

1 Dondero - 6-1-2021

2 you -- you didn't mean liquidation of the
3 assets.

4 Q. Okay. That's what I'm getting to.

5 MR. MORRIS: So can we scroll up to
6 Mr. Scott's response?

7 (Scrolling.)

8 BY MR. MORRIS:

9 Q. And Mr. Scott tried to clarify why
10 he -- he used the word "divest." Do you see
11 that?

12 A. Yes.

13 Q. Okay.

14 MR. MORRIS: And then if we can
15 scroll up to your response.

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see your response says: What
19 does that mean? Quote, you need to tell me
20 ASAP that you have no intent to divest assets.

21 Do you see that?

22 A. Yes.

23 Q. Why did you write that?

24 A. It was unpredictable -- some of his
25 behavior was unpredictable at this point. I

1 Dondero - 6-1-2021

2 just wanted to make sure he wasn't liquidating
3 or intending to liquidate the portfolio.

4 Q. What interest did you have in making
5 sure that Mr. Scott didn't liquidate the
6 portfolio?

7 A. It could materially damage the value
8 of the DAF and its ability to continue its
9 mission as a charitable entity.

10 Q. Had Mr. Scott ever divested assets
11 before?

12 MR. TAYLOR: Objection, vague.

13 A. Well, by giving up the
14 11 million-dollar disclaim against the debtor,
15 he divested an 11 million-dollar asset.

16 BY MR. MORRIS:

17 Q. Anything else?

18 A. Not that I can recall.

19 Q. When was the last time you
20 communicated with Mr. Scott?

21 A. I sent him a Happy Birthday text a
22 couple days ago.

23 Q. And when was the last time you spoke
24 with him?

25 A. It's been a couple months.

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2 Q. Is the last time you spoke to him at
3 around the time that he gave notice of his
4 intent to resign?

5 A. No. It was about a month after
6 that.

7 Q. Mr. Patrick replaced Mr. Scott as
8 the managing member of the DAF GP and as the
9 director of the affiliated DAF entities and CLO
10 HoldCo, correct?

11 MR. SBAITI: Objection --
12 (Audio distortion.)

13 A. Ultimately, yes.

14 BY MR. MORRIS:

15 Q. Do you know how Mr. Patrick came to
16 replace Mr. Scott?

17 MR. TAYLOR: Objection to the extent
18 it calls for a legal conclusion.

19 A. I -- I found out about it after it
20 happened, you know, only from things that Mark
21 Patrick told me.

22 BY MR. MORRIS:

23 Q. Did you know that it was going to
24 happen before the event occurred, before the
25 actual replacement occurred?

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2 MR. TAYLOR: Objection, relevance.

3 A. No.

4 BY MR. MORRIS:

5 Q. Do you know who -- who gave

6 Mr. Patrick -- withdrawn.

7 Do you know anything about the
8 circumstances by which Mr. Patrick replaced
9 Mr. Scott?

10 A. I -- only from conversations with
11 Mark Patrick after the fact.

12 Q. What did Mr. Patrick tell you?

13 MR. TAYLOR: Objection, hearsay.

14 A. He had struggled to -- he had
15 struggled to find other candidates or entities.
16 He had struggled with D&O insurance around some
17 of the alternative candidates.

18 And one day, when he was talking to
19 Grant Scott, they came to some -- I don't know
20 who said what to who, but that -- why doesn't
21 Mark Patrick do it and he has knowledge of the
22 structure, he enjoys the charitable giving
23 part.

24 And unbeknownst to me, they agreed,
25 and he sent over the appropriate documentation

1 Dondero - 6-1-2021

2 or transfer of shares of voting--again, I don't
3 know how it works specifically--and Grant
4 signed it, and Mark Patrick became the trustee.

5 BY MR. MORRIS:

6 Q. So, it's your testimony that, prior
7 to the time they signed the documentation
8 pursuant to which Patrick replaced Scott, you
9 had no knowledge that there were discussions
10 underway pursuant to which that would occur?

11 A. Correct.

12 Q. You mentioned that Mr. Patrick told
13 you that they had trouble getting D&O
14 insurance.

15 Do I have that right?

16 A. That was -- yeah, that was one of
17 the factors with a couple of the candidates.

18 Q. And did he tell you who those
19 candidates were?

20 MR. TAYLOR: Objection, hearsay.

21 A. He did at the time. I can't
22 remember who they were. One was -- one was a
23 former Dean Foods executive, I believe; and the
24 other was an offshore sole practitioner.

25 BY MR. MORRIS:

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2 Q. Did he tell you what the
3 difficulties were in obtaining D&O insurance?

4 A. No.

5 Q. Did you ask?

6 A. No.

7 Q. Do you know where Mr. Patrick got
8 the authority to -- withdrawn.

9 Do you know who determined to
10 replace Mr. Scott with Mr. Patrick?

11 MR. TAYLOR: Objection to the extent
12 it calls for a legal conclusion.

13 A. As I testified, I believe it was the
14 two of them together.

15 BY MR. MORRIS:

16 Q. And do you have any understanding as
17 to what authority they had to designate
18 Mr. Scott's successor?

19 MR. TAYLOR: Objection, calls for a
20 legal conclusion.

21 A. I -- I believed, between the two of
22 them, they knew how the structure worked, and I
23 believed between the two of them, they had
24 authority -- believed they had authority, and
25 that's why they effectuated it.

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2 BY MR. MORRIS:

3 Q. Okay. Was Mr. Patrick ever employed
4 by HCMLP?

5 A. Yes.

6 Q. Do you know what period of time he
7 was employed by HCMLP?

8 A. He's been there for quite a while.
9 I mean, he was there for quite a while. I
10 believe over a decade.

11 Q. And what positions did he hold, if
12 you recall?

13 A. He headed up our tax department. I
14 don't remember him having any position other
15 than that or before that.

16 Q. Is he a lawyer, to the best of your
17 knowledge?

18 A. He's -- he's a tax lawyer, yeah.

19 Q. And do you know if he's employed
20 today?

21 A. I -- yes.

22 Q. Do you know where he's employed?

23 A. Yes.

24 Q. Where do you understand Mr. Patrick
25 is employed?

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2 A. At SkyBridge.

3 Q. Do you know where SkyBridge's
4 offices are located?

5 A. Yes.

6 Q. Where are they located?

7 A. On McKinney Avenue. I believe it's
8 2515.

9 Q. Is that the same suite of offices
10 where your office is located?

11 MR. SBAITI: Objection, vague.

12 A. It's not the same floor. We -- we
13 left, as you know, the Highland offices
14 suddenly, and so until we establish permanent
15 office locations, they're located there, but I
16 expect they will be relocating in the
17 not-too-distant future.

18 BY MR. MORRIS:

19 Q. Did you have any discussions with
20 Mr. Patrick concerning the positions he was
21 inheriting from Mr. Scott before he agreed to
22 accept them?

23 A. No.

24 Q. Do you have any written or oral
25 agreements with Mr. Patrick of any kind?

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2 MR. SBAITI: Objection --

3 MR. TAYLOR: Objection, vague.

4 A. Yeah, not that I know of, but I'm
5 not sure what you're asking.

6 BY MR. MORRIS:

7 Q. All right. Do you have any written
8 oral agreements of any kind with Mr. Patrick
9 pertaining to his role as an authorized
10 representative of any of the DAF entities or
11 CLO HoldCo, Ltd.?

12 MR. TAYLOR: Objection, vague.

13 A. I do not, no.

14 BY MR. MORRIS:

15 Q. Do you know if Mr. Patrick has any
16 agreement with any of the DAF entities or CLO
17 HoldCo, Ltd., other than those set forth in the
18 limited partnership agreement and the Amended
19 and Restated Limited Liability Company
20 Agreement for the general partnership?

21 A. I don't know of any.

22 Q. Okay. So, there was almost a
23 two-year period between the date that Mr. Scott
24 sent his notice to you of his intent to resign
25 and Mr. Patrick's replacement of Mr. Scott at

1 Dondero - 6-1-2021

2 the end of March. Do I have that right?

3 MR. TAYLOR: Objection. I think you
4 said two-year period.

5 MR. MORRIS: If I did, let me
6 restate it.

7 BY MR. MORRIS:

8 Q. There was approximately a two-month
9 period between the time that Mr. Scott sent his
10 notice to you of his intention to resign and
11 Mr. Patrick's replacement at the end of
12 March 2021. Do I have that right?

13 A. Yes.

14 Q. Okay. Are you aware that during
15 that interim period, Mr. Patrick gave certain
16 instructions to Mr. Scott?

17 MR. TAYLOR: Objection, calls for
18 hearsay.

19 MR. SBAITI: Lacks foundation.

20 A. I -- I don't know specifically.

21 BY MR. MORRIS:

22 Q. Do you know generally? Are you
23 aware of any instructions that Mr. --
24 withdrawn.

25 Can I call that period between

1 Dondero - 6-1-2021

2 January 31st and the time that Mr. Patrick
3 formally replaced Mr. Scott as "the interim
4 period"? Is that okay?

5 A. Sure.

6 Q. Okay. Did you ever learn at any
7 time during the interim period that Mr. Patrick
8 was giving Mr. Scott instructions with respect
9 to the duties and responsibilities concerning
10 the DAF and CLO HoldCo?

11 MR. SBAITI: Objection, assumes
12 facts not in evidence.

13 A. Not that I recall.

14 BY MR. MORRIS:

15 Q. Okay. Did you communicate with
16 Mr. Scott at all during the interim period
17 other than the birthday text that you
18 mentioned?

19 MR. SBAITI: Objection, misstates
20 testimony.

21 A. I don't -- I don't recall. I mean,
22 I know I've had some conversations with him,
23 yeah, about that -- I have a house in Aspen
24 but -- and we had some conversations about
25 Aspen and skiing and stuff like that, but I

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2 don't remember -- I don't remember

3 specifically --

4 BY MR. MORRIS:

5 Q. Did -- did --

6 A. -- anything else.

7 Q. -- Mr. Patrick --

8 I apologize, Mr. Dondero. Were you
9 finished?

10 A. Yeah, I'm done.

11 Q. Okay. Did Mr. Patrick inform you of
12 any issues that were being raised that needed
13 to be addressed with Mr. Scott during the
14 interim period?

15 A. Not that I recall.

16 Q. Did you ever instruct Mr. Patrick on
17 what to tell Mr. Scott with respect to any
18 matter concerning any of the DAF entities or
19 CLO HoldCo during the interim period?

20 A. Not that I recall.

21 Q. Are you familiar with the phrase
22 "adherence agreement"?

23 A. No.

24 MR. MORRIS: Can we please put up
25 the next exhibit, which we'll mark as

1 Dondero - 6-1-2021

2 Exhibit 6, Grant Scott, beginning at Bates
3 No. 85.

4 (Exhibit 6 introduced.)

5 MR. MORRIS: And if we could --

6 BY MR. MORRIS:

7 Q. Did you ever learn that there was a
8 point in time when the debtor was requesting
9 that CLO HoldCo, Ltd., enter into an adherence
10 agreement?

11 A. No.

12 MR. MORRIS: Can we scroll up a
13 little bit, please?

14 (Scrolling.)

15 MR. MORRIS: And just a little
16 further.

17 (Scrolling.)

18 BY MR. MORRIS:

19 Q. And do you see that Grant Scott
20 forwards it to Mark Patrick and says, "This
21 relates to the second issue from the debtor"?

22 A. Yes.

23 MR. MORRIS: And can you scroll up a
24 little more?

25 (Scrolling.)

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2 BY MR. MORRIS:

3 Q. And you see Mr. Patrick's
4 instruction, "Do not sign the adherence
5 agreement from the debtor. The successor will
6 address this"?

7 A. Yes.

8 Q. Do you have any knowledge that
9 Mr. Patrick instructed Mr. Scott on March 2nd,
10 2001, not to sign an adherence agreement from
11 the debtor?

12 A. I have no knowledge prior to this.

13 Q. Okay.

14 MR. MORRIS: Can you scroll to the
15 top?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see Mr. Patrick further
19 instructed Mr. Scott on March 2nd to, quote,
20 "Stand down on any communication," close quote?

21 A. Yes.

22 Q. Were you aware that Mr. Patrick had
23 instructed Mr. Scott to stand down?

24 A. No.

25 Q. Did you ever tell Mr. Patrick to

1 Dondero - 6-1-2021

2 instruct Mr. Scott to stand down?

3 A. No.

4 Q. Do you have any understanding as to
5 where Mr. Patrick obtained the authority to
6 instruct Mr. Scott to stand down?

7 MR. SBAITI: Objection, vague,
8 assumes facts not in evidence.

9 A. I -- I wouldn't view it as an
10 authority issue. I think they had a long-term
11 relationship, friendship, working relationship
12 with regard to the DAF; and I think Mark was
13 giving him advice.

14 MR. MORRIS: Okay. It's 12:20 New
15 York time. I'd like to just take a short
16 break until 12:30, and I shouldn't have too
17 much more left.

18 MR. TAYLOR: Okay.

19 (Recess held 11:19a-11:31a.)

20 MR. MORRIS: Okay. Hopefully just
21 15 or 20 minutes more. A half hour at
22 most, I promise.

23 BY MR. MORRIS:

24 Q. Are you ready to proceed,
25 Mr. Dondero?

1 Dondero - 6-1-2021

2 A. Yes.

3 Q. You've told me that you expressed to
4 Mr. Scott--and I'm, you know,
5 paraphrasing--that you expressed to Mr. Scott
6 your concerns with respect to his -- certain of
7 the decisions that he made during the course of
8 the bankruptcy.

9 Do I have that right? Is that fair?

10 A. Yes.

11 Q. Do you know whether anybody else
12 besides yourself expressed any concerns to
13 Mr. Scott concerning any of the decisions that
14 he made during the post-petition period?

15 MR. SBAITI: Objection, vague.

16 A. I -- I don't recall.

17 BY MR. MORRIS:

18 Q. Are you aware of anybody other than
19 yourself telling Mr. Scott, in sum or
20 substance, that any of the decisions he made
21 post-petition were inappropriate or not in the
22 best interests of the DAF or CLO HoldCo, Ltd.?

23 A. I don't know.

24 Q. Okay. You're not aware of anybody;
25 is that fair?

1 Dondero - 6-1-2021

2 A. Not as I sit here today.

3 Q. Okay. We talked earlier about the
4 suggestion -- and again, if I get this wrong,
5 just correct me.

6 But I think you testified that
7 implicit in your conversations with Mr. Scott
8 was your belief that he wasn't acting in the
9 best interests of the DAF and CLO HoldCo, Ltd.,
10 and had breached his fiduciary duties; is that
11 fair?

12 A. I think I testified that I didn't
13 use the word "fiduciary duties" but -- I don't
14 recall using those words, but I do recall
15 stating that he was making decisions that
16 weren't in the best interest of the fund.

17 Q. Okay. And I appreciate the
18 clarification and -- I appreciate the
19 clarification.

20 Do you have your own personal belief
21 as to whom Mr. Scott owed fiduciary duties to?

22 MR. SBAITI: Objection, vague.

23 MR. MORRIS: Withdrawn.

24 I'm going to try and do this a
25 different way.

1 Dondero - 6-1-2021

2 Ms. Canty, can we please put back up
3 on the screen Exhibit 1?

4 (Exhibit 1 on the screen.)

5 BY MR. MORRIS:

6 Q. Can you see that, sir?

7 A. Yes.

8 Q. Is there any entity on this
9 Exhibit 1 that you do not believe Mr. Scott
10 owed a fiduciary duty to prior to the time of
11 his resignation in late March 2021?

12 MR. SBAITI: Object to the extent it
13 calls for a legal conclusion.

14 A. Yeah. I -- I can't answer that
15 question.

16 BY MR. MORRIS:

17 Q. Well, do you believe that Mr. Scott
18 owed a fiduciary duty to the three entities
19 that have in their name "Charitable DAF"?

20 MR. SBAITI: Same objection.

21 A. Again, regardless of where the
22 assets are held, he has a responsibility, in my
23 mind, as the trustee or the managing member, to
24 optimize those assets and protect those assets
25 and to efficiently, effectively administer

1 Dondero - 6-1-2021

2 expenses.

3 BY MR. MORRIS:

4 Q. I appreciate that. I'm just asking
5 you to whom he owes the duty to do those
6 things, if you have an understanding. I'm
7 just -- I'm not asking for a legal conclusion.
8 I'm asking you if you have an understanding as
9 to whom he owes those duties.

10 A. Not specifically.

11 Q. Okay. Did you ever discuss at any
12 time with Mr. Patrick your views concerning
13 Mr. Scott's decision to withdraw the objection
14 to the HarbourVest Settlement?

15 MR. SBAITI: Objection, vague, lacks
16 foundation.

17 A. I don't -- I don't specifically
18 recall. It's -- I'm willing to be refreshed,
19 but I -- I don't specifically recall, but
20 that's -- yeah, I don't specifically recall.
21 It's not -- I don't want to speculate.

22 BY MR. MORRIS:

23 Q. I don't want you to speculate,
24 either.

25 Do you have any recollection of --

1 Dondero - 6-1-2021

2 at all of ever discussing with Mr. Patrick your
3 views as to Mr. Scott's decision to withdraw
4 the objection to the HarbourVest Settlement?

5 MR. TAYLOR: Objection, asked and
6 answered.

7 A. Yeah, I don't recall.

8 BY MR. MORRIS:

9 Q. Did you -- do you have any
10 recollection at all of ever discussing with
11 Mr. Patrick your views concerning Mr. Scott's
12 decision to enter into the settlement agreement
13 on behalf of CLO HoldCo?

14 A. I don't recall.

15 Q. I'm sorry. Are you -- yeah, are you
16 aware that CLO HoldCo and the DAF, Ltd.,
17 commenced the lawsuit against the debtor and
18 others in the United States District Court for
19 the Northern District of Texas?

20 A. Yes.

21 Q. Okay.

22 MR. MORRIS: Can we put that
23 complaint up on the screen and mark it as
24 Exhibit 7, I believe?

25 (Exhibit 7 introduced.)

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. I'll just represent to you that this
4 is the first page of the complaint. If you
5 need to refer to it for any purpose, just let
6 me know.

7 But I'm going to start with the
8 question of, have you ever seen a copy of the
9 complaint that was filed by the Charitable DAF
10 Fund, L.P., and CLO HoldCo, Ltd., against the
11 debtor and certain other entities?

12 A. Yes.

13 Q. When did you see the complaint for
14 the first time, that you recall?

15 MR. TAYLOR: Objection, vague.

16 A. Near final versions before it was
17 filed.

18 BY MR. MORRIS:

19 Q. So you saw -- you saw versions of
20 the complaint before it was filed. Do I have
21 that right?

22 A. Yes.

23 Q. Okay. Did you participate in any
24 discussions concerning the substance of the
25 complaint before it was filed?

1 Dondero - 6-1-2021

2 MR. TAYLOR: I'm just going to
3 caution the witness: You can tell him if
4 you participated in any conversations; but
5 to the extent that you had conversations
6 with any attorneys who were acting as
7 lawyers, please do not go into the
8 substance of those conversations.

9 A. Yeah. I mean, yes, I had
10 conversations with attorneys.

11 BY MR. MORRIS:

12 Q. Which attorneys did you speak with
13 about this complaint before it was filed?

14 A. Mazin. I can't remember -- I can't
15 remember -- I talked to a lot of attorneys. I
16 can't remember -- I can't remember besides
17 Mazin.

18 Q. Okay. Now, Mazin doesn't represent
19 you personally, does he?

20 A. No.

21 Q. Can you please tell me everything
22 you discussed with Mazin concerning this
23 complaint?

24 MR. TAYLOR: Objection,
25 attorney-client privilege.

1 Dondero - 6-1-2021

2 MR. SBAITI: Well, I'm also -- DAF
3 is asserting work-product privilege and
4 joint-interest privilege regarding
5 communication through DAF with us.

6 MR. MORRIS: I'm sorry. I'm sorry.
7 I'm having a little trouble hearing you. I
8 think I heard attorney work product. What
9 over privileges are being asserted here?

10 MR. SBAITI: Joint interest. As
11 advisor to the DAF, he provided us some
12 information that we used and helped us
13 identify information that we were using.
14 So, helping his advisee's counsel perform
15 their duties falls under the work-product
16 privilege. We're claiming work-product
17 privilege over the content of his
18 conversation.

19 MR. MORRIS: Okay. Did I hear
20 somebody say attorney-client privilege,
21 too?

22 MR. TAYLOR: I had said that, but I
23 was just making sure that Mazin jumped in
24 with his objections --

25 (Whereupon, the court reporter's

1 Dondero - 6-1-2021

2 computer crashed, calls were made, and an
3 iPad was engaged to finish the deposition.)

4 MR. MORRIS: All right.

5 Mr. Dondero, can you hear me?

6 THE WITNESS: Yes.

7 MR. MORRIS: Mr. Court Reporter, can
8 you hear me?

9 THE REPORTER: Yes, sir.

10 BY MR. MORRIS:

11 Q. Mr. Dondero, did you provide any
12 comments to the Sbaiti firm on any draft of the
13 complaint before it was filed?

14 MR. SBAITI: You can answer that
15 question yes or no. I'll just instruct the
16 witness not to answer with any content of
17 any kind on the basis -- and we're
18 instructing him not to answer on the basis
19 of work-product privilege and
20 joint-interest privilege.

21 A. Some.

22 BY MR. MORRIS:

23 Q. Can you disclose for me all of the
24 information and comments you provided that --
25 to the draft complaints?

1 Dondero - 6-1-2021

2 MR. SBAITI: Instruct the witness
3 not to answer on the basis of work-product
4 privilege and joint-interest privilege.

5 BY MR. MORRIS:

6 Q. Are you going to follow Counsel's
7 advice, Mr. Dondero?

8 A. Yes.

9 Q. Did you provide any conceptual or
10 strategic ideas about what claims to pursue to
11 the Sbaiti firm prior to the time the complaint
12 was filed?

13 MR. SBAITI: Can you repeat the
14 question?

15 BY MR. MORRIS:

16 Q. Did you provide any thoughts or
17 ideas as to what claims should be pursued in
18 this complaint prior to the time it was filed?

19 MR. TAYLOR: I'm going to first
20 lodge an objection as to vague, and I
21 believe Mazin has some other objection.

22 MR. SBAITI: Yeah. I would -- I
23 will say the same objection, and we will
24 object to any content of the -- within the
25 attorney-client work-product and

1 Dondero - 6-1-2021

2 joint-interest privilege.

3 A. Not that I recall.

4 BY MR. MORRIS:

5 Q. Did you provide any facts that are
6 set forth in the complaint?

7 Withdrawn.

8 Did you -- did you provide to the
9 Sbaiti firm any facts that are reflected in the
10 final version of the complaint?

11 MR. SBAITI: Mr. Dondero, you can
12 answer that question yes or no; otherwise,
13 we instruct you not to answer on the basis
14 of -- the content on the basis of
15 attorney-client, work-product and
16 joint-interest privilege.

17 A. Not that I recall.

18 BY MR. MORRIS:

19 Q. You don't recall providing any facts
20 at all?

21 A. Not specifically.

22 Q. Did you provide any general facts or
23 ideas to the Sbaiti firm in connection with
24 your review of the drafts of the complaint?

25 MR. SBAITI: Same instruction, same

1 Dondero - 6-1-2021

2 objections.

3 A. Maybe some.

4 BY MR. MORRIS:

5 Q. Okay. Can you describe those for
6 me, please?

7 MR. SBAITI: I'll instruct you not
8 to answer that on the basis of
9 attorney-client work-product privilege and
10 joint-interest privilege.

11 BY MR. MORRIS:

12 Q. Are you going to follow Counsel's
13 advice, Mr. Dondero?

14 A. Yes.

15 Q. Did you have any discussions with
16 the Sbaiti firm concerning whether or not to
17 name James Seery as a defendant in the original
18 complaint?

19 MR. SBAITI: I'll instruct the
20 witness not to answer on the basis of
21 attorney-client, work-product and
22 joint-interest privilege as doing so would
23 reveal the contents of such communication.

24 BY MR. MORRIS:

25 Q. Can you just answer yes or no?

1 Dondero - 6-1-2021

2 A. No.

3 Q. You didn't have -- that wasn't part
4 of any of the discussions you had prior to the
5 time the complaint was filed?

6 MR. SBAITI: Same instruction. Just
7 don't answer.

8 THE WITNESS: So please don't
9 answer, right, or don't answer --

10 MR. SBAITI: Don't answer.

11 THE WITNESS: Okay.

12 BY MR. MORRIS:

13 Q. Are you going to follow Counsel's
14 advice?

15 A. Yes.

16 Q. Did you -- did you suggest that
17 Mr. Seery should be named as a defendant in
18 this lawsuit to the Sbaiti firm prior to the
19 time it was filed?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of
22 attorney-client work product and
23 joint-interest privilege, as doing so would
24 reveal the contents of those
25 communications.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advice?

5 A. Yes.

6 Q. Did you know, prior to the time the
7 complaint was filed, that the Sbaiti firm
8 intended to file a motion for leave to amend
9 their complaint to add Mr. Seery as a
10 defendant?

11 MR. SBAITI: You can answer that
12 question yes or no, but, otherwise, it will
13 reveal the content of any underlying
14 communication on the basis of
15 attorney-client work product, or
16 joint-interest privilege.

17 A. No.

18 BY MR. MORRIS:

19 Q. When did you learn that the Sbaiti
20 firm filed a motion for leave to amend their
21 complaint to add Mr. Seery as a defendant?

22 A. I don't -- I don't recall.

23 Q. Do you recall whether you had any
24 conversations with anybody in the world at any
25 time prior to the time that motion was filed

1 Dondero - 6-1-2021
2 regarding the possibility of filing a motion
3 for leave to amend the pleading to add
4 Mr. Seery as a defendant?

5 MR. SBAITI: Objection, vague, lacks
6 foundation; and instruct the witness not to
7 reveal the content of any communications on
8 the basis protected under the
9 attorney-client, work-product,
10 common-interest privilege.

11 A. I don't recall.

12 BY MR. MORRIS:

13 Q. Okay. Did you ever discuss with
14 Mr. Patrick the topic of whether or not
15 Mr. Seery should be sued?

16 A. No.

17 Q. Did you ever discuss with the Sbaiti
18 firm the topic of whether Mr. Seery should be
19 sued?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of attorney work
22 product -- attorney-client, and
23 common-interest privilege as answering
24 would reveal the contents of such
25 communications, if they occurred.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advise?

5 A. Yes.

6 MR. MORRIS: I think I may be done.

7 Can we just take a three-minute
8 break and let me just check my notes?

9 MR. SBAITI: Sure.

10 (Recess held.)

11 MR. MORRIS: All right. I have no
12 further questions. I would request the
13 production of a privilege log reflecting
14 the communications, if any, between
15 Mr. Dondero and the Sbaiti firm; but,
16 otherwise, I have nothing further at this
17 time.

18 MR. SBAITI: Okay.

19 MR. MORRIS: Again, I appreciate
20 your time, Mr. Dondero.

21 MR. SBAITI: We'll reserve our
22 questions.

23 MR. MORRIS: Okay. Thank you,
24 everybody.

25 MR. SBAITI: Thank you. Take care.

1 Dondero - 6-1-2021

2 THE REPORTER: Mr. Sbaiti, do you
3 guys need a copy of this deposition?

4 MR. SBAITI: Yeah, we would just
5 need a PTX of the deposition transcript and
6 soft copies of the exhibits. Are you going
7 to send something to the witness to read
8 and sign? I think you could send it to him
9 either directly or to Mr. Taylor on his
10 behalf.

11 (Time Noted: 12:01 p.m.)

12

13

14

JAMES DONDERO

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16 Subscribed and sworn to before me
17 this _____ day of _____, 2021.

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1 Dondero - 6-1-2021

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name:

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

7 In re:)
 8 HIGHLAND CAPITAL) Case No.
 9 MANAGEMENT, LP,) 19-34054 L.P.
 10 Debtor,) Chapter 11
 11 -----)
 12 HIGHLAND CAPITAL MANAGEMENT,)
 13 LP,)
 14)
 15 Plaintiff,) Adversary No.
 16 vs.) 21-03003-sgi
 17 JAMES D. DONDERO,)
 18 Defendant.)

19 Dep. Date: 06/01/2021
 20 Deponent: JAMES DONDERO

- 21 Reason codes:
 22 1. To clarify the record.
 23 2. To conform to the facts.
 24 3. To correct transcription errors.

25 CORRECTIONS:

16	Pg.	LN.	Now Reads	Should Read	Reason
17	---	---	_____	_____	_____
18	---	---	_____	_____	_____
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1 Dondero - 6-1-2021

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JAMES DONDERO

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21 SUBSCRIBED AND SWORN BEFORE ME
22 THIS _____ DAY OF _____, 2021.

23

24

(Notary Public) MY COMMISSION EXPIRES: _____

25

1 Dondero - 6-1-2021

2 -----I N D E X-----

3 WITNESS: EXAMINATION BY PAGE:

4 JAMES DONDERO

5 Mr. Morris 288

6

7 *****

8 -----EXHIBITS-----

9 Deposition Exhibits PAGE/LINE

10 Exhibit 1 DAF/CLO Holder Structure 290/15
Chart
11 Bates No. GScott000007

12 Exhibit 2 Amended and Restated 301/6
Limited Liability Company
13 Agreement of Charitable
DAF GP, LLC
14 Bates No. PATRICK_000031
through 000035

15 Exhibit 3 Amended and Restated 313/14
Investment Advisory
16 Agreement
17 Bates No. GScott000325
through 000340

18 Exhibit 4 Phone Conference 335/25
19 Invitation For 1/31/2021
Bates No. GScott000011

20 Exhibit 5 January/February 2021 339/22
21 Email String Regarding
22 Notice of Intent to Resign
and Divest From CLO
23 HoldCo, Ltd., and Related
Entities
24 Bates No. GScott000018
through 000019

25

1 Dondero - 6-1-2021

2 -----EXHIBITS-----

3 Deposition Exhibits PAGE/LINE

4 Exhibit 6 March 2021 Email String 361/4
5 Regarding Highland
6 Adherence Agreement
7 (Highland CLO Funding) in
8 Connection With Transfer
9 of HarbourVest Shares
10 Bates No. GScott000085
11 through 000088

12 Exhibit 7 Original Complaint in Re: 368/25
13 Charitable DAF Fund, L.P.
14 and CLO HoldCo, Ltd., V
15 Highland Capital
16 Management, L.P. and
17 Others
18 Bates No. GScott000389
19 through 000414

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EXHIBIT 17

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

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In Re:) **Case No. 19-34054-sgj-11**
)
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 21, 2020
) 9:30 a.m.
Debtor.)
) **MOTIONS**
)
_____)

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

APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd., 13th
Floor
Los Angeles, CA 90067
(310)_277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Maxim B. Litvak
PACHULSKI STANG ZIEHL & JONES, LLP
150 California Street, 15th Floor
San Francisco, CA 94111-4500
(415) 263-7000

For the Debtor: Melissa S. Hayward
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.:

2 For the Official Committee of Unsecured Creditors: Dennis M. Twomey
3 SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7438

5 For the Official Committee of Unsecured Creditors: Penny Packard Reid
6 Juliana Hoffman
7 SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
8 Dallas, TX 75201
(214) 981-3413

9 For ACIS Capital Management GP, LLC,
10 et al.: Rakhee V. Patel
WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
11 Dallas, TX 75201
(214) 745-5250

12 For the Issuer Group: Amy K. Anderson
13 JONES WALKER, LLP
811 Main Street, Suite 2900
14 Houston, TX 77002
(713) 437-1866

15 For the Issuer Group: James T. Bentley
(Telephonic) SCHULTE ROTH & ZABEL, LLP
16 919 Third Avenue
New York, NY 10022
17 (212) 756-2000

18 For Redeemer Committee of the Highland Crusader Fund: Mark A. Platt
19 FROST BROWN TODD, LLC
100 Crescent Court, Suite 350
20 Dallas, TX 75201
(214) 580-5852

21 For Redeemer Committee of the Highland Crusader Fund: Marc B. Hankin
22 JENNER & BLOCK, LLP
919 Third Avenue
(Telephonic) New York, NY 10022-3098
23 (212) 891-1600
24
25

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert
3 OFFICE OF THE UNITED STATES
4 TRUSTEE
5 1100 Commerce Street, Room 976
6 Dallas, TX 75242
7 (214) 767-8967 Ext. 1080

8 For UBS AG London Branch, Kimberly A. Posin
9 et al.: LATHAM & WATKINS, LLP
10 355 South Grand Avenue
11 Los Angeles, CA 90071-1560
12 (213) 485-1234

13 For UBS AG London Branch, Asif Attarwala
14 et al.: LATHAM & WATKINS, LLP
15 330 N. Wabash Avenue, Suite 2800
16 Chicago, IL 60611
17 (312) 876-7700

18 Recorded by: Michael F. Edmond
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

002888

1 DALLAS, TEXAS - JANUARY 21, 2020 - 9:35 A.M.

2 THE COURT: Counsel in the courtroom first in
3 Highland.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz, John Morris, and Max Litvak from Pachulski Stang
6 Ziehl & Jones, counsel for the Debtor.

7 THE COURT: Good morning.

8 MR. POMERANTZ: Also in the courtroom are the members
9 of the independent board: John Dubel, Jim Seery, and Russell
10 Nelms.

11 THE COURT: Good morning.

12 MS. HAYWARD: Good morning, Your Honor. Melissa
13 Hayward and Zachery Annable on behalf of the Debtor.

14 THE COURT: Good morning.

15 MS. LAMBERT: Lisa Lambert with the U.S. Department
16 of Justice representing William Neary, the United States
17 Trustee. I believe Ms. Kippes will also be joining later this
18 morning.

19 THE COURT: Okay. Good morning.

20 MS. LAMBERT: Thank you.

21 MR. TWOMEY: Good morning, Your Honor. Dennis
22 Twomey, Penny Reid, and Juliana Hoffman on behalf of the
23 Unsecured Creditors' Committee from Sidley Austin. Thank you.

24 THE COURT: Good morning.

25 MS. PATEL: Good morning, Your Honor. Rakhee Patel

1 of Winstead, P.C. on behalf of ACIS Capital Management, LP and
2 ACIS Capital Management, GP, LLC.

3 THE COURT: Good morning.

4 MS. PATEL: Thank you.

5 MR. PLATT: Good morning, Your Honor. Mark Platt.

6 I'm here on behalf of the Redeemer Committee of the Highland
7 Crusader Fund. And Mark Hankin, I believe, is on the phone as
8 well.

9 THE COURT: Okay. Good morning.

10 MS. POSIN: Good morning, Your Honor. Kim Posin of
11 Latham & Watkins. Also here is Asif Attarwala from Latham.
12 We represent creditor UBS Securities, LLC and UBS AG London
13 Branch.

14 THE COURT: Good morning.

15 MS. ANDERSON: Good morning, Your Honor. Amy
16 Anderson with Jones Walker on behalf of the Issuer Entities.
17 And with me on the phone is Mr. James Bentley with Schulte
18 Roth.

19 THE COURT: Okay. Thank you.

20 All right. That's all the courtroom appearances. If
21 you're on the phone and wish to appear, you may go ahead. I
22 think we heard at least Mr. Bentley, you're on the phone,
23 correct?

24 MR. BENTLEY: Yes, Your Honor. Thank you.

25 THE COURT: All right. And we heard Mr. Mark Hankin

1 should be on the phone, correct?

2 MR. HANKIN: Yes, Your Honor.

3 THE COURT: All right. Anyone else wishing to
4 appear?

5 All right. Well, we originally had quite a few things on
6 the calendar, and it looks like we're down just to four or
7 five maybe at this point, correct?

8 MR. POMERANTZ: That is correct, Your Honor. Again,
9 Jeff Pomerantz; Pachulski Stang Ziehl & Jones.

10 There has been a flurry of paperwork. I have either
11 inserts or replacements to things in your binders, or I have
12 completely new binders. What would Your Honor prefer?

13 THE COURT: Well, by the way, you had a very helpful
14 binder, whoever was responsible for that. I think just the
15 inserts will do.

16 MR. POMERANTZ: Okay. May I approach?

17 THE COURT: You may. And I assume we're talking
18 about the pleadings binder that you sent over Friday-ish?

19 MR. POMERANTZ: Correct.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Okay. Very good. Thank you.

23 MR. POMERANTZ: Your Honor, I thought I would take
24 Your Honor through the agenda. And if the agenda that we
25 provided today was helpful, we would propose to do it for all

1 hearings, if that would be acceptable.

2 THE COURT: That would be great, yes.

3 MR. POMERANTZ: Thank you, Your Honor.

4 So, Your Honor, number one on the agenda was the DSI
5 retention motion. Your Honor has already entered an order
6 approving that motion.

7 THE COURT: Uh-huh.

8 MR. POMERANTZ: Number two is the ordinary course of
9 business protocol motion, which was rendered moot by Your
10 Honor's approval of the settlement, so a notice of withdrawal
11 of that motion has been filed on the docket.

12 THE COURT: Okay.

13 MR. POMERANTZ: The number three and four, the
14 retentions of Foley Gardere and Lynn Pinker, we have agreed
15 with the Committee and ACIS to continue those hearings. At the
16 conclusion of this hearing, I will be asking perhaps for a
17 couple of hearing dates --

18 THE COURT: Okay.

19 MR. POMERANTZ: -- over the next couple of months so
20 that --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- we can set these for the next one.
23 Number five is the PensionDanmark relief from stay motion.
24 That also by agreement has been continued until the next date.

25 Number six is the settlement motion. The only trailing

1 issue, if Your Honor may recall, the CLO Issuers had raised
2 some concerns that the ordinary course of business protocols
3 would somehow impact the ability of the Debtor and the CLO
4 Funds to operate in accordance with their contractual
5 documents. We have been engaged with them and with the
6 Creditors' Committee in discussions on how to address their
7 concerns. We are still working on that, and we would ask that
8 that matter continue to trail to the next hearing.

9 THE COURT: Okay. All right.

10 MR. POMERANTZ: Your Honor, number seven and number
11 eight and number nine, we are -- we were -- they were --
12 they're unopposed. There have been some discussions, both in
13 connection with the cash management motion and on the bonus
14 motion, of the Committee and others. We would propose to hear
15 those after the contested matters. So we would prefer to trail
16 them until after the three contested matters.

17 THE COURT: All right.

18 MR. POMERANTZ: And Your Honor, the three contested
19 matters remaining, we would propose to take them in the order
20 of argument on the agreed protective order. There is
21 opposition by the Trustee's Office. Then an argument on the
22 Committee seal motion, and then followed by the United States
23 Trustee's motion to appoint a trustee.

24 THE COURT: All right. I am good with that sequence.
25 Anyone want to comment?

1 All right. So we'll start with the protective order.

2 MR. POMERANTZ: Your Honor, and I will cede the
3 podium to my partner, John Morris, who will be handling
4 argument on that.

5 THE COURT: All right. Thank you. Mr. Morris?

6 MR. MORRIS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. MORRIS: John Morris; Pachulski Stang Ziehl &
9 Jones; for the Debtor.

10 Your Honor, the Committee and the Debtor have agreed upon
11 the terms of a protective order. The protective order really
12 is a garden-variety protective order. And if I may, I would
13 just like to spend a couple of minutes giving the Court some
14 background as to how we got here.

15 THE COURT: Okay.

16 MR. MORRIS: This case has been going on for three
17 months, and obviously there's been a substantial exchange of
18 information during the interim. The case was filed in mid-
19 October. Almost immediately, the Debtor received substantial
20 requests from the Committee's professionals, both the lawyers
21 as well as the financial advisors. Under the leadership of
22 Brad Sharp, who was acting at that point as the CRO, the Debtor
23 acted very quickly to provide the information that it could.

24 Given that it was asked to produce documents on a very
25 expedited basis, given that it was asked to produce information

1 on a wide variety of issues that didn't concern an adversary
2 proceeding, that didn't concern a contested matter, some of
3 which related to, for example, transactions that were being
4 contemplated and we wanted to give the Committee visibility,
5 for all those reasons, the documents were produced initially on
6 a professional-eyes-only basis.

7 From time to time, the Committee sought the Debtor's
8 consent to share certain of that information with the Committee
9 members in order to enable the Committee members to fulfill
10 their duties. And I won't go into detail, but most of the time
11 we agreed. Sometimes we didn't.

12 The fact is, Your Honor, the parties worked very
13 cooperatively throughout the fall, notwithstanding the
14 adversarial nature of the proceedings, to provide information.
15 And we continued on that basis until late December, when the
16 Committee and the Debtor finally reached an agreement on the
17 terms of a protective order, and that's what we filed I think
18 on December 27th.

19 And the flow of information continued. The parties, I
20 think it's fair to say, have relied upon the terms of that
21 order. Under the guidance of the newly-appointed independent
22 directors, the Debtor has continued to provide information to
23 the Debtor as well as to other parties.

24 What information has been provided during this time? I
25 think it's important for Your Honor to understand the

1 magnitude of just what the Debtor has done here. I think the
2 Committee has made over 30 -- no, let me state it differently.
3 The Debtor has made over 30 separate document productions. It
4 covers more than 10,000 pages of material. It covers the
5 laundry list of issues that the Committee is interested in,
6 again, both with respect to contested matters and stuff that
7 has absolutely nothing to do with anything that's on the
8 Court's calendar today.

9 We've engaged in depositions. The Committee took three
10 very extensive depositions of Mr. Sharp, the CRO, of Mr.
11 Caruso, his partner at DSI, and they took a more-than-seven-
12 hour deposition of Frank Waterhouse, the CFO of the Debtor. I
13 defended each of those depositions. I didn't direct any of my
14 witnesses not to answer a single question. So there's been
15 full transparency here. I think there was maybe one question
16 that I asked to be marked confidential because it pertained to
17 the identity of investors in a nondebtor entity, and the
18 Committee didn't object to that.

19 So there's been that free flow of information.

20 Of course, Your Honor, the Debtor has filed its schedules,
21 its SOFAs. The Debtor sat for an almost-two-hour examination
22 before the United States Trustee and creditors, answering
23 questions about those documents at a 341 meeting that is going
24 to be continued tomorrow morning.

25 The point here, Your Honor, is that the agreed-upon rules

1 as reflected in the protective order haven't hindered the flow
2 of information. In fact, it's enhanced the ability of the
3 Creditors' Committee to gain information.

4 In the absence of the cooperation between the Committee
5 and the Debtor, Your Honor, I believe it's hard to imagine how
6 we could have reached an agreement on things like corporate
7 governance and the bonus motion, which includes information
8 relating to personnel matters, salaries and things of that
9 nature. And so this flow of information I think is helping
10 the Debtor's estate, it's helping the process, and I think it
11 ought to be encouraged, frankly.

12 As I mentioned earlier, another very critical component of
13 the information-sharing is sharing with the Committee
14 information relating to proposed transactions. That has
15 nothing, again, to do with an adversary proceeding, has
16 nothing to do with a contested matter, but it would really
17 hinder the Debtor's ability to operate if it was in a
18 contentious situation with the Committee over its day-to-day
19 business. And so, again, this protective order enables the
20 Debtor to carry forth its business.

21 I think it's important, Your Honor, to look at what the
22 consequences of this have been. Neither the Committee nor
23 anybody else has ever filed a motion to compel the Debtor to
24 provide information. Neither the Committee nor any other
25 party in interest has ever even requested a conference with

1 this Court or the Court in Delaware on matters relating to
2 discovery.

3 No one has objected to the protective order except the
4 United States Trustee. And we do appreciate the perspective
5 and the position that the United States Trustee is in, but
6 it's got to be taken into the context of this case. And in
7 the context of this case, where the Committee is on board,
8 where nobody else is objecting, the Court ought to ask itself
9 why. And I think the reason why is because the process is
10 really working, and it's working very well.

11 The people and the entities that are mentioned in the
12 United States Trustee's objection, whether it's ACIS or the
13 SEC or the PBGC or investors, they're all very sophisticated
14 parties, they're all well aware of what's happening, they all
15 have notice, and nobody is here objecting. And I think that's
16 very important.

17 The good news, Your Honor, I think the good news, anyway,
18 is the Committee and the Debtor have agreed to amend its form
19 of protective order in a way that we hope and we believe goes
20 a long way to addressing the United States Trustee's concerns.
21 In particular, what we've done is we've added the United
22 States Trustee as one of the parties who will receive
23 everything. Okay. So we've amended that. And Your Honor, I
24 have both clean and blacklines of the revised protective
25 order, if you'd like me to hand it up.

1 THE COURT: All right. You may approach.

2 MR. MORRIS: And I can just show you exactly where
3 these changes have been made.

4 THE COURT: Okay. Thank you. Thank you.

5 MR. MORRIS: So, Your Honor, you'll see in the
6 blackline at Paragraph 2 on Page 7 that we've added in
7 Subparagraph 2(f) the United States Trustee's Office. So
8 they're now one of the people or entities --

9 THE COURT: Uh-huh.

10 MR. MORRIS: -- who will receive everything. And
11 then on Page 11 in Paragraph 10, we've tried to make it very
12 clear that the protective order is not intended to prevent the
13 U.S. Trustee from disclosing discovery material in compliance
14 with a subpoena or court order or a FOIA request, provided
15 that the Debtor and the Committee are given notice pursuant to
16 Paragraph 9 so that we have an opportunity to intervene if we
17 think that there's a reason not to engage in that process.

18 So, as long as we receive notice, you know, the U.S.
19 Trustee can be responsive in the way that I think, I think at
20 least to some degree, they want to.

21 This order now, Your Honor, and I think this is -- I'll
22 thank the Committee for pointing this out -- this order is now
23 really wholly consistent with a protective order that was
24 entered by Judge Hale in the *PHI* case. It was entered just
25 last April, and it's filed at Docket #316. And that's a

1 protective order that wasn't entered in connection with an
2 adversary proceeding or a contested matter. It was a
3 protective order that was for use to all parties who wanted to
4 participate in discovery at any stage of the case. It also
5 included the United States Trustee's Office as one of the
6 recipients of documents, and it specifically provided not only
7 for confidential information but for professional-eyes-only
8 designation. I have a copy of that order if it would be
9 helpful for the Court to see.

10 THE COURT: All right. You may approach.

11 (Pause.)

12 MR. MORRIS: To the extent that there's any party who
13 has not yet requested information or has not sought discovery,
14 if the Court enters this order they'll be able to do so
15 pursuant to this order. And to be clear, as soon as a party
16 either requests or produces information, discovery
17 information, they become a party to this document. And so
18 they'll have all of the rights and the abilities to seek
19 information, to challenge designations. So nobody's rights
20 are really being curtailed in their ability to gain discovery.
21 And at this point, Your Honor, we have both the Committee as
22 well as the United States Trustee's Office who are going to
23 see everything. And so if either the Committee or the
24 Trustee's Office believe that the Debtor has improperly
25 labeled or categorized any document as either confidential or

1 highly confidential, there's a process to be followed. And
2 that process, I think, is quite reasonable. It's pretty
3 standard, at least in my experience. They'll let us know that
4 they disagree. We'll have a conversation. We'll either --
5 the Debtor will either agree to redesignate the document or
6 we'll bring the matter to the Court for the Court's
7 determination.

8 Sealing issues. Again, the U.S. Trustee's Office and the
9 Committee will both be fully informed as to what's happening
10 here. And if either of them has an issue, they can bring that
11 to the Court's attention.

12 To the extent that there is a disputed matter before the
13 Court on a sealing motion, the rules of engagement remain the
14 same. There's nothing in this protective order that seeks to
15 shift the burden. There's nothing in this protective order
16 that seeks to change the burden. The only thing that it does
17 is it attempts to identify, through the agreement with the
18 Committee, the types of information that the Debtor reserves
19 the right to designate as highly confidential.

20 It doesn't mean that that's now the standard that the
21 Court has -- the Court will rule, employ whatever standard it
22 thinks is appropriate, frankly. But it's a description, I
23 think it's in Paragraph 12, of the type of information that we
24 would mark as highly confidential. And I think the Committee
25 would agree, if given the opportunity, to give the Court some

1 comfort that at this point the Debtor has been quite judicious
2 and limiting in terms of the amount of information that
3 they've designated for that particular category.

4 So, in summary, Your Honor, there's no dispute that it's
5 needed. Gratefully, even the U.S. Trustee isn't telling the
6 Court that a protective order is not needed. From the
7 Debtor's perspective, it's not only needed, I would -- I
8 daresay it's required. Because if you want the Debtor and the
9 Committee to continue to engage in a free flow of information
10 outside of an adversary proceeding, outside of a contested
11 matter, this is the only way to do it. And I know that's what
12 the Debtor wants. I believe that's what the Committee wants.
13 It's why we've entered into this agreement. So these are
14 matters that ought to be protected.

15 1102(b)(3) doesn't give all creditors a right to all
16 documents. It gives them the right to information. And we
17 believe that this agreement facilitates the Committee's
18 ability to get information and to share it, as they determine,
19 with their members.

20 Unless Your Honor has any questions, I have nothing
21 further.

22 THE COURT: I do not. All right. Ms. Reid, did you
23 -- it's a joint motion. Did you want to say something?

24 MS. REID: Yes, Your Honor. Penny Reid with Sidley
25 Austin on behalf of the Creditors' Committee.

1 Just briefly, I would agree with Mr. Morris that this
2 protective order was a heavily-negotiated protective order
3 that took quite a while to get the parties' agreement, and it
4 enabled the Creditors' Committee to get the documents it
5 needed.

6 What is very important to note is two things. It does
7 provide a mechanism for any party to object to the
8 designation. And it's the burden of the party designating it
9 to support the designation. And all disputes or anything
10 related to this order comes to Your Honor. It's the
11 jurisdiction of this Court to decide everything, which is also
12 very important to our client.

13 THE COURT: Okay. Thank you.

14 MS. REID: Thank you, Your Honor.

15 THE COURT: All right. Ms. Lambert? Have we at
16 least made some progress from your prospective with the added
17 language?

18 MS. LAMBERT: We're making some progress, but not
19 sufficient progress. May I approach the bench --

20 THE COURT: You may.

21 MS. LAMBERT: -- with the exhibit binders?

22 THE COURT: All right.

23 MS. LAMBERT: Your Honor, this is not, as the Debtor
24 characterized it, a garden-variety protective order. This is
25 not like the *PHI* order, which was a confidentiality order that

1 defined parameters for sharing information with the creditors.
2 This is a motion that prevents the sharing of matters.
3 Protective orders are granted in contested matters and in
4 adversaries, not in the case in chief. Rule 23 is not
5 available in the case in chief. Section 1102, the only
6 statute that they cite, presumes sharing, not failing to
7 disclose. And the reason --

8 THE COURT: Well, let me ask you this. I want to
9 really drill down on this, because, you know, he used the
10 words, counsel used the words garden-variety. And frankly,
11 when I read these pleadings back in chambers, I thought, I
12 think this is pretty standard fare, this protective order. I
13 think I've signed something like this many times before.

14 And I get what you're saying. Well, let me see if I get
15 what you're saying. It feels like your main issue is that we
16 don't have a contested matter or an adversary proceeding. But
17 what I will throw out is this: Had we had a motion for a 2004
18 exam, a gazillion times I have seen people come back with
19 okay, we, debtor, will produce, but we want this protective
20 order. And it ends up looking maybe almost identical to this
21 one.

22 Another context I thought of was back shortly after the
23 2005 amendments when these new provisions were added with
24 regard to creditors' committees and sharing in 1102(b), I very
25 often saw, in complex Chapter 11s, a protocol order, we

1 sometimes called it, where a creditors' committee sort of
2 wanted cover for their dos and don'ts, and it resulted in sort
3 of a protective order. You know, I haven't gone back and
4 looked and compared terms, but something like this.

5 MS. LAMBERT: Right.

6 THE COURT: So, --

7 MS. LAMBERT: And the *PHI* order is --

8 THE COURT: -- are we punishing -- is this a no good
9 deed goes unpunished sort of thing? They didn't make the
10 Creditors' Committee file a 2004 motion.

11 MS. LAMBERT: The difference --

12 THE COURT: They've produced. And then now they've
13 negotiated this. I mean, --

14 MS. LAMBERT: The difference is very important, Your
15 Honor. You have --

16 THE COURT: What is --

17 MS. LAMBERT: -- gone right to the crux. A motion
18 for 2004 exam defines the areas to be discovered. An
19 adversary proceeding defines the areas to be discovered. A
20 motion for contested matter defines the issues that are
21 subject to discovery. Here, --

22 THE COURT: They -- the Debtor --

23 MS. LAMBERT: -- no one --

24 THE COURT: -- didn't insist on that. The Debtor is
25 just like, fine. We're going to in good faith produce.

1 MS. LAMBERT: But it's not the Debtor's issue.

2 THE COURT: We just want this order.

3 MS. LAMBERT: It's also the parties' issues, the
4 other creditors. If you have some knowledge of what is at
5 issue, you have some opportunity to come to the Court and say
6 hey, I, the SEC, or I, Creditor X, also am interested in what
7 --

8 THE COURT: But nothing about this order would
9 prevent them from filing --

10 MS. LAMBERT: But they don't know --

11 THE COURT: -- a 2004 motion and seeking the
12 information themselves, correct?

13 MS. LAMBERT: Right. And then they're going to have
14 to fight the sealing provision. So -- or the fact that it's
15 been designated highly confidential, which they would not have
16 had to fight otherwise until an opportunity came and they knew
17 what the information was. But now they don't have the
18 information. See, the information would have been given to
19 them as highly confidential, --

20 THE COURT: Uh-huh.

21 MS. LAMBERT: -- maybe labeled that way, in a
22 protective order in connection with their litigation.

23 THE COURT: Uh-huh.

24 MS. LAMBERT: But now they don't even get to get it
25 because it's already protected from them. Already insulated.

1 This is the problem.

2 So the -- if the Court compares the *PHI* order -- and the
3 U.S. Trustee certainly understands that there must be sharing
4 protocols or some type of confidentiality in general. This is
5 not it, though. This goes way beyond that. There should be a
6 provision that creditors can get information under certain
7 circumstances.

8 If the Court looks at the orders that are typical in these
9 cases, there is such a provision. That does not exist. In
10 addition, the carve-out in the order for contested matters,
11 2004 exams, and adversaries is material. And they should be
12 carved out here, too.

13 So those are the substantive, big-parameter issues of why
14 this, as a matter of law, is problematic.

15 In addition, there are particular provisions that are
16 untenable. The first is the limitation on the Government.
17 And this goes all the way back to the *WorldCom* case, Your
18 Honor. In *WorldCom*, a court entered an order for the examiner
19 to be able to interview people under seal, basically, in
20 confidence. An examiner prepared various reports. Later, the
21 U.S. Attorney's Office sought to obtain those, and they were
22 not able to because they had been done under seal originally
23 and that was material to the disclosure of the information.
24 This Court should not modify the statutory obligations that
25 the parties have to refer matters, either for ethical or

1 criminal matters. The U.S. Trustee circulated the routine
2 language that we ask for in every order of this type, and they
3 declined to do it.

4 THE COURT: Show me that language.

5 MS. LAMBERT: I can -- I can provide the Court with a
6 -- the language. I emailed it to them. I don't have it here
7 right now, but I can provide it to the Court. But basically,
8 I'm sure the Court has seen it before, we put it in all of our
9 languages, and it says nothing in this order constrains the
10 obligations of any party under ethical or federal statute to
11 share information. But now what's required is, if the U.S.
12 Trustee wants --

13 THE COURT: I don't know if I've ever signed -- I
14 mean, that might be an exception that would swallow up the
15 rule. I feel like I have -- I've approved language before
16 that, you know, says kind of the sky is blue, nothing prevents
17 a party from seeking modification of this order on notice to
18 parties and a hearing.

19 MS. LAMBERT: Your Honor, --

20 THE COURT: I mean, --

21 MS. LAMBERT: -- the United States Trustee should not
22 be required to come to this Court to tell -- or to tell the
23 Debtor that they have a subpoena for information or that
24 they're sending a criminal referral.

25 THE COURT: No, no, no. There's already an exception

1 on there for a subpoena.

2 MS. LAMBERT: No. No. The issue is --

3 THE COURT: But you don't think you have to give them
4 notice if you did a subpoena?

5 MS. LAMBERT: I have to give them notice. If I have
6 a FOIA request --

7 THE COURT: I mean, but you don't think that's
8 appropriate?

9 MS. LAMBERT: No, Your Honor. I don't think it's
10 appropriate that the U.S. Trustee, who has an obligation
11 statutorily, and the Court has an obligation statutorily, to
12 send matters to the U.S. Attorney's Office, that we have to
13 disclose when we're doing that. No. And other parties in
14 interest should be free to do that, too. That's what the
15 statute says. We have an obligation to do that.

16 We don't have to tell them what our whole case is. It
17 will become apparent if the U.S. Attorney's Office pursues it.
18 They release the information, usually. But this is not
19 standard. It has never been --

20 THE COURT: Okay. I just want the language that you
21 --

22 MS. LAMBERT: All right.

23 THE COURT: -- you argue is standard, and you said
24 that --

25 MS. LAMBERT: That language is, Nothing in this order

1 constrains anybody --

2 THE COURT: I want to see it. I want to get -- see
3 examples.

4 MS. LAMBERT: All right. Well, I'm happy --

5 THE COURT: Because I don't remember -- maybe I've
6 signed it a million times and I just don't remember, but I
7 don't really remember that.

8 MS. LAMBERT: I'm happy to provide the Court with a
9 number of orders signed by a number of judges in this
10 district.

11 THE COURT: I would like to see it now.

12 MS. LAMBERT: Okay. Well, I will have Ms. Kippes
13 provide that. But --

14 THE COURT: She's sitting in the back of the
15 courtroom now.

16 MS. LAMBERT: I'm sure that she is.

17 So, the other thing is, Your Honor, --

18 THE COURT: Unless you can show me right now, look,
19 here, in fact, is the garden-variety form of order, here is
20 the language that time after time after time after time after
21 time courts insist upon, --

22 MS. LAMBERT: Your Honor has not required -- Your
23 Honor has not required them to provide any evidence that this
24 language is standard. And it's not. So, --

25 THE COURT: I have a form of order that the

1 Creditors' Committee is supportive of and has heavily
2 negotiated. And it just looks at first glance to me to be
3 somewhat garden-variety. So, --

4 MS. LAMBERT: Well, --

5 THE COURT: -- you as the objector need to, you know,
6 point out why it's not.

7 MS. LAMBERT: Your Honor, the appearance of this case
8 is that there's a desire to keep it from being public. This
9 Court routinely, all the time, says bankruptcy is an open
10 process.

11 THE COURT: But I also, routinely, all the time, sign
12 protective orders. And it's like, We'll have a hearing down
13 the road if something needs to get in the record. This is
14 about discovery outside the courtroom.

15 MS. LAMBERT: Correct. And the order in *PHI*, I think
16 the Court will find, is very different from the order in this
17 case. So -- and is useful for that reason. I anticipate the
18 --

19 THE COURT: Okay. Go through the protective order in
20 *PHI* and highlight for me provisions that it has --

21 MS. LAMBERT: It does not bar sharing with government
22 entities. It is not as limiting to professional eyes, though
23 it has some limitations. And it contemplates sharing with
24 creditors under defined provisions.

25 THE COURT: Okay. Again, lengthy order. Point out

1 which provision from *PHI* you would like to see in this order.

2 MS. LAMBERT: All right. If the Court gives me a
3 break, I will annotate the order.

4 The IRS, I anticipate the evidence will be, has an
5 estimated claim of \$8 million to \$9 million that's on appeal.
6 The SEC is involved in the oversight of this Debtor. The PBGC
7 is a creditor.

8 THE COURT: They can file motions for a 2004 or file
9 an adversary. Or they file a proof of claim, it's objected
10 to, we can have discovery.

11 MS. LAMBERT: That changes the --

12 THE COURT: They got notice of this motion --

13 MS. LAMBERT: The change --

14 THE COURT: -- for approval of a protective order.

15 Yes or no?

16 MS. LAMBERT: Yes. I'm not -- I question whether the
17 IRS has as a creditor. I think they received notice because
18 they're not really listed as a creditor, they're listed as
19 contested.

20 THE COURT: Okay. But they got notice. They have
21 able counsel that shows up all the time in cases.

22 MS. LAMBERT: So, Your Honor, the statute, 1102,
23 presumes the disclosure of information, not the constraining
24 of information.

25 THE COURT: But you would agree, would you not, that

1 many, many times courts have entered protective orders in
2 connection with a Committee's 1102(b) obligations?

3 MS. LAMBERT: No.

4 THE COURT: Again, I use the analogy back shortly
5 after the 2005 amendments, --

6 MS. LAMBERT: They're referred --

7 THE COURT: -- where people prospectively said hey,
8 we want -- we want to be clear we're doing things correct,
9 we'll share information with our constituency, we, the
10 Creditors' Committee, but there's certain confidential,
11 privileged items we may somehow get into our hands, and we
12 want to --

13 MS. LAMBERT: It is --

14 THE COURT: -- be clear about what we have to share
15 and what we should not.

16 MS. LAMBERT: It is true that the Court enters
17 confidentiality orders in cases. I'm well aware of that. The
18 issues of this one is different. It is not garden-variety.
19 The difference goes right to the language of confidential
20 versus protected.

21 Your Honor, another aspect of this case or this motion
22 that is not workable is the sealing provision being co-
23 extensive with those, the items that are designated as highly
24 protected. You heard at the Federal Bar Association meeting
25 only last week that the magistrate judges were talking about

1 striking these provisions routinely. The FJC's publication on
2 protective orders and sealing also says it should not be
3 coextensive, should be a separate motion to seal. The
4 standards are totally different and much higher for sealing
5 the documents. This is a public process, and it should be
6 maintained as a public process.

7 THE COURT: All right. Any --

8 MS. LAMBERT: The Court delegates under this motion
9 its responsibility to evaluate information to the Debtor
10 unilaterally. The Debtor gets to make the decisions, not the
11 Court. And nobody knows what those decisions are, except
12 maybe the party that is asking for the information. If you
13 don't know that the information exists and it's already
14 subject to protection, you never get that opportunity.

15 It's for these reasons that the motion should be denied or
16 tailored.

17 THE COURT: All right. Anything else?

18 You know, no one has mentioned this, but it danced through
19 my brain: Part of the settlement I approved with the
20 Committee contemplated sort of a common interest privilege on
21 some things, right? Or am I misremembering that?

22 MR. MORRIS: They will have access, Your Honor, to
23 information as part of their investigation. I can't tell you
24 off the top of my head --

25 THE COURT: Okay. No one --

1 MR. MORRIS: -- the precise parameters of it.

2 THE COURT: No one can immediately tell me?

3 MR. MORRIS: Yeah.

4 THE COURT: Okay. Anything else?

5 MS. LAMBERT: Your Honor, if the Court would like,
6 the U.S. Trustee is happy to annotate one of the orders and to
7 provide a supplement with the orders that contain the
8 language, both that the Court -- this Court has entered and
9 other courts have entered from the district.

10 THE COURT: All right. Well, --

11 MR. MORRIS: Your Honor, just very briefly. John
12 Morris, again. Pachulski Stang Ziehl & Jones.

13 THE COURT: This motion has been pending for a long
14 time. It was actually filed in Delaware?

15 MR. MORRIS: It has.

16 THE COURT: Okay.

17 MR. MORRIS: And it's -- and we've relied on it.

18 THE COURT: Okay.

19 MR. MORRIS: The reason that I went through the
20 background, Your Honor, is to give the Court the assurance
21 that it's working, it's not being abused. By bringing the
22 U.S. Trustee under the tent with the Creditors' Committee,
23 you're going to have two independent parties who are going to
24 review and challenge, if they think appropriate, the Debtor's
25 designations.

1 Nobody is being prevented here from filing a motion,
2 whether it's for a 2004 or another contested matter. Nobody
3 here is -- just because something is marked as highly
4 confidential doesn't mean that other people can't get access
5 to it. They just need to come and use a device pursuant to
6 which it's responsive. That's all it is. It is garden-
7 variety, Your Honor. Thank you.

8 THE COURT: All right. I'm going to overrule the
9 objections and approve the proposed agreed protective order as
10 amended in accordance with the mark-up that was shown and the
11 announcement made.

12 I am also, even though I think this is like saying the sky
13 is blue, I'm also going to direct that the Debtor and
14 Committee add a sentence at the very last paragraph that the
15 Court reserves the right to amend or -- amend this order upon
16 motion by any party in interest and notice and a hearing.

17 Again, I think that's probably a no-brainer, doesn't need
18 to be said, but I'm going to direct it to be said in there.
19 And, again, it would have to be on motion of a party in
20 interest and notice and a hearing, and we can all come and
21 argue whether some sort of amendment is needed to this order.
22 And, you know, you already have provisions in there that
23 contemplate, you know, someone may file a motion pursuant to
24 this order, but we'll just throw that in for good measure.

25 Again, I feel like this is an agreed order that is not

1 substantially different from forms of order this Court and
2 other courts have approved many times before. While the
3 timing and context may seem different, feel different to the
4 U.S. Trustee, I feel like, as we say in the law, it's a
5 difference -- a distinction without a difference, or whatever
6 the expression is.

7 Again, I allude to the many times in the past where a
8 creditors' committee, early in the case, before there were
9 contested matters, before there were adversary proceedings,
10 filed motion for approval of protocols under 1102(b) regarding
11 its obligation to share information, and by the time we showed
12 up for the hearing, there was an agreed protective order that
13 had been negotiated.

14 I compare it to the context of the committee or somebody
15 files a motion for a 2004 exam early in the case, and then we
16 come back with an agreed protective order.

17 I said before it's as though, to me, no good deed goes
18 unpunished. We have cooperation early on the case, and now,
19 you know, when this agreed protective order is proposed, the
20 argument is, well, there wasn't a 2004, there wasn't a
21 contested matter. Again, I don't think that distinction from
22 other cases makes any meaningful difference. I think there's
23 good cause pursuant to 1102(b), 105, and Rule 26. While maybe
24 not triggered yet with a contested matter or adversary
25 proceeding, I think there's good cause to approve this agreed

1 form of protective order.

2 All right. So, if you all could make those changes that
3 we discussed here on the record, and I'll sign it right away.

4 MR. MORRIS: Thank you, Your Honor.

5 THE COURT: All right. We now had the seal motion of
6 the Committee that I think you all proposed we go to second
7 today. And I'll tell you what floated through my head,
8 reading these pleadings. It almost felt like a moot issue by
9 this point. I don't know if anyone -- maybe I took your
10 thunder here, but --

11 MR. TWOMEY: You did somewhat steal my thunder, Your
12 Honor. I just wanted --

13 THE COURT: Okay.

14 MR. TWOMEY: Dennis Twomey again on behalf of the
15 Creditors' Committee.

16 THE COURT: I'm sure you're going to articulate it
17 much better than I just did.

18 MR. TWOMEY: If I might, Your Honor, maybe I'll take
19 a minute just to describe the genesis of the motion, which, --

20 THE COURT: Uh-huh.

21 MR. TWOMEY: -- just like the motion you heard, is
22 also about two months old and has been on ice for a while.
23 The Committee filed a motion to seal back in early December in
24 conjunction with, at the time, the Committee's objection, the
25 omnibus objection to the Debtor's second-day motions. As you

1 just noted, those objections were all resolved as part of the
2 governance settlement that you approved at the last hearing.
3 In terms of what was covered by the motion to seal as part of
4 that omnibus objection, which has now been resolved, the
5 Committee had attached as Exhibits C and D two orders that
6 were issued in the arbitration proceedings between the Debtor
7 and the Redeemer Committee, which, as Your Honor is aware, the
8 Redeemer Committee is a member of our Creditors' Committee
9 here. And at the time of the filing, the Committee sought to
10 seal the awards, primarily because the Debtor had previously
11 expressed to the Redeemer Committee that the Debtor believed
12 the rewards were subject to a protective order in that
13 litigation. And the Redeemer Committee at the time, while --

14 THE COURT: Now, let me ask you to repeat what you
15 just said, because I know this was brought up in the U.S.
16 Trustee's motion. You alluded to a protective order in your
17 motion. Are you saying now that you thought at the time there
18 was a protective order in place in the arbitration that you
19 might be running afoul of by disclosing it?

20 MR. TWOMEY: Correct.

21 THE COURT: Okay.

22 MR. TWOMEY: More specifically, Your Honor, we had to
23 get our omnibus objection, the Committee's omnibus objection
24 on file, and we wanted to include those awards as exhibits to
25 our omnibus objection. And the Redeemer Committee, who sits

1 on our Creditors' Committee, had indicated to the full
2 Committee that the Debtor had previously expressed the view
3 that these awards were subject to that separate protective
4 order in the other case.

5 And so, out of an abundance of caution, so that we could
6 get our omnibus objection on file, we sought -- we filed the
7 seal motion. And so that was sort of the genesis of the
8 motion.

9 So we filed it out of an abundance of caution in order to
10 press forward with our filing of the omnibus objection at the
11 time. And since that time, we've had the opportunity to
12 consider it more, and the Redeemer Committee has sort of
13 indicated its views on the protective order. But most
14 importantly, our objection, obviously, has now been resolved
15 as part of the settlement that Your Honor approved last week.

16 So, given that, coming full circle, Your Honor, the
17 Committee is no longer seeking the relief that we had
18 requested in the seal motion, and so that's where things stand
19 today. The Committee has communicated its position to both
20 the U.S. Trustee and the Debtor, and that's where things
21 stand.

22 So I believe the Debtor, in terms of the underlying
23 merits, I believe the Debtor still believes that those awards
24 contain some confidential information. Mr. Morris can speak
25 to that. And obviously, the U.S. Trustee had objected to our

1 seal motion.

2 But, again, Your Honor, coming full circle to the point
3 you raised initially, this really isn't an issue -- this isn't
4 a motion that the Committee continues to pursue, because the
5 objection, the underlying objection, the omnibus objection to
6 those second-day motions has been resolved as part of last
7 week's, or almost two weeks ago, the order that Your Honor
8 entered.

9 THE COURT: All right. So, to recap: The two
10 arbitration awards, or parts of them, I don't know if it was
11 the whole thing, but they were attached to the omnibus
12 objection, which is now moot because it was an objection to
13 the cash management motion, the DSI retention application, and
14 the ordinary course business protocols. That objection is
15 totally moot, if you will, now, because the global settlement
16 or the -- well, the settlement I approved last week resolved
17 all the issues raised in that objection. So, well, I guess, I
18 mean, what -- I was going to say, what would stop you from
19 just withdrawing the objection?

20 MR. TWOMEY: We can -- I think we can withdraw the
21 motion. Because it's a motion, obviously. We can withdraw
22 the motion to file under seal. That's --

23 THE COURT: Well, and again, I'm not telling you how
24 to do things, but I'm just saying that's what rolled through
25 my mind as far as why this might be a moot point.

1 MR. TWOMEY: Understood, Your Honor. And certainly,
2 from the Committee's perspective, we're not trying to, you
3 know, add more --

4 THE COURT: Uh-huh.

5 MR. TWOMEY: -- more issues that don't need to be
6 added. And I think that's exactly right. That's what I was
7 going to --

8 THE COURT: And that's part of what I'm getting here.
9 I mean, this could be a battle for another day. At some
10 point, someone may want to file a pleading attaching those
11 arbitration awards.

12 MS. LAMBERT: Your Honor, they are in evidence for
13 the motion to appoint a Chapter 11 trustee. That's why we're
14 having this motion before. The U.S. Trustee was constrained
15 to file its pleading redacted and all the documents under seal
16 --

17 THE COURT: Right.

18 MS. LAMBERT: -- because they're filed under seal
19 here and the order seals it.

20 THE COURT: Okay. Well, I guess what you're saying
21 is you're going to move, in connection with your trustee
22 motion in a few minutes, for me to admit into evidence these
23 arbitration awards we're arguing about right now?

24 MS. LAMBERT: That is correct.

25 THE COURT: Okay. Okay.

1 MR. TWOMEY: Thank you, Your Honor.

2 THE COURT: Thank you. Who else wishes to speak on
3 this?

4 MR. MORRIS: John Morris for Pachulski Stang Ziehl &
5 Jones for the Debtor.

6 THE COURT: Uh-huh.

7 MR. MORRIS: Your Honor, my first point here was
8 objection moot; procedurally nothing before the Court. I
9 think that's been taken care of.

10 But it's a very important point. And the reason why it's
11 very important is because the Redeemer award was first
12 proffered by the Committee in opposition to the Debtor's
13 motion for the appointment of a CRO. Old management was going
14 to stay in place, and they were using -- I presume that they
15 would have attempted to use the Redeemer award to show that,
16 notwithstanding the Debtor's desire to appoint the CRO, old
17 management was still in place.

18 The reason why it's very important to note that the
19 objection that the Committee filed is now moot is because
20 we're now here in a very different context. We're here
21 because the United States Trustee's Office wants to offer the
22 Redeemer awards into evidence in support of their motion for
23 the appointment of a trustee. That motion is going to be
24 determined under 1104. 1104 relates solely to current
25 management. We were here two weeks ago, Your Honor, and the

1 Court approved an order appointing new management.

2 And so our first argument, Your Honor, is that there is no
3 sealing issue for the Court to decide in the first instance
4 because the Redeemer awards simply are not relevant and
5 shouldn't be admitted into evidence, and we can leave it for
6 another day when and if another party in interest seeks to
7 either discover or otherwise introduce into evidence the
8 Redeemer awards.

9 If you recall, the week before last we were here and the
10 United States Trustee's Office attempted to elicit argument
11 over prior acts that were described in Your Honor's ACIS
12 decision, in a prior SEC order, in the Redeemer awards. And I
13 think Your Honor properly at that point kind of shut it down
14 and said, We're here on a motion to appoint new management.
15 And we have new management. And I'm prepared to put my
16 witness in the box who will testify that the independent
17 directors are firmly in control of this debtor, that every
18 single employee is under their authority and control, that
19 they have the ability to fire any of them, that none of them
20 are able to engage in any conduct that is outside their
21 approval.

22 And so I think the Redeemer award -- and, frankly, we're
23 going to have the same objection to the U.S. Trustee's offer
24 of the ACIS opinion into evidence and the SEC order, because
25 they're all related to conduct that took place prepetition

1 under old management.

2 1104, the only section upon which this motion is based,
3 refers to current management. And I don't think that we want
4 to spend a whole day. I mean, I just don't think it's
5 relevant. And so if it's not relevant, then it's not
6 admissible into evidence. The Court need not even get to the
7 issue of sealing.

8 If the Court were inclined to introduce it into evidence,
9 we would still request that it be marked under seal.

10 Specifically, Your Honor, under 107, the Debtor believes
11 that there is a very compelling interest in keeping the
12 Redeemer awards confidential. It does go into substantial
13 allegations and findings pertaining to the Debtor's business
14 practices. We do believe it contains confidential
15 information, confidential commercial information, as required
16 under 107. And the Debtor is very concerned. And you will
17 hear the testimony from the independent directors about
18 innuendo and rumor that can get into the marketplace and
19 hinder the ability of the Debtor to reorganize and to go
20 forward with their business operations.

21 So, in sum, Your Honor, I think we've got two points to
22 make. One is that the Redeemer award has nothing to do with
23 current management. There's no allegation that it has
24 anything to do with current management. There won't be any
25 facts to establish that the Redeemer award has anything to do

1 with current management. And we think that kind of ends
2 everything.

3 But if Your Honor really is inclined to allow that into
4 evidence, we would still ask that it be marked under seal.

5 THE COURT: Okay.

6 MR. MORRIS: Thank you.

7 MS. LAMBERT: Your Honor, the U.S. Trustee has two
8 responses. And the first really goes to the motion to seal.
9 Cause can be broader than the items listed. That goes all the
10 way to *Little Creek* and is carried through into the Fifth
11 Circuit's precedent on trustee appointment. The statute says
12 "or similar cause."

13 So the U.S. Trustee has raised three issues in connection
14 with the appointment of a trustee, and one of those issues is
15 that the legal division of the Debtor has so much control over
16 the Debtor's conduct that that establishes cause to appoint a
17 trustee so that there is somebody to replace the (inaudible)
18 decisions.

19 I anticipate the evidence will be that the Court in ACIS
20 and that the arbitration award and the SEC opinion all go to
21 those types of issues. That's number one.

22 Number two, technically, and it's not just a bureaucratic
23 technicality under the facts, the management of this debtor
24 has not changed. Individuals at Strand have changed. And the
25 U.S. Trustee agrees that, under some circumstances, that might

1 resolve the issues. But not under the facts of this case.

2 And that's because Dondero remains the sole shareholder of the
3 Strand entity. And --

4 THE COURT: That's not management.

5 MS. LAMBERT: No, it's not.

6 THE COURT: It's an equity interest.

7 MS. LAMBERT: It's an equity interest. That's
8 correct. Management has changed, but the management owes a
9 fiduciary duty to the stockholder. And there are a lot of
10 things --

11 THE COURT: Didn't they contract around that --

12 MS. LAMBERT: No.

13 THE COURT: -- in the settlement agreement?

14 MS. LAMBERT: Mr. Dondero contracted around various
15 provisions, but the board did not. And the reason the board
16 did not, I believe, is that the Delaware statute prohibits
17 contracting around a fiduciary duty to shareholders. If you
18 think about it, it makes a lot of sense.

19 THE COURT: I signed an order.

20 MS. LAMBERT: You did sign an order.

21 THE COURT: It's not a contract.

22 MS. LAMBERT: And you signed an order where Mr.
23 Dondero constrained his rights to vote the stock and a variety
24 of other things, but that doesn't change the fiduciary
25 obligations of the board to Mr. Dondero's stock equity

1 interests. And the case law is that corporate fiduciary
2 duties to shareholders, generally speaking, cannot be changed.

3 So it's a problem. It's a problem that, you know, it's
4 not because I'm a genius, it's because I've played chess on
5 this table a number of times that I know that this problem can
6 arise. And it's an issue of conflict for the new board.

7 THE COURT: Okay. Let -- my brain needs to take
8 things in a certain sequence. In all the arguments, we've
9 bled over a little bit to your motion for appointment of a
10 trustee. On the motion to seal, --

11 MS. LAMBERT: On the motion --

12 THE COURT: -- I am inclined, and tell me why I
13 shouldn't, I'm inclined to punt. The objection is now moot.
14 The motion to seal to which it attaches, in my mind, is moot.
15 So I'm inclined to just deny for mootness, and then we --

16 MS. LAMBERT: Your Honor, --

17 THE COURT: -- punt to another day whether these
18 arbitration awards get in in some context. Can -- is there
19 any disagreement with that, so we can just roll into the U.S.
20 Trustee's motion?

21 MS. LAMBERT: The U.S. Trustee is not subject to a
22 protective order except one the Court's about to enter. At
23 the time this was entered, the U.S. Trustee had no -- was not
24 subject to the protective order, but we did receive these
25 documents under the motion to seal order. So I need some

1 clarity on what I'm going to be doing.

2 This arbitration award was the basis, according to the
3 declaration, the catalyst for the filing of this bankruptcy
4 case. And the Court is considering and being asked to
5 restrain its disclosure to the public. It's highly material
6 to the facts of this case --

7 THE COURT: Okay.

8 MS. LAMBERT: -- generally.

9 THE COURT: All right. Well, again, my simple brain
10 is going to take these things in sequence. I am denying the
11 motion to seal merely for mootness, okay? I'm overruling the
12 objection -- well, I'm deeming the objection of the Committee
13 as moot, the omnibus objection to the CRO, the cash management
14 motion. It's moot, and therefore the motion to seal relating
15 to it is moot.

16 I haven't made any ruling broader than that with regard to
17 this motion to seal.

18 Now, I realize there's the protective order I've just
19 approved, and that has some relevance here, but we're done on
20 the motion to seal. Okay? Denied for mootness only.

21 MS. LAMBERT: Dismissed for mootness?

22 THE COURT: Denied. Dismissed. Is there a
23 distinction there that I'm glossing over?

24 MS. LAMBERT: I think, procedurally, dismissed for
25 mootness.

1 THE COURT: All right. It's one or the other.
2 Committee, you can draft the order as you think is
3 appropriate. I dismiss/deny, either one.

4 All right. Let's --

5 MR. TWOMEY: Thank you, Your Honor.

6 THE COURT: Let's move to the motion for appointment
7 of a trustee. I assume you're going to want opening
8 statements. I've read the pleadings. They don't need to be
9 lengthy.

10 OPENING STATEMENT ON BEHALF OF THE U.S. TRUSTEE

11 MS. LAMBERT: Judge Jernigan, the Debtor and the U.S.
12 Trustee have agreed to do brief opening statements, and the
13 U.S. Trustee is going to move for the admission of the binders
14 to establish its case in chief. The Debtor has some
15 objections, some of which you've already heard, to the U.S.
16 Trustee's exhibits. And then we'll move to the Debtor's case
17 in chief.

18 THE COURT: All right. In your opening statement,
19 you're asking the Court to admit the ACIS opinion, the
20 Redeemer Committee's arbitration award, the partial award
21 dated March 3, 2019, the final award dated April 29, 2019, and
22 an SEC order of September 25, 2014?

23 MS. LAMBERT: That is --

24 THE COURT: You're asking me, in your opening
25 statement, to admit those?

1 MS. LAMBERT: No, Your Honor. I was going to do that
2 after my opening statement, --

3 THE COURT: Well, I was confused.

4 MS. LAMBERT: -- but I will do it now if you'd like.

5 THE COURT: I misunderstood your statement.

6 MS. LAMBERT: I was going to make my opening
7 statement, they're going to make their --

8 THE COURT: You may proceed.

9 MS. LAMBERT: All right.

10 THE COURT: You may proceed.

11 MS. LAMBERT: So, the issues in the motion to appoint
12 a Chapter 11 trustee are three.

13 First, the management is the same because Strand is still
14 the general partner. In some context, because the individuals
15 at Strand have changed, it is material. On the other hand, it
16 has created its own conflict, and that is the basis for the
17 appointment of a trustee.

18 Number two, the legal team is central. I anticipate the
19 evidence will be that many of the compliance issues that
20 caused problems in past cases and have -- and the evidence
21 will indicate that the management -- the legal management team
22 ignored the advice of outside counsel. The Court's findings
23 in the ACIS opinion go to individuals at the legal team who
24 still remain there. And the testimony I anticipate will be
25 that they continue to maintain control over compliance

1 decisions and other decisions at the Debtor, based on the
2 testimony of the CRO.

3 And, finally, the efforts to keep this case *sub rosa* by
4 filing expansive protective orders and seeking expansive
5 sealing of documents that are central to the case continue to
6 prevent the transparency that's necessary, and a Chapter 11
7 trustee would facilitate the transparency that the Court has
8 always emphasized in all of its cases is a cornerstone of
9 Chapter 11.

10 For these reasons, the U.S. Trustee seeks the appointment
11 of a Chapter 11 trustee in this case.

12 THE COURT: All right. Other opening statements?

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: Good morning again, Your Honor. Jeff
15 Pomerantz; Pachulski Stang Ziehl & Jones.

16 Your Honor, the burden is on the United States Trustee to
17 demonstrate by clear and convincing evidence that cause exists
18 for the appointment of a Chapter 11 trustee or that the
19 appointment of a Chapter 11 trustee is in the best interest of
20 parties. The Debtor intends to present the testimony of Mr.
21 John Dubel, one of the Debtor's independent directors, which
22 will demonstrate that the U.S. Trustee cannot come close to
23 meeting its burden.

24 Rather, the testimony will unequivocally demonstrate that
25 the alternative governance structure approved by this Court on

1 January 9th satisfactorily addresses any concerns with the
2 Debtor's prepetition management, allows the parties to put the
3 acrimony which marked the first three and a half months of
4 this case behind them, and allows them to focus on efforts to
5 restructure the Debtor's liabilities in an efficient and
6 timely manner.

7 Specifically, the testimony will show that, since its
8 employment, the board has been fully engaged in managing the
9 Debtor's business. That a member of the board has physically
10 been at the Debtor's headquarters for six of the seven days
11 since their appointment, and that Mr. Dubel, the testifying
12 witness, has devoted in excess of 80 hours to the engagement
13 in the last 12 days.

14 The testimony will show that the board has met with
15 department heads and received briefings from them regarding
16 all facets of the Debtor's operations. And that, importantly,
17 the Debtor's employees, including the legal department, are
18 respecting the independent board members' authority and are
19 fully cooperating with the board.

20 And lastly, that the board is effectively overseeing the
21 implementation of the court-approved protocols.

22 Lastly, Your Honor, the evidence will demonstrate that the
23 appointment of a Chapter 11 trustee would destabilize the
24 business further, creating further uncertainty and adversely
25 affect the Debtor's ability to restructure.

1 For these reasons, Your Honor, the Debtor opposes the
2 appointment of a trustee. Thank you, Your Honor.

3 THE COURT: All right. Any other opening statements?

4 MR. TWOMEY: Your Honor, Dennis Twomey on behalf of
5 the Committee. The Committee did file an objection, Your
6 Honor, but does not intend to put forth any evidence. So if
7 it's okay with Your Honor, we would prefer to just wait to
8 make our statement until the end of the proceedings.

9 THE COURT: All right. That's fine.

10 MR. TWOMEY: Thank you.

11 THE COURT: Thank you. All right. Ms. Lambert?

12 MS. LAMBERT: Your Honor, Ms. Kippes has provided me
13 with this Court's order in the *Adeptus* case, where the Court
14 did include the standard language that the U.S. Trustee has
15 about referring criminal or ethical obligations. I'm happy to
16 present it to the Court.

17 THE COURT: All right. Well, you may. I've made my
18 ruling, but --

19 (Pause.)

20 THE COURT: Again, I've made my ruling. And, you
21 know, I don't know if this was heavily negotiated in that
22 case. If it was, you know, fine. I just don't know.

23 MS. LAMBERT: If I may I approach the bench?

24 THE COURT: Okay. These are the proposed exhibits
25 for the Trustee now?

1 MS. LAMBERT: Yes.

2 THE COURT: Okay.

3 MS. LAMBERT: Your Honor, I have an additional set of
4 binders. I'd intended for the ones that I presented to the
5 Court to be the work copies, and there to be an original set.
6 Does the Court not need the original set?

7 THE COURT: Well, did you give one to Tom?

8 MS. LAMBERT: I did.

9 THE COURT: Okay. We're good, then. Well, Tom,
10 don't work on yours.

11 MS. LAMBERT: No, I have an additional one.

12 THE COURT: Oh, well, if you have an additional one,
13 fine.

14 MS. LAMBERT: Yeah.

15 THE COURT: Give it to Michael over here.

16 (Pause.)

17 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
18 the admission of all but Exhibit 6, which the U.S. Trustee
19 hasn't been able to obtain, which is the transcript of the 341
20 meeting.

21 THE COURT: Okay. So, 1 through 5 and 7 through 11?

22 MS. LAMBERT: Yes, Your Honor.

23 THE COURT: All right. I know there are objections
24 to some of these. Are there some that are not objected to?

25 MR. MORRIS: May I speak from here, Your Honor?

1 THE COURT: Yes.

2 MR. MORRIS: Okay. John Morris for the Debtor. The
3 Debtor has no objection to Exhibits 4, 5, 8, and 9.

4 (U.S. Trustee's Exhibits 4, 5, 8, and 9 are received into
5 evidence without objection.)

6 MR. MORRIS: With respect to Exhibit #7, which
7 pertains to certain deposition designations, we've got a list
8 here that we shared with the U.S. Trustee's Office yesterday
9 that goes through each of the designations and identifies
10 those with which we have objections, those with which we do
11 not. We identified the bases for each of the objections, and
12 we've also offered a limited set of counterdesignations, to
13 which I understand the U.S. Trustee does not object.

14 If it would be easier, I could just mark this as an
15 exhibit and give it to the Court for the Court's
16 consideration.

17 THE COURT: All right. He's got a substitute, it
18 sounds like, for Exhibit 7. Do you have an issue with that?

19 MS. LAMBERT: Your Honor, the U.S. Trustee put in the
20 entire deposition, anticipating that the rule of completeness
21 would be sought and due to the time constraints and the
22 holiday weekend, not being able to change our depositions. So
23 we don't have any objections to the rule of completeness and
24 the entire deposition transcript, statement of a party, is in
25 the binder under Tab 7.

1 THE COURT: All right. Well, --

2 MR. MORRIS: That's not what we were asking, Your
3 Honor. We do not want the entire transcript admitted into
4 evidence for any reason. The U.S. Trustee's Office
5 specifically identified certain pages and lines, and we
6 responded. And there's a very limited set of
7 counterdesignations that we've offered simply for purposes, I
8 think, of I say completeness in two instances and context in
9 one. But nothing should go into evidence that is either
10 unobjected to or if the Court overrules any of our objections.
11 We don't want the whole transcript into evidence.

12 THE COURT: All right. So, do you need to look at
13 his revised version of your Exhibit 7?

14 MS. LAMBERT: Well, I would, yes.

15 THE COURT: Okay. And, again, I understood he gave
16 it to you earlier.

17 MS. LAMBERT: He gave it to me yesterday during the
18 holiday.

19 The objections that they've made are on relevance, and the
20 U.S. Trustee's response on the relevance is that the
21 management issues go to the in-house counsel as well, and
22 there's testimony about the in-house counsel. The only
23 objections are on relevance, Your Honor, and because this is a
24 bench trial, the Court has broader discretion on a relevance
25 objection than it would in a jury trial, as the Court is

1 disciplined and can scan out those materials that are not
2 relevant. And, more importantly, they are relevant to the
3 case as the U.S. Trustee has alleged it.

4 MR. MORRIS: Your Honor, the relevance objections
5 actually are not limited to issues of whether or not the
6 testimony relates to current management. Some of them have to
7 do with venue and I'm not even sure why it was designated.
8 But we've made our objections, and I think it would be
9 appropriate for the Court to rule. We understand that it's a
10 bench trial, but that doesn't -- that doesn't negate the Rules
11 of Evidence.

12 THE COURT: All right. Well, I certainly don't want
13 to go back in chambers and read the entire deposition if
14 that's not really what anyone was originally wanting me to do.

15 MS. LAMBERT: For this reason, Your Honor, the U.S.
16 Trustee has designated the lines that were relevant in the
17 U.S. Trustee's witness and exhibit list 7. And they
18 corresponding have designated the lines that they feel are
19 necessary for completeness and context.

20 THE COURT: Okay. I'm going to -- I guess I'm
21 overruling the objection to 7. I will look at your deposition
22 excerpts and I will look at what Mr. Morris has handed you as
23 far as his supplemental excerpts. All right?

24 (U.S. Trustee's Exhibit 7 is received into evidence as
25 specified. Debtor's supplement is received into evidence as

1 specified.)

2 MR. MORRIS: So then with respect to the exhibits,
3 Your Honor, I don't know if you want to hear argument now on
4 the objections.

5 THE COURT: All right. So, we have objections to 1,
6 2, and 3.

7 MR. MORRIS: Right. And those really just follow
8 along the argument that I made earlier. All of these
9 documents, the first one, I believe, is the ACIS opinion. The
10 second is the Redeemer awards. The third is a more than five-
11 year-old SEC cease-and-desist order. And our argument is that
12 they should not come into evidence for any purpose. They all,
13 to the extent -- you know, I'm not sure what they're trying to
14 use with them, but, again, 1104 is crystal clear. It relates
15 to the current management. None of the current managers were
16 at the Debtor prior to two weeks ago, let alone at the time
17 these orders were entered.

18 THE COURT: All right. Let me tell you where I am on
19 this, Ms. Lambert. I almost think of this as a summary
20 judgment issue on current management. I mean, I am inclined
21 to agree with the Debtor's argument that 1104 -- is it (b)(1)?
22 No. Which one? (a)(1). Just simply doesn't apply as a
23 matter of law anymore because we're not talking about current
24 management anymore.

25 Now, your U.S. Trustee motion lives another day, in my

1 view, because of 1104(a)(2), because you might still convince
2 me that it's in the interest of creditors, equity holders, or
3 other interests of the estate. But it almost feels like,
4 again, a summary judgment issue on current management.

5 So, what is your response to that?

6 MS. LAMBERT: Your Honor, the Fifth Circuit case law
7 is not limited to just management. Fraud, dishonesty,
8 incompetence, or gross [mis]management of the affairs of the
9 debtor by current management, either before or after the
10 commencement of the case, or similar. Or similar cause. The
11 U.S. Trustee is under 1104(a)(1). The Fifth Circuit precedent
12 establishes that cause for purposes of (a)(1) should be
13 considered like cause for bad faith or other factors such as
14 *Little* --

15 THE COURT: So you're saying there's clear Fifth
16 Circuit authority that says --

17 MS. LAMBERT: That --

18 THE COURT: -- similar cause --

19 MS. LAMBERT: -- inherent --

20 THE COURT: -- goes beyond the context of activities
21 of current management?

22 MS. LAMBERT: Correct. Like inherent conflicts,
23 which is what we have, an inherent conflict.

24 THE COURT: All right. Well, I am going to sustain
25 the objection to those three, but without prejudice,

1 basically, to me reconsidering your offer, for example, during
2 a rebuttal stage. Okay? If I hear something from witnesses
3 that makes me see this in a different light. But my view now
4 is that things changed when we replaced the current management
5 structure of the Debtor, the management structure that it had
6 when it filed bankruptcy, and all of these --

7 MS. LAMBERT: These issues -- these are not --

8 THE COURT: -- these orders --

9 MS. LAMBERT: Are not for current --

10 THE COURT: -- pertain to the prior regime.

11 MS. LAMBERT: No. The ACIS opinion, the Redeemer
12 arbitration partial award, also go line by line to the legal
13 counsel as being in control of decisions.

14 THE COURT: Okay. Again, I'm over -- I'm sustaining
15 the objection to these exhibits, subject to you re-offering
16 them after I've heard witness testimony --

17 MS. LAMBERT: But --

18 THE COURT: -- essentially as rebuttal evidence if
19 you convince me that --

20 MS. LAMBERT: But this is my case-in-chief evidence.

21 THE COURT: I've ruled.

22 MS. LAMBERT: So, the Court is determining that cause
23 must be management? Because these are being introduced for
24 issues as to the counsel.

25 THE COURT: Well, give me -- make your best argument

1 again on why 11(a)(1) is broader than just the context of
2 current management.

3 MS. LAMBERT: Cause can be items other than those
4 that are listed. Or similar cause. That's what the statute
5 says --

6 THE COURT: You're giving me a statutory
7 interpretation I disagree with, but do you have Fifth Circuit
8 authority binding on me --

9 MS. LAMBERT: Yes, Your Honor.

10 THE COURT: -- that --

11 MS. LAMBERT: It's cited in the U.S. Trustee's
12 motion, and it is --

13 THE COURT: I mean, I know *Cajun Electric* and --

14 MS. LAMBERT: *Cajun Electric* involves an inherent
15 conflict between --

16 THE COURT: But was that a context, I don't think it
17 was, where a whole new slate of directors and managers had
18 been put in place?

19 MS. LAMBERT: It was not a case involving wrongdoing.
20 And so the facts are totally --

21 THE COURT: Conflicts of interest.

22 MS. LAMBERT: It involves directly conflicts of
23 interest, yes, in the positions that must be decided by the
24 controlling board.

25 THE COURT: I am --

1 MS. LAMBERT: And I --

2 THE COURT: -- asking you, had a whole new slate of
3 officers and directors been brought in in *Cajun Electric*?

4 MS. LAMBERT: No, and that would not have resolved
5 the --

6 THE COURT: It's been many years since I've read it.

7 MS. LAMBERT: That would not have resolved the
8 problem in *Cajun Electric*.

9 THE COURT: Okay. So *Cajun Electric* is not --

10 MS. LAMBERT: But *Cajun Electric* stands for the
11 proposition that cause is broader than the items listed here.

12 THE COURT: Of course. But it's still pertaining to
13 current management. I'm not reading those words "for cause"
14 out of the statute. I'm just saying I think --

15 MS. LAMBERT: Right.

16 THE COURT: -- they all pertain to current
17 management.

18 MS. LAMBERT: But here's the thing on the Court's
19 statutory construction.

20 THE COURT: I either have --

21 MS. LAMBERT: The Court has --

22 THE COURT: -- a binding case or not. I'm telling
23 you what my interpretation of the statute is.

24 MS. LAMBERT: Right. Well, --

25 THE COURT: I either have a binding case or not.

1 MS. LAMBERT: -- *Cajun Electric* is binding and it
2 establishes, as do *Little Creek* and other Fifth Circuit cases,
3 in every context --

4 THE COURT: Okay.

5 MS. LAMBERT: -- where cause is used, --

6 THE COURT: But I am looking for a case on point.

7 MS. LAMBERT: Your Honor, this is a matter of
8 statutory construction. The Court is reading out a full
9 clause of the statute.

10 THE COURT: Okay.

11 MS. LAMBERT: Current management is at the --

12 THE COURT: I've ruled on the evidence. Do we want
13 to talk about Exhibit 6, which was objected to, and Exhibit
14 10?

15 MS. LAMBERT: No. 6 is out. That was the
16 transcript.

17 THE COURT: Oh, I'm sorry. 6 is out. So, 10 was the
18 one that --

19 MS. LAMBERT: And 10, the purpose of 10 is to
20 establish that Strand is -- Advisors is a Delaware
21 corporation, and I think that's stipulated to.

22 THE COURT: Uh-huh.

23 MR. MORRIS: If that's the only fact for which it's
24 offered, we withdraw the objection.

25 THE COURT: Okay. 10 is admitted.

1 (U.S. Trustee's Exhibit 10 is received into evidence.)

2 THE COURT: And 11, that's something that obviously I
3 can take judicial notice of the docket entry in this case.
4 Right?

5 MS. LAMBERT: Right.

6 THE COURT: Okay. So I just, I'll take judicial
7 notice of 11.

8 All right. You may call your first witness.

9 MS. LAMBERT: Your Honor, the U.S. Trustee rests on
10 its documentary exhibits.

11 THE COURT: All right. Debtor, your witness?

12 MR. MORRIS: Your Honor, before we call our case, we
13 move for a directed verdict based on the evidence or lack
14 thereof that was adduced.

15 THE COURT: Okay. Well, I'm going to deny that. I
16 haven't had a chance to go back and look at this Frank
17 Waterhouse deposition testimony. It may or may not resolve
18 the issue. So, --

19 MR. MORRIS: Thank you, Your Honor. I just wanted to
20 preserve the record.

21 The Debtor calls John Dubel.

22 THE COURT: All right. Mr. Dubel, if you could
23 approach our witness box. Yes. Please raise your right hand.
24 Please raise your right hand.

25 JOHN DUBEL, DEBTOR'S WITNESS, SWORN

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1 THE COURT: All right. Please be seated.

2 DIRECT EXAMINATION

3 BY MR. MORRIS:

4 Q Good morning, Mr. Dubel. Take your time.

5 (Pause.)

6 MR. MORRIS: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. MORRIS: Okay.

9 BY MR. MORRIS:

10 Q Mr. Dubel, do you currently have a relationship to the
11 Debtor?

12 A Yes, I do.

13 Q And can you describe for the Court your understanding of
14 your relationship to the Debtor?

15 A Yes. I am one of the three independent directors
16 appointed at the Strand Advisors, Inc. level, which is the
17 general partner of Highland Capital Management, LP, which I'll
18 probably refer to as HCMLP, just for brevity, Your Honor.

19 Q Okay. I may refer to it as the Debtor, if I may.

20 A You may.

21 Q Do you recall when you were appointed as an independent
22 director?

23 A Yes. January 9th of 2020.

24 Q Okay. And prior to that time, did you personally have
25 experience in bankruptcy and the insolvency areas?

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1 A Yes, I do.

2 Q Can you describe that experience for the Court?

3 A My experience is about 35-plus years of working on all the
4 arenas of the restructuring, both from creditor side, debtor
5 side, as an investor in distressed. The majority of my work
6 over the years has been in the debtor side of running
7 companies as a CEO or a chief restructuring officer, sitting
8 on boards of directors as an independent director for
9 companies going through stress, either bankruptcy or
10 restructuring.

11 Q And are there other independent directors at the Strand
12 level today?

13 A There are.

14 Q And who are they?

15 A There are two of them. Russell Nelms, who is a retired
16 bankruptcy judge from the Fort Worth area, and Mr. James
17 Seery, who is an investor, also an attorney, but an investor
18 in distressed, and has also practiced law.

19 Q Okay.

20 MR. MORRIS: I want to spend a few minutes, if I may,
21 Your Honor, just asking the witness about the independent
22 directors' activities --

23 THE COURT: Okay.

24 MR. MORRIS: -- since appointment.

25 BY MR. MORRIS:

1 Q Has the board, in fact, been engaged in managing the
2 Debtor since being appointed?

3 A We have.

4 Q Can you describe for the Court generally the types of
5 tasks that the independent directors have covered since their
6 appointment?

7 A The first day of our appointment, on the 9th, we met as a
8 board, which the board meeting actually continued through
9 until the 10th, on that Friday, in which we sat down with the
10 chief restructuring officer and his team. We met with the
11 vast majority of the senior managers within the company to
12 make sure that we could hear from them what was going on
13 within the company and to convey to them what our duties and
14 responsibilities were, so it was very clear to both the CRO
15 and to all the management, the senior management, of what the
16 responsibilities were for the independent board and how the
17 protocol would work and how they would need to interact with
18 us in a -- in what has now become a daily basis.

19 Q And since being appointed, have the independent directors
20 received presentations from the Debtor and from DSI concerning
21 the Debtor's operations, assets, and liabilities?

22 A We have.

23 Q Can you describe just generally the nature and scope of
24 those presentations?

25 A Yes. So we've gone through, which is not untypical for

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1 situations like this when you get involved, go through each of
2 the departments and ask them to walk us through how their
3 department works, what they're working on, key issues that are
4 necessary for us to pay attention to immediately, key issues
5 that we would look at further down the road, understand who
6 the personnel are within the organization, their group.

7 And we, of course, because there were a lot of issues that
8 were very time-sensitive, we reacted to those issues to be
9 able to give them guidance on what we needed, what we needed
10 further information for or what decisions we would make
11 immediately on those decisions -- on those issues.

12 Q Since being appointed, have you -- have the independent
13 directors also reviewed and authorized certain court filings?

14 A We have. We had a protocol in place where one or -- or
15 all three, depending on the filings, are required to sign off
16 on any filings before they're submitted to the Court so that
17 we have a good understanding and can make sure that we have
18 good -- good direction to our counsel as to what would be
19 going forward.

20 Q Mr. Dubel, in the last 12 days, how much time have you
21 personally spent managing the Debtor?

22 A In excess of 80 hours, probably closer to 90 hours. I
23 don't keep a -- I'm fortunate I don't have to keep time
24 records to the tenths of an hour like counsel does. But just
25 in looking at my calendar, in excess of 80 hours. And it's

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1 been literally every single day, Saturdays and Sundays
2 included.

3 Q And to the best of your understanding, is the same true
4 with respect to Mr. Nelms and Mr. Seery?

5 A Yes, it is. In fact, a lot of the time has been spent
6 with them together on these issues. So, I, you know, I have
7 firsthand knowledge of the amount of time that they are
8 putting in also.

9 Q Can you describe for the Court the extent to which the
10 three of you have been physically present in the Debtor's
11 office since being appointed as independent directors?

12 A Yes. During the work days, which it's now I think been
13 seven business days that the offices have been open, we have
14 been there six of those days. Actually, seven, if you count
15 this morning. We spent some time in the offices this morning
16 working with folks before we came over here. And either one
17 or all three of us have been there during those six days.
18 We're trying to balance out the workload a little bit with the
19 needs of the organization.

20 Q Can you describe for the Court the role that Mr. Sharp and
21 DSI have played since the time that you were appointed as an
22 independent director?

23 A Yes. Mr. Sharp, as the chief restructuring officer, and
24 his team have provided us with a tremendous amount of
25 information on the organization, on the assets of the various

1 different entities that the Debtor has to manage. Provided us
2 with asset positions, liability issues, and has basically been
3 very helpful in bringing us up to speed immediately on
4 everything we need to know to understand how to operate the
5 business, and acted in a very, you know, forthright manner.

6 Q Since being appointed, have the independent directors
7 played a role in the implementation of the protocols that were
8 part of the order appointing them?

9 A Yes. We have made sure that everybody -- all the senior
10 managers in the organization understand what the protocols are
11 and worked with either DSI or directly with us, depending on
12 the facts and circumstances of the particular situation, so
13 that the protocols are being followed. And we continue to do
14 that on a daily basis.

15 Q Have you and the other directors had an opportunity to
16 review proposed transactions since being appointed?

17 A Yes, we have, starting on Thursday, January 9th, through,
18 actually, this morning. While we were sitting in court, we
19 got confirmation of things that were taking place as it
20 related to the protocols.

21 Q Since being appointed, have you and the other directors
22 communicated with the Creditors' Committee and its
23 professionals?

24 A We have. In accordance with the protocol, we have, but we
25 would be doing that anyway, even if the protocols didn't

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1 require it, because we feel it's good for the transparency in
2 this case. But we have met with the Committee professionals
3 many times and with the Committee members themselves via
4 conference call.

5 Q Let's shift gears a little bit and talk about your
6 interaction and the interaction of the other directors with
7 the Debtor and its employees. Have the directors sought
8 information from the Debtor's employees as part of the tasks
9 that you've just described?

10 A Yes, we have.

11 Q And can you describe for the Court, you know, either by
12 name or by title or by department, the places within the
13 organization from which the directors have sought information?

14 A Yeah. So, I can kind of -- maybe it's easiest by
15 department. There have been investment decisions that have
16 been needed to be made. Part of those investment decisions
17 require compliance reviews and a legal understanding of those
18 decisions. So we have reached out to the three different
19 department heads or the individuals responsible within those
20 departments for information that was necessary for us to
21 understand and be able to make decisions.

22 So, as an example, for compliance, making sure that
23 whatever it is that's being asked of us is in accordance with
24 all of the compliance requirements under the various different
25 regulatory authorities, looking at it from a legal point of

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1 view, making sure we understand how that transaction legally
2 might fit in with something else, whether it's a related party
3 issue or making sure that it fits in with the protocols.

4 And then, obviously, from the actual asset manager point
5 of view, the trader, understanding how the impact of our
6 decision would be able to be implemented in the ordinary
7 course process of trading a position as necessary or holding
8 onto a position.

9 Q To the best of your knowledge, have the independent
10 directors timely received the information that was sought to
11 fulfill your duties?

12 A We have.

13 Q And do you have any concerns that anyone at the Debtor has
14 withheld information from you or the other directors?

15 A I do not. In fact, I think they've been very forthright
16 in presenting us with information that we have requested and
17 been very responsive.

18 Q To the best of your knowledge, have either of the other
19 directors ever expressed any concern to you about the flow of
20 information?

21 A No, they have not.

22 Q Do you have any reason to believe that any information
23 provided to the independent directors by any of the employees
24 at the Debtor is false or inaccurate?

25 A No, I do not.

1 Q Have you and the other independent directors requested to
2 meet with certain employees?

3 A We've requested to meet with many of the employees, yes.

4 Q Can you just describe for the Court, again, either by
5 title or by department, the employees with whom the directors
6 have met thus far?

7 A Pretty much every single department head, whether it's the
8 finance office through the chief financial officer, the
9 controller, the -- looking through, then, to the chief
10 compliance officer, the trading groups for a variety of
11 different entities that we have under management. Our private
12 equity group, the leadership in that. The legal group,
13 looking -- we've met with pretty much everybody in the legal
14 group to understand various issues and get a better
15 understanding of the business. Human resources, et cetera.

16 Q Um, --

17 A Communications. Forgot about that one.

18 Q Have you or any of the other independent directors ever
19 expressed any concerns about the reliability of information
20 provided by any of the Debtor's employees?

21 A No, we have not.

22 Q Are you generally familiar with the Court's order that
23 appointed you as an independent director?

24 A I am.

25 Q Are you generally familiar with the duties and

1 responsibilities that have been bestowed upon you as set forth
2 in that order?

3 A I am.

4 Q Have you and the other independent directors discussed the
5 scope and responsibilities for your duties as an independent
6 director?

7 A We have.

8 Q And do you have a general understanding as to what those
9 duties are?

10 A Yes. As the independent directors of Strand, we are the
11 general partner for the Debtor's estate, HCMLP, and it's my
12 understanding that those duties lie to -- go to the Debtor's
13 estate, to maximize value for the Debtor.

14 Q And is it your understanding that the order that was
15 entered was an order that was entered after the Committee and
16 the Debtor reached an agreement for the appointment of new
17 management?

18 A That is my understanding.

19 Q Okay. Did -- have the independent directors taken any
20 steps to make sure that the Debtor's employees are aware of
21 your duties and responsibilities?

22 A Yes. From the first day that we got there, as I mentioned
23 earlier, we've met with all the department heads, explained to
24 them what the roles and responsibilities are. Walked through
25 with them the protocol that is laid out in the order. Asked

1 them to communicate that down into the organization.

2 We continue to walk around the offices. All of our
3 employees, except with the exception of one or two who are
4 overseas, all reside in the offices here in Dallas, and so
5 we've walked around and met with many of the other employees.
6 We've had our communications department put together
7 communication that's been posted on the Intranet and -- the
8 Intranet, the internal communications, and also on the
9 company's website for all employees to see and understand.
10 And we actually will be having an all-hands meeting this
11 afternoon with all of the employees.

12 Q Do you have any concerns that any of the Debtor's
13 employees either don't understand or don't respect the
14 authority and role of the independent directors?

15 A I do not.

16 Q Have either of the other independent directors ever
17 expressed to you any concern at all that any of the Debtor's
18 employees either don't understand or fail to respect the
19 authority and role that the three of you play?

20 A I've not heard any concerns, no.

21 Q Do you have any concerns at all that the Debtors engage in
22 any transactions that don't have the independent directors'
23 knowledge and approval?

24 A I do not.

25 Q Do you -- have the independent directors taken any steps

1 to try to prevent any unauthorized transactions from taking
2 place?

3 A Yes, through communications directly with all of the
4 individuals that could have the authority to do -- or the
5 apparent authority to enter into transactions, making it very
6 clear what our role and responsibility is, making it clear
7 what they have to do in order to execute anything.

8 We've also engaged, through working with the chief
9 restructuring officer and his team, to have them be
10 continuously looking at transactions that take place through
11 the Debtor's systems.

12 Q So, is it your understanding that the CRO has visibility
13 into the movement of the Debtor's assets?

14 A Yes.

15 Q Okay. Do you have any concern that the independent
16 directors are not firmly in control of the Debtor?

17 A I do not.

18 Q Have either of the other independent directors expressed
19 any concern to you at all that the independent directors might
20 not be fully in control of the Debtor?

21 A They have not expressed that.

22 Q I think you were in the courtroom for the argument that
23 preceded your testimony; is that right?

24 A I was.

25 Q Um, --

1 A Or, except for a very short period of time.

2 Q Pursuant to the order that was entered by this Court, is
3 it your understanding that the independent directors have the
4 ability to fire any employee of the Debtor?

5 A That is my understanding and that is exactly what we have
6 the authority to do.

7 Q And is it your understanding that the independent
8 directors have the final authority over transactions that are
9 being made on behalf of the Debtor?

10 A It is very clear in my mind that we have that authority.

11 Q Is there any aspect of the Debtor's business in which any
12 employee of the Debtor has authority that exceeds any of the
13 independent directors'?

14 A When you say exceeds, meaning overrides?

15 Q Correct.

16 A No. There's no -- no one has the authority that overrides
17 our decisions. We may authorize people to do things, but no
18 one has the authority to override our decisions.

19 Q And have the independent directors made that known to all
20 of the department heads?

21 A We have.

22 Q And have the independent directors made that known to all
23 of the employees in the legal department?

24 A We have.

25 Q And have the independent directors made that known to all

1 of the employees in the compliance department?

2 A I think there's only one person who's in Compliance, but

3 --

4 Q That's --

5 A Our chief compliance officer. Yes.

6 Q I do love precision. Thank you.

7 Does the independent -- do you or any of the independent
8 directors have any concerns at all that the message of control
9 has not been adequately conveyed to the people who are
10 executing your orders?

11 A I don't have any concerns about that.

12 Q Okay. Do you believe the independent directors -- have
13 you begun to kind of familiarize yourself with the Debtor's
14 operations, structures, and assets?

15 A Yes, we have.

16 Q And does the Debtor oppose the motion for the appointment
17 of a trustee at this time?

18 A Yes, the Debtor does.

19 Q Can you explain to the Court why the Debtor opposes the
20 appointment of a trustee at this time?

21 A Yes. There is a new management team in place, led by the
22 -- you know, with the independent directors in place, having
23 the authority over all of the actions of the Debtor. And we
24 believe that, based upon the expertise of the three
25 individuals, that we have the right expertise to run the

1 company, between legal, trading, restructuring, investment
2 management, that the expertise that we bring to the table is
3 what is necessary to run the company, and that if there were a
4 change in that it would obviously cause a tremendous amount of
5 disruption in the business. If there were a Chapter 11
6 trustee appointed, that it would have a tremendous negative
7 impact on the Debtor's ability to create the greatest value
8 for our creditors and other stakeholders.

9 Q Have any of the Debtor's employees quit since the
10 independent directors were appointed?

11 A We've lost a couple of people. I just don't remember the
12 exact timeline. But it's -- it has happened. It's -- you
13 know, we've had three -- I think three resignations.

14 Q Okay. Does the Debtor have any concerns that if a trustee
15 is appointed that the Debtor will be at risk of losing senior
16 -- senior management or other -- you know, senior employees or
17 other employees of the Debtor?

18 A Yes, we do.

19 Q And what's the basis for that concern?

20 A Our goal here is to reorganize the company and create the
21 greatest value for our creditors and others. And if an
22 appointment of a trustee was to be so ordered, that it would
23 send the wrong message to the employees and the employees
24 would lose confidence and seek employment elsewhere. And it's
25 a vibrant market for employees right now.

1 Q Based on your experience in the insolvency area, do you
2 have a view as to how the appointment of a Chapter 11 trustee
3 might be viewed in the marketplace?

4 A This is a business that trades on credibility. It's not
5 walking into a store and buying an item off of a shelf of a
6 company that's in Chapter 11, but it's all about the
7 credibility of the individuals. And if an appointment of a
8 Chapter 11 trustee was so ordered, we think it would have a
9 negative impact on our ability to continue to have that
10 relationship with the third parties that we have to deal with
11 on a daily basis.

12 Q Do you have a view as to whether or not the appointment of
13 a trustee could impair the Debtor's ability to reorganize?

14 A I do.

15 Q And can you share that view with the Court?

16 A I think it's for the exact same things that I just
17 mentioned. Our ability to create the greatest value and
18 reorganize and -- would be impacted by, you know, loss of
19 personnel who might not want to work in that environment and
20 also the loss of the relationships in the trading partners
21 that we have to deal with. And so it would -- it would
22 inhibit our ability to reorganize properly for this and create
23 greatest value.

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

25 THE COURT: All right. Cross?

1

CROSS-EXAMINATION

2

BY MS. LAMBERT:

3

Q Hello again. We talked before the hearing. But my name

4

is Lisa Lambert. I'm with the U.S. Trustee's Office.

5

A Good morning, Ms. Lambert.

6

Q How are you?

7

A Good.

8

Q So, you're an independent director of Strand, and Strand

9

is the general partner of the Debtor, right?

10

A That's correct.

11

Q And your testimony is that the duties to the Debtor trump

12

any duties to the stockholders of Strand, right?

13

A It is my testimony that, as the general partner, our

14

duties are to the Debtor's estate and to protect the Debtor's

15

estate and create the greatest value there, which would

16

ultimately benefit Strand.

17

Q Okay. So is it your testimony that there's no duty to the

18

stockholders of Strand?

19

A Our duty is to the Debtor's estate as the general partner,

20

and that would then protect Strand.

21

Q So your perspective is the duties are not in conflict?

22

They are coextensive, right?

23

A I apologize. I don't know -- I'm not a lawyer, so --

24

Q I'm going to --

25

A -- the reference to coextensive might be something that's

1 a legal term, but --

2 Q But the duties are the same, --

3 A Uh, --

4 Q -- is your testimony?

5 A I don't know if they're the same. My -- my view is the
6 duties are to the Debtor's estate as the general partner of
7 Strand.

8 Q Okay. Mr. Dondero is the -- still a stockholder of
9 Strand, right?

10 A As I understand, yes.

11 Q And Mr. Dondero currently is an employee of the Debtor?

12 A He is a nonpaid employee of the Debtor.

13 Q So if the decision came to terminate Mr. Dondero as an
14 employee, do you think it impacts his -- your fiduciary role
15 to him as the stockholder?

16 MR. MORRIS: Objection, Your Honor, to the extent all
17 of this calls for a legal conclusion. I just want to make
18 sure that we're just talking about the witness's lay
19 understanding.

20 MS. LAMBERT: No. His understanding.

21 THE COURT: Okay. Over...

22 MS. LAMBERT: His under...

23 THE COURT: Overruled.

24 BY MS. LAMBERT:

25 Q What is your understanding?

1 A I'm sorry. Could you repeat the question, Ms. Lambert?

2 Q Mr. Dondero is an employee of the Debtor, whether unpaid
3 or not. And does the board's -- the directors' decisions
4 about whether to maintain him or terminate him, is that
5 impacted by his holding all of the stock of Strand?

6 A From my perspective, it would have no impact. If there
7 was a decision to be made to keep him on board or terminate,
8 it would have no impact as to what his holdings are in Strand.

9 Q Why is that?

10 A Because our duties in managing the Debtor would be to
11 figure out what the right answer is for the Debtor. And if
12 that decision was to either keep him in place, as we currently
13 have, or to terminate him because there was no longer a need
14 for him at that level, it would be a decision we would make on
15 behalf of managing the Debtor.

16 Q You would agree with me that he might have a different
17 perspective on that, right?

18 A I don't know what his decision -- what his view would be.
19 It may be different; it may not be. It depends on the facts
20 and circumstances at the time that we would have to make that
21 decision.

22 Q Now, you testified that you've been very busy with the
23 activities of the Debtor. Did you have an opportunity to read
24 the Court's ACIS opinion?

25 A Yeah. I've read multiple decisions or multiple filings on

1 -- on ACIS. I --

2 Q I'm talking about the published opinion. It's a little
3 bit lengthy. You would have remembered seeing it, I think.

4 A I believe I did read that prior to our appointment, yes.

5 Q Okay. And then did you also read the Redeemer arbitration
6 awards?

7 A I've read a few different Redeemer arbitration awards. I
8 think there were two or three of them.

9 Q Two.

10 A Yeah.

11 Q And I'm talking about the partial --

12 A Yeah.

13 Q -- and the final judgments.

14 A Yes, I have.

15 Q Okay. You're aware that both of those opinions talk about
16 the attorneys testifying with plausible deniability, --

17 MR. MORRIS: Your Honor?

18 MS. LAMBERT: -- the in-house counsel?

19 MR. MORRIS: Your Honor, I would just ask the witness
20 not to answer the question until I state my objection.

21 This is exactly why we objected to the relevance of these
22 exhibits into evidence, and now she's just doing orally what
23 she has not yet been able to do with the admission of the
24 documents.

25 She should establish a foundation first that there's

1 anybody in any of those decisions who are in control of the
2 Debtor or who are deemed to be current management. Because
3 the evidence at this point I think is undisputed that the
4 independent directors are in fully -- are in full control of
5 this enterprise. They -- everybody reports to them. All
6 decisions are made with their knowledge and approval. And
7 there's no evidence to the contrary.

8 So I don't, you know, I don't think the U.S. Trustee
9 should be able to get through the back door what they're not
10 able to get through the front door.

11 THE COURT: I sustain that objection.

12 BY MS. LAMBERT:

13 Q Have you worked with the in-house legal department?

14 A Of the Debtor?

15 Q Of the Debtor.

16 A Yes.

17 Q Can you name for me the employees of the legal department
18 of the Debtor?

19 A I probably can't name all of them, but starting from the
20 top, Scott Ellington. Isaac Leventon. J.P. Sevilla. Tim
21 Cournoyer. Thomas Surgent is an in-house -- he's a lawyer.
22 He's also our chief compliance officer. I don't know
23 technically which -- whether he covers both. And then there
24 have been others in the group that I -- I don't remember all
25 the names. But those are the main folks that we've had to

1 deal with.

2 Q And Compliance is part of Legal, right?

3 A I don't technically know. I think it stands on its own.

4 But Mr. Surgent is an attorney, as I understand.

5 Q And how often have you dealt with Mr. Ellington?

6 A In the seven days that we've been there, probably five or
7 six of them he's had to travel for, you know, for work, so we
8 haven't always, you know, seen him every day. But pretty much
9 every day, including yesterday, when we were in the office.

10 Q And Mr. Leventon, how often have you consulted with him?

11 A Unfortunately, not as often as we would like, because Mr.
12 Ellington -- Mr. Leventon had an auto accident that he was
13 involved with, so he's been out of the office. But I've dealt
14 with him a little bit over the last several days as he, you
15 know, as he's allowed to -- as he's recuperating.

16 Q So, the board has been talking with the legal department
17 almost every day, right?

18 A Yes.

19 Q And the legal department in this particular business is
20 particularly important for management decisions, right?

21 A It's important to get information from them to inform us
22 as the managers, meaning the board, yes.

23 Q You rely on their advice, don't you?

24 A We take into consideration what they -- what they share
25 with us, yes.

1 Q And they have expertise in the areas of the legal issues
2 that are central to this case, right?

3 A They have expertise. Fortunately, the board also has a
4 tremendous amount of legal expertise, both in the -- specific
5 to investment management and also corporate governance. And
6 having been a CEO and a CRO and been involved for the last 35
7 years in some highly-contentious, litigious litigations, I've
8 unfortunately picked up a little bit of how to understand what
9 is given to me and interpret it.

10 Q All right. Have you had any hesitation in relying on
11 their legal advice?

12 A No.

13 Q Are you aware that the -- that the Redeemer's arbitration
14 award determines that their advice ignored the advice of
15 outside counsel?

16 MR. MORRIS: Objection, Your Honor. Relevance.

17 THE COURT: Sustained.

18 MS. LAMBERT: Your Honor, the relevant --

19 BY MS. LAMBERT:

20 Q Are you aware that the ACIS Court also determined that Mr.
21 Ellington and Mr. Leventon were providing affidavits for the
22 Debtor rather than the Debtor, --

23 MR. MORRIS: Object, Your Honor.

24 MS. LAMBERT: -- Mr. Dondero?

25 MR. MORRIS: Same objection.

1 THE COURT: Sustained.

2 MS. LAMBERT: Your Honor, these -- both of these
3 questions go to our presentation that the in-house counsel is
4 not providing advice that's in the interest of the Debtor and
5 has ignored outside counsel. It's relevant to whether -- to
6 the case if current management knows that, which the evidence
7 is unclear, and whether they're doing something about it.
8 That's the United States Trustee's case.

9 THE COURT: All right. I don't think you've laid the
10 foundation to go this route.

11 MS. LAMBERT: Okay.

12 BY MS. LAMBERT:

13 Q You're relying on the advice of the legal counsel on a
14 daily basis, right?

15 A We take information from counsel and we process it. We
16 talk as a group, meaning the board. And as I referenced
17 earlier, two of our board members happen to be experienced
18 lawyers, one of whom is an expert in corporate governance and
19 bankruptcy law, having been a judge for 14 years. We sift the
20 information that comes from all different parties and make our
21 decisions based upon our experience in these situations. We
22 talk to outside counsel also as necessary.

23 Q Are you aware of any concerns about the advice that your
24 legal counsel in-house has provided to you?

25 A I'm sorry. Could you -- are -- excuse --

1 Q Are you aware of any concerns about the advice that the
2 in-house legal counsel has provided to you?

3 A Nothing that's been provided to us, no. No concerns about
4 that.

5 Q Are you aware of any concerns historically?

6 A I understand that there -- and have read that there were
7 issues related to that on a historical basis, yes.

8 Q Has that impacted the way you interact with the legal
9 counsel?

10 A Sure. A healthy dose of skepticism is always important
11 whenever you get into a new situation, whether there are those
12 allegations or rulings or what have you. It's always
13 important to have a healthy set of skepticism on these things.

14 Q All right.

15 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
16 the admission of U.S. Trustee's 1, 2, and 3.

17 MR. MORRIS: *Voir dire*, Your Honor?

18 THE COURT: Pardon?

19 MR. MORRIS: *Voir dire*? Can I just ask a few
20 questions?

21 THE COURT: You may. Uh-huh.

22 VOIR DIRE EXAMINATION

23 BY MR. MORRIS:

24 Q Sir, has -- have the members of the legal department been
25 cooperative?

1 A Yes.

2 Q Have the members of the legal department been responsive
3 to the independent directors' requests?

4 A Yes, they have.

5 Q Have the members of the legal department been authorized
6 to do anything without the independent directors' knowledge
7 and approval?

8 A No.

9 Q Are the independent directors aware of any member of the
10 legal department having done anything without the knowledge
11 and approval of any of the independent directors?

12 A I am not.

13 Q Do the members of the legal department all report to the
14 independent directors?

15 A They report through the legal department organization,
16 which reports to the independent directors.

17 Q And the independent directors ultimately have the sole
18 authority as to whether or not to fire any member of the legal
19 department, as true with any member of the organization; is
20 that right?

21 A That is correct.

22 Q All right.

23 MR. MORRIS: I have no further questions.

24 MS. LAMBERT: Your Honor, the U.S. Trustee contends
25 that this is -- these opinions are highly relevant to the

1 board's understanding of the current situation. The
2 cooperativeness and the responsiveness and the doing of the
3 acts for the board members is not the issue if the information
4 that is being provided to the board is fundamentally
5 unreliable. And that's the issue the U.S. Trustee wants to
6 raise.

7 THE COURT: Okay. I sustain the objection and I
8 overrule the request to have the Court admit Exhibits 1
9 through 3.

10 MS. LAMBERT: Your Honor, is it necessary for me to
11 do an offer of proof, given that these exhibits are already in
12 the binder and have been -- everybody is familiar with the
13 desire that they be admitted?

14 THE COURT: All right. Well, if you're not wanting
15 any testimony, if you're just wanting the admission of the
16 exhibits, they will certainly be included in the record as
17 offered but not admitted. So if there's an appeal, they're in
18 there for the Court of Appeals to see.

19 CROSS-EXAMINATION, RESUMED

20 BY MS. LAMBERT:

21 Q So, it's your testimony that the Debtor's legal counsel
22 have been cooperative, responsive, and doing acts for the
23 board, and that ultimately the board acts as the sole
24 authority, right?

25 A That's correct.

1 Q Has the legal counsel provided the board with any advice
2 that they have -- that the board has disagreed with?

3 MR. MORRIS: Objection, Your Honor. To the extent
4 that this calls for the disclosure of attorney-client
5 communications, I would object.

6 THE COURT: All right. If you can answer without
7 disclosing privileged information, you may answer.

8 THE WITNESS: Okay. May I ask if you could repeat
9 the question, just so I --

10 BY MS. LAMBERT:

11 Q Has the board reached a determination that disagreed with
12 the legal counsel's recommendations?

13 A I don't believe so.

14 Q Has the board sought outside legal counsel after receiving
15 a report from in-house counsel that they -- that they wanted
16 more information on?

17 A That would be very common practice for getting information
18 from in-house counsel, then getting additional information
19 from outside counsel. It's -- we have done that. I would say
20 that's just a normal part of any organization, and I would do
21 that in every situation I'm involved with, --

22 Q Okay. But --

23 A -- if it was so relevant.

24 Q But I'm asking a little different question, which is, to
25 date, in this case, has the board done that?

1 A Have we sought advice from outside counsel on something --

2 Q That the in-house counsel provided advice on.

3 A Yes. And as I said, I think that's just a normal part of
4 our understanding information so that we can make decisions.

5 Q Now, you testified that having a trustee would impact the
6 Debtor's credibility in the market, right?

7 A That's my --

8 Q And ACIS --

9 A -- view.

10 Q -- had a trustee, correct?

11 A As I understand, yes.

12 Q And ACIS reorganized, didn't it?

13 A I am not familiar with the ACIS case, you know, whether it
14 was a reorganization. I'm just not familiar with the details
15 of it.

16 Q Okay. So, earlier, I had asked you if you were familiar
17 with the ACIS opinion and with the ACIS case, and my
18 understanding was you had read documents in the ACIS case.
19 Right?

20 A I've read them. I haven't studied them. I believe ACIS
21 was a reorganization, but I'm not familiar with the details of
22 it.

23 MS. LAMBERT: No further questions.

24 THE COURT: All right. Any other examination?

25 MR. MORRIS: No, Your Honor.

1 THE COURT: All right. Thank you. You're excused.

2 (The witness steps down.)

3 THE COURT: Does the Debtor have other evidence?

4 MR. MORRIS: No, Your Honor. The Debtor rests.

5 THE COURT: All right.

6 MR. MORRIS: Oh, I apologize. The only exhibit that
7 we did have that we noted on the exhibit list was the Court's
8 order and the exhibits that appointed the independent
9 directors. The protocols. We'd just --

10 THE COURT: All right. Well, the Court can take
11 judicial notice of those.

12 MR. MORRIS: Exactly. And just for the record, it's
13 at Docket #354-1.

14 THE COURT: Thank you.

15 MR. MORRIS: And I have a binder of exhibits if --

16 THE COURT: All right. You may approach with that.
17 Thank you.

18 All right. And the Committee said it did not intend to
19 put on evidence, correct?

20 MR. TWOMEY: That's correct.

21 THE COURT: All right. Any rebuttal evidence?

22 MS. LAMBERT: No, Your Honor.

23 THE COURT: All right. I'll hear closing arguments.

24 CLOSING ARGUMENT ON BEHALF OF THE U.S. TRUSTEE

25 MS. LAMBERT: Your Honor, Section 1104(a) is

1 structured with the clause about fraud, dishonesty, and gross
2 [mis]management, referring to -- management. Thereafter, the
3 statute says "or for other cause." The structure
4 grammatically of the statute is important because the
5 management provisions are one set and the "or for cause" is
6 another.

7 The Fifth Circuit precedent is clear that there can be
8 other types of cause. The inability to manage this Debtor and
9 to rely on its in-house legal counsel is pervasive in the
10 prior opinions and remains an issue today.

11 It is for this reason that the U.S. Trustee sought the
12 admission of Exhibits 1 through 3. There are not just issues
13 with Mr. Dondero, but there remains an issue with Dondero,
14 which brings me to point two, which is that the Delaware
15 corporate statute requires that there be a fiduciary duty to
16 him. There are many contexts where one can contract around a
17 fiduciary duty in partnerships, limited partnerships, but not
18 in corporations, because corporations have the stockholder and
19 creditor function. There is no evidence, no evidence, about
20 what creditors there might be of Strand. We have no knowledge
21 of that. And the Delaware case law is that there is a
22 fiduciary duty to creditors.

23 But if there are no creditors, then that duty runs to Mr.
24 Dondero. This remains a conflict of interest issue for
25 consideration. And it is an actual conflict, especially

1 because Mr. Dondero remains in the Debtor as an employee. And
2 the evidence is that, today, he, Mr. Ellington, and Mr.
3 Leventon, all of whom have been cited in prior opinions as
4 trying to establish plausible credibility, remain at the
5 Debtor, advising the management. And the board -- no one
6 questions that the board is some of the best people that we
7 have. But the issue is that, as a board, they are separate
8 from the Debtor, and there is a CRO in, but the CRO, I
9 anticipate the evidence will be that the CFO relies on the in-
10 house legal counsel, and that's -- the deposition transcript
11 cites go to the reliance on in-house legal counsel for major
12 decisions.

13 And so this remains a concern. And it is within Section
14 1104.

15 Finally, Your Honor, the effort to seal matters, including
16 the *sine qua non*, the catalyst for the bankruptcy filing, the
17 arbitration award, impede the ability of the public to
18 understand the facts of this case, impede the ability of the
19 regulators to understand this case, and it's too far. For
20 these reasons, the U.S. Trustee moves for the appointment of a
21 Chapter 11 trustee.

22 THE COURT: Let me just ask. I'm going to hit on
23 something you said there at the end, because you've said it a
24 few times. It concerns me a little. The words I remember Mr.
25 Pomerantz using on day one, and maybe using a couple of times

1 thereafter, was that the Redeemer Committee's arbitration
2 award created a liquidity problem at the Debtor's level and
3 that was the impetus for the bankruptcy.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: That is a little bit more of a narrow
6 statement than what I think your last sentence has implied.

7 MS. LAMBERT: Well, --

8 THE COURT: I mean, I hear what you're saying, tell
9 me if I'm hearing wrong, that there are statements in that
10 arbitration award that were the impetus for the bankruptcy
11 filing and the public needs to hear that. But that's not what
12 I heard Mr. Pomerantz say from day one. He said the
13 arbitration award, \$180 million in amount or whatever it was,
14 in that neighborhood, caused a liquidity problem that caused
15 the bankruptcy.

16 MS. LAMBERT: Yes, Your Honor. But the testimony is
17 today that the Debtor's credibility in the market is
18 important, and the Redeemer arbitration award and its basis --
19 I mean, it's not just that it was \$180 million. It's that
20 there was a basis for it -- they caused this bankruptcy [five-
21 second audio recording malfunction at 11:40 a.m.] award.

22 THE COURT: Okay. Well, again, maybe I shouldn't
23 have opened up that can of worms, but I just felt like there
24 was incorrect --

25 MS. LAMBERT: The --

1 THE COURT: -- repeating of the words of the Debtor.

2 MS. LAMBERT: The Court is right to be precise, and
3 it -- I suppose, from the U.S. Trustee's perspective, it's the
4 straw that broke the camel's back, and that's what we meant in
5 terms of a catalyst. And it is a judgment. But normally the
6 public has the opportunity to know what the basis of the
7 judgment is. And the basis of that ruling.

8 THE COURT: All right. Well, again, this is an issue
9 that may come up on another day and the Court will decide
10 whether it needs to come into the record. But, today, I
11 didn't think it was relevant for the motion before the Court.

12 All right. Anything else?

13 MS. LAMBERT: Finally, Your Honor, the evidence is
14 that, historically, the Debtor has had oversight externally as
15 a result of the same kind of problems that led to this, and
16 yet that did not work. And so for all those reasons, the U.S.
17 Trustee moves for the appointment of a trustee.

18 THE COURT: All right. Other arguments?

19 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

20 MR. POMERANTZ: Good morning again, Your Honor. Jeff
21 Pomerantz; Pachulski Stang Ziehl & Jones; on behalf of the
22 Debtor.

23 Just to pick up on the last point of your colloquy with
24 Ms. Lambert, Your Honor was correct. My statements at the
25 beginning of the case were that the reason the case was filed

1 was because of the Debtor's inability to satisfy the award
2 which was about to be confirmed in a judgment. It's not
3 inconsistent with what the testimony you heard today that the
4 disclosure of that award in the current context, where
5 management has completely changed, is totally irrelevant and
6 would be unduly prejudicial, and that is why we have
7 consistently sought to have that sealed and why we have
8 indicated to Your Honor and Your Honor has ruled that it's not
9 relevant for today's hearing.

10 Your Honor, the Trustee seeks appointment of a Chapter 11
11 trustee, notwithstanding Your Honor's January 9th approval of
12 a settlement between the Debtor and the Committee that
13 restructured management. And I think it's important to just
14 highlight some of the things that the settlement that Your
15 Honor approved did.

16 First, it involved a sweeping governance change,
17 highlighted by the establishment of a new board of directors
18 with three individuals who have exceptional reputations and a
19 diverse skillset that makes them unquestionably qualified to
20 manage a complex business such as the Debtor.

21 It also involved the removal of Mr. Dondero as the
22 Debtor's decision-maker, along with his agreement, which is
23 the subject, as Your Honor pointed out, of a separate court
24 order, not to interfere with the board's performance of its
25 duties, along with his agreement not to terminate substantial

1 contracts his affiliated entities have with the Debtor.

2 The settlement also established detailed operating
3 protocols which provide significant transparency regarding the
4 Debtor's operations and ensures, among other things, that the
5 Committee will have visibility into any related transactions
6 before they are consummated.

7 The settlement also granted standing to the Committee to
8 investigate and prosecute certain insider claims, along with
9 broad access to the Debtor's books and records, including
10 attorney-client information necessary to prosecute those
11 claims. While perhaps not unprecedented, this type of
12 authority being granted to Committee at this early in the case
13 is rarely granted and is quite unusual.

14 It is against this backdrop, Your Honor, that the Court
15 must evaluate the Trustee's motion. The applicable standard,
16 as you have heard, is under 1104 of the Bankruptcy Code, which
17 provides that the Court shall appoint a trustee for cause or
18 if the appointment is in the best interest of parties in
19 interest or for other cause.

20 As Your Honor wrote in the *Patman Drilling* case years ago,
21 "Appointment of a Chapter 11 trustee is a draconian remedy,
22 and there is a strong presumption that Chapter 11 -- a debtor
23 shall remain in possession."

24 And notwithstanding the Trustee's argument to the
25 contrary, the courts in the Fifth Circuit, including Your

1 Honor in *Patman Drilling*, follow *Cajun Electric* and require a
2 movant to demonstrate that appointment of a trustee is
3 justified by clear and convincing evidence.

4 Not only has the U.S. Trustee not met his burden, but the
5 facts demonstrate overwhelmingly that allowing the Debtor to
6 remain in possession is clearly in the best interests of all
7 parties in interest. In fact, no stakeholder supports the
8 U.S. Trustee's motion, and the Creditors' Committee, which
9 comprises the vast majority of unsecured claims in this case,
10 opposes the motion.

11 This bankruptcy case has been pending for over three
12 months and has been marked by significant acrimony and
13 litigation over governance and control. With the installation
14 of the board, the establishment of the protocols, the case is
15 finally on a positive trajectory, and the Debtor, through the
16 independent board, is now in a position to sit down and
17 cooperatively work with the Committee to develop a plan so
18 that the Debtor can exit Chapter 11 as quickly as possible.
19 Appointment of a Chapter 11 trustee would create further
20 uncertainty, adversely affect operations, and further delay
21 the efforts of the Debtor towards developing an exit strategy.

22 The Trustee has advanced three principal arguments on why
23 the Court should appoint a Chapter 11 trustee, none of which
24 are persuasive.

25 First, the United States Trustee argues that a Chapter 11

1 trustee is the only remedy to address various forms of
2 malfeasance that courts have found the Debtor to have
3 committed in the past. In so arguing to the Court, the U.S.
4 Trustee ignores the court-approved settlement, ignores the
5 existence of the independent board, ignores the removal of Mr.
6 Dondero from any position of control in the Debtor.

7 Section 1104 authorizes the appointment of a trustee for
8 cause, including fraud, dishonesty, incompetence, or gross
9 [mis]management of the affairs by current management. Case
10 law is clear that the focus is on the actions of current
11 management and not prior management. And, in fact, in the
12 *Bayou* case from the Second Circuit, which we identified and
13 cited, the Court refused to appoint a Chapter 11 trustee where
14 new management had been installed and there had been no
15 allegation that new management had committed any of those
16 acts.

17 The Debtor doesn't dispute that, prepetition, the Debtor
18 was involved in litigation where the courts found wrongdoing
19 by the Debtor. However, those findings are irrelevant if the
20 Debtor is under new management. New management, through the
21 independent board, is now in control, managing the Debtor's
22 operation. And importantly, James Dondero is not in a
23 position of control anymore. And as I said, there have been
24 no allegations that current management has engaged in any type
25 of fraud or mismanagement or done anything not to engender

1 confidence by the Court or the creditors. The independent
2 board consists of individuals with sterling reputations with
3 substantial skill.

4 Second, the Trustee argues that the independent board is
5 incapable of effectively managing the Debtor's affairs; the
6 structures implemented in other situations to combat Debtor's
7 bad acts have failed. Essentially, the Debtor [sic] is
8 arguing that other members of management, including the legal
9 team, may remain employed by the Debtor and the board will not
10 be able to prevent the Debtor from engaging in the same type
11 of activities that occurred prior to Chapter 11.

12 There is absolutely no evidence, Your Honor, to support
13 the U.S. Trustee's unfounded allegations. Rather, all the
14 evidence before Your Honor contradicts this argument and
15 demonstrates that the independent board has been and continue
16 to be an independent fiduciary to the estate and ensuring that
17 the Debtor takes only actions that are, in fact, benefiting
18 the estate and all parties in interest.

19 The only evidence before Your Honor regarding this is the
20 testimony you heard from John Dubel, one of the independent
21 directors. He testified as follows. Since his appointment
22 was effective on January 9th, at least one member of the board
23 has been present at the Debtor's headquarters for six of the
24 seven business days. Mr. Dubel himself has worked over 80
25 hours on the Debtor since the 9th. He testified that he

1 believes that other members of the board have put in the same
2 amount of work.

3 The board conducted a board meeting immediately upon its
4 appointment on January 9th and January 10th, and has had many
5 other informal discussions among themselves on a daily basis.

6 Mr. Dubel testified that the board has received
7 comprehensive presentations from counsel, from the CRO and his
8 team, and from each of the Debtor's department heads, and is
9 in daily communications with all such parties. He testified
10 that such presentations have covered the Debtor's structure,
11 organizations, operations, assets and liabilities, and the
12 rights and responsibilities of the board.

13 He testified that the board is reviewing and overseeing on
14 a daily basis implementing -- implementation of the protocols
15 approved by the Court.

16 He testified that, as any good board and fiduciary would
17 do, he has reached out and he has been in contact with the
18 Committee, the Committee members and their advisors on a
19 variety of issues. He's also testified that he has -- that
20 the board has reached out to department heads, who have
21 provided information without question to the board, and that
22 he believes and other members of the board believe that all
23 such information is truthful and accurate information.

24 He's testified that the authority of the board has been
25 communicated to employees, and that he believes and other

1 directors believe that the employees are respecting such
2 authority and that the CRO and the independent board are
3 providing critical interaction with the other Debtor's
4 employees and approval of transactions that are required.

5 He's testified that resolution of the corporate governance
6 will now allow the Debtor to move forward towards pursuing a
7 plan, and that appointment of a trustee would be very divisive
8 to the Debtor's operations and adversely affect operations.

9 In fact, Your Honor, the uncontradicted evidence is that
10 the independent board members are doing exactly what an
11 independent fiduciary like the trustee should or would be
12 doing: assessing the Debtor's operations and assets and
13 liabilities and evaluating how to maximize the Debtor's assets
14 for all stakeholders.

15 Moreover, the Trustee's argument that prior structures
16 implemented were insufficient is irrelevant. Never before has
17 an independent board been installed in this company, and never
18 before has Mr. Dondero been removed completely from a position
19 of authority.

20 It is also telling that two of the litigants who have had
21 significant dealings with the Debtor and its management over
22 the last years -- the Redeemer Committee and ACIS, both
23 members of the Committee -- oppose the U.S. Trustee's motion
24 and believe that the current structure is in the best
25 interests of the Debtor's stakeholders.

1 I would like to turn, Your Honor, to the last of the U.S.
2 Trustee's arguments with respect to the fiduciary duty, which
3 the Trustee says constitutes other cause because of some
4 apparent conflict. First, Your Honor, I would mention that
5 there is nothing in the pleadings regarding the fiduciary duty
6 issue. When --

7 MS. LAMBERT: Your Honor, I object.

8 MR. POMERANTZ: Excuse me.

9 MS. LAMBERT: I couldn't put it in the pleadings
10 because it didn't exist.

11 THE COURT: I'm not sure --

12 MR. POMERANTZ: Your Honor?

13 THE COURT: -- I understand the objection. He's
14 about to say what was in your pleadings.

15 MS. LAMBERT: Right. And he's saying that I should
16 have put it in my pleading, which was filed before there was
17 any management agreement, at a time when it looked like there
18 wasn't going to be a management agreement.

19 MR. POMERANTZ: Your Honor, then --

20 THE COURT: Well, --

21 MR. POMERANTZ: All right.

22 THE COURT: -- clarify. You were about to say
23 there's nothing about --

24 MR. POMERANTZ: Yes.

25 THE COURT: -- breach of fiduciary duty in --

1 MR. POMERANTZ: I was going to say, --

2 THE COURT: -- the motion?

3 MR. POMERANTZ: -- Your Honor, that the motion that
4 was filed was before the Committee settlement.

5 THE COURT: Right.

6 MR. POMERANTZ: The Committee settlement happened.
7 We opposed. In our position, we addressed the fiduciary duty
8 issue head-on. The U.S. Trustee chose not to file a reply.

9 THE COURT: Okay.

10 MR. POMERANTZ: The U.S. Trustee stood up and, Your
11 Honor, cited case law on what Delaware fiduciary duty is.
12 There is nothing in their pleadings. And the argument that
13 she -- the Trustee could not --

14 MS. LAMBERT: I again object.

15 MR. POMERANTZ: -- put that in the pleading --

16 MS. LAMBERT: The reason that they raised this in
17 their response is that, and they said in there, we anticipate
18 the U.S. Trustee will raise it, it's because I raised it at
19 the hearing on the management.

20 MR. POMERANTZ: Well, Your --

21 THE COURT: Okay. I overrule --

22 MR. POMERANTZ: Your Honor?

23 THE COURT: -- that objection. You can make your
24 argument.

25 MR. POMERANTZ: I will move on. It -- my only point

1 was there was a little bit of trial by ambush here, with
2 counsel standing up at the podium, talking about case law and
3 talking about Delaware fiduciary duties. That's not in the
4 record. But I'll move on, Your Honor.

5 Second, this issue was raised at the January 9th hearing
6 and Your Honor ruled that there was no conflict. So, in some
7 sense, it is res judicata to the issues that are here.

8 And most importantly, Your Honor, the Committee, as you
9 know, has been extremely active in this case, is represented
10 by competent professionals. There is no way that the
11 Committee would have allowed management to come in if they
12 believed that management would be subject to competing duties.

13 Nevertheless, Your Honor, I'd like to address the argument
14 head-on. The Debtor is a limited partnership. The limited
15 partnership is managed by Strand, which is the general
16 partner. And the management of the Debtor is carried out by a
17 board that has been installed at Strand at the general
18 partnership level.

19 When the Debtor filed its bankruptcy, its managers at
20 Strand owed a fiduciary duty to the bankruptcy estate. The
21 managers owe a fiduciary duty to the bankruptcy estate in the
22 same way that a trustee, if appointed, would owe a fiduciary
23 duty to the bankruptcy estate. And the argument that Jim
24 Dondero is an equity holder at Strand and somehow creates a
25 conflict is a red herring. Strand is a single-purpose entity.

1 All it does is manage the Debtor. Strand has an obligation to
2 manage the Debtor appropriately. If the board at Strand is
3 fulfilling its duties to the Debtor, it's fulfilling Strand's
4 duties to the Debtor.

5 So, in other words, Your Honor, what the board does that
6 is in honor of its fiduciary duties: makes sure Strand is
7 complying with its obligations and makes sure Strand is not
8 subject to any claims that they have not fulfilled their
9 obligations under the management agreement.

10 This was the situation in a case before Judge Isgur in
11 2014 in the *Houston Regional Sports* case, which we cite in our
12 papers at 505 B.R. 468. The debtor, a limited partnership,
13 was managed by a general partnership. The partners, ultimate
14 partners, disagreed in how the company should proceed, and the
15 company found itself subject to an involuntary bankruptcy
16 proceeding. One of the partners, the Houston Astros -- I
17 guess this is rag on Houston Astros week -- was --

18 THE COURT: Don't mention that, please.

19 MR. POMERANTZ: -- appointed a board member to the
20 general partner and argued to Judge Isgur that that board
21 member had duties to it as the general partner and that
22 because of that, and since its consent was needed for any
23 restructuring, that any Chapter 11 would have to fail.

24 Judge Isgur said no, no, no. A general partner, a board
25 member of a general partner, regardless of that it was

1 appointed by the Houston Astros, who may have different views,
2 had the obligations to the estate and to fulfill its the
3 obligations to the estate, and that if they did anything in
4 violation of that, it would create liability.

5 So that Judge Isgur directly challenged and opposed the
6 conclusion that there's somehow a different fiduciary duty.
7 Now, he did sort of, in a footnote, say that he wasn't finally
8 determining fiduciary duty issues, but he did not find any
9 conflict.

10 The same is true here. And the argument that there is
11 somehow this conflict, somehow these competing interests,
12 somehow that the board may act in favor of Jim Dondero that's
13 not in favor the board and that's different than a trustee,
14 that is essentially a red herring. It's hornbook law. When
15 an estate files bankruptcy, its managers owe a fiduciary duty
16 to the estate.

17 And who do we have on our board? We have a former judge.
18 What better to have on a board, considering what its fiduciary
19 duties are, as a former judge, a former bankruptcy judge who
20 is well-familiar with what fiduciary duties exist and to whom
21 they exist?

22 So, Your Honor, we don't think there's a conflict, and
23 there's certainly not a conflict that would rise to the level
24 of "other cause" that the Trustee is trying to fit and
25 shoehorn its motion for appointment of a trustee.

1 In conclusion, Your Honor, the Trustee has not carried its
2 burden of establishing that cause exists for the appointment
3 of a Chapter 11 Trustee, that "other cause" exists, or that it
4 is in the best interest of parties in interest. The corporate
5 governance structure approved by the Court renders moot the
6 concerns about the prepetition conduct and Debtor's prior
7 management, and there's nothing been adduced through the
8 testimony to lead to the conclusion that any of the members of
9 the -- employees of the Debtor are not doing what they're
10 supposed to be doing, reporting to the independent board, and
11 that the independent board cannot fulfill their duties.

12 Appointment of a Chapter 11 trustee would adversely impact
13 the Debtor's operations, jeopardize restructuring efforts.
14 And for all of these reasons, Your Honor, the Debtor requests
15 that the Court deny the Trustee's motion.

16 THE COURT: All right. Mr. Twomey, anything from
17 you?

18 CLOSING ARGUMENT ON BEHALF OF THE OFFICIAL COMMITTEE

19 MR. TWOMEY: Thank you, Your Honor. I will be brief,
20 but I do want to provide the Committee's perspective on this,
21 given in particular 1104's focus on stakeholders.

22 As Your Honor is aware, the Committee represents the
23 primary economic stakeholders in this case. Even more than
24 most cases, the unsecured creditors in this case comprise the
25 vast majority of creditors, given how little secured debt

1 there is. And Your Honor, the Committee which represents
2 those unsecured creditors strongly disputes the notion that
3 appointment of a Chapter 11 trustee would be in the best
4 interest of stakeholders, for many of the same reasons as Mr.
5 Clemente discussed at the prior hearing in support of the
6 settlement.

7 The Committee believes the settlement approved by this
8 Court a week and a half ago, and the corporate governance
9 structures embodied therein, provide the Debtor with the best
10 opportunity to maximize value in this case.

11 As described earlier, the Committee believes that the
12 board members are highly qualified, with complementary
13 skillsets. It's hard to imagine that there's a single trustee
14 out there that could match their combined experience and
15 expertise.

16 Any Chapter 11 trustee would face the same challenges that
17 the board is facing, and those challenges just wouldn't
18 magically go away by appointment of a trustee.

19 In addition, appointment of a Chapter 11 trustee at this
20 point would lead to more delay getting up to speed, additional
21 cost for the trustee trying to get up to speed in the case,
22 and it obviously would basically undo the settlement that the
23 Committee and the Debtor spent so much time trying to pull
24 together.

25 As Your Honor has heard today, the board clearly has

1 rolled up their sleeves. They're becoming heavily involved in
2 the case. And the Committee also has information and
3 oversight rights and standing to pursue certain claims under
4 the settlement that provides an additional check on all of
5 this process going forward.

6 So, Your Honor, in light of the foregoing, especially the
7 settlement that Your Honor approved a little over ten days
8 ago, the U.S. Trustee simply can't meet its burden of showing,
9 under these circumstances, that cause warrants appointment of
10 a Chapter 11 trustee or that appointment of a Chapter 11
11 trustee would be in the best interest of stakeholders.

12 So, Your Honor, the Committee respectfully requests that
13 the motion be denied.

14 THE COURT: Counsel for UBS, did you have something?

15 CLOSING ARGUMENT ON BEHALF OF THE UBS PARTIES

16 MS. POSIN: Yes, Your Honor. Thank you, Your Honor.
17 Kim Posin of Latham & Watkins, counsel for creditors and
18 Unsecured Creditors' Committee members, UBS Securities, LLC,
19 and UBS AG London Branch.

20 Your Honor, just very briefly, I wanted to say that UBS
21 has a very substantial claim against Debtors and this estate.
22 We believe our claim to be in excess of \$1 billion. And that
23 results from a November 2019 judgment in the New York Supreme
24 -- or Superior Court -- Supreme Court, excuse me, on a breach
25 of contract claim.

1 So, as a very significant creditor of this estate, we have
2 spent a substantial amount of time with the Committee and with
3 Committee counsel over the last few weeks creating this new
4 governance structure that the Court has put into place in the
5 last week and a half.

6 We are hopeful and we fully expect that, now the new
7 governance is in place, that the Debtors will be able to
8 proceed with a path forward and avoid the distractions and,
9 you know, influences that may have hindered their decision-
10 making processes to date or before the new governance
11 structure was put into place.

12 While we appreciate the U.S. Trustee's concerns with the
13 pre-existing management structure, we believe that that broken
14 structure has now been fixed. And unless and until the new
15 governance structure proves to be unworkable or detrimental to
16 the Debtor's estate or to its creditors in some fashion, the
17 -- there is no need and it would be inappropriate to appoint a
18 Chapter 11 trustee.

19 In fact, we agree with Mr. Twomey and Mr. Pomerantz that
20 the appointment of a Chapter 11 trustee at this point in these
21 cases would be detrimental, it would be disruptive, it would
22 cause delays, and there's no assurances that any Chapter 11
23 trustee that could be appointed would be -- would have
24 anywhere near the qualifications and capabilities of the new
25 board members.

1 So, Your Honor, we believe it is in the best interests of
2 all creditors, not just the numbers of this Committee, to deny
3 the motion, to allow the new governance structure to proceed,
4 and to give the board members an opportunity to manage the
5 Debtor's decision-making processes to preserve value and
6 hopefully to reach a resolution of this case in an appropriate
7 manner as efficiently and effectively as possible.

8 THE COURT: All right. Thank you.

9 MS. POSIN: Thank you.

10 THE COURT: Anyone else? Any rebuttal? All right.
11 We'll take a 15-minute break. It's 12:02. We'll come back at
12 12:17 and I'll give you a ruling.

13 THE CLERK: All rise.

14 (A recess ensued from 12:02 p.m. until 12:34 p.m.)

15 THE COURT: All right. We are going back on the
16 record in the Highland case. This is the Court's ruling on
17 the United States Trustee's motion for appointment of a
18 trustee.

19 The Court has bankruptcy subject matter jurisdiction
20 pursuant to 28 U.S.C. Section 1334. This is a statutory core
21 proceeding pursuant to 28 U.S.C. § 157. The Court concludes
22 it has constitutional authority to make a final ruling in this
23 contested matter. And the Bankruptcy Code section that
24 governs the merits of the motion is Section 1104.

25 Based on the totality of the evidence, the Court believes

1 -- well, let me back up. Based on case authority, the Court
2 believes the legal standard is that there must be clear and
3 convincing evidence establishing the need for a trustee. But
4 even if I am misremembering the procedural history of *Cajun*
5 *Electric*, and even if the Fifth Circuit later, on a
6 rehearing, adopted a preponderance of the evidence standard
7 that had been suggested in a prior dissent, I would still find
8 here, under a preponderance of the evidence standard, that
9 there are not grounds under Section 1104(a)(1) or (2) for the
10 appointment of a trustee in this case. So the motion of the
11 U.S. Trustee is denied.

12 I frequently say in court hearings, some folks know, that
13 facts matter. It's kind of a mantra of mine. It seems like a
14 very obvious statement, I know. But facts, evidence, really
15 does matter. And here are some of the facts involved that
16 are, frankly, quite atypical compared to what bankruptcy
17 courts frequently see with trustee motions, motions to appoint
18 a Chapter 11 trustee.

19 First, as I've noted a couple of times before, we have a
20 well-constituted and well-represented Official Unsecured
21 Creditors' Committee. Three of the four members of the
22 Committee have extensive multi-year experience litigating with
23 this debtor. They are collectively owed many millions of
24 dollars. Actually, one Committee member, UBS, represented
25 today it thinks it's owed a billion dollars.

1 They are, beyond any doubt, sophisticated, well-
2 represented parties. And with all of their background and
3 breadth of knowledge about this debtor and its now-former
4 control person, Jim Dondero, with all of their history of
5 distrust and acrimony, they do not at this juncture support a
6 Chapter 11 trustee.

7 In fact, as we all know, the Committee and its
8 professionals worked mightily for several weeks with the
9 Debtor's professionals to come up with a new corporate
10 governance structure that, in their reasonable view, could
11 serve as a much more favorable vehicle than a Chapter 11
12 trustee.

13 They, as we all know, negotiated and chose three new
14 independent board members of the general partner of the
15 Debtor, Strand, which general partner, of course, ultimately
16 controls the Debtor and has fiduciary duties to the Debtor as
17 a general partner. And this new board not only has all the
18 attributes, benefits of independence and an understanding of
19 fiduciary duties, the Court has issued an order defining its
20 role as such, but, in this Court's opinion, this new board has
21 at least two distinct advantages over a Chapter 11 trustee.

22 First, with no offense to any of the Chapter 11 trustee
23 candidates out there that might be able to serve, the three
24 board members bring a fabulous skillset to the process. A
25 retired bankruptcy judge, an individual with tremendous high-

1 yield investment and portfolio management experience, and an
2 individual with significant experience as an independent
3 director in difficult, large restructuring cases.

4 Second, the Debtor and the Committee professionals believe
5 that a new board, with the ability to retain or terminate
6 employees as they deem fit, would be less disruptive overall
7 and could potentially preserve enterprise value better than
8 the more drastic mechanism of a Chapter 11 trustee.

9 Moreover, in connection with this overhaul of governance,
10 corporate governance, the UCC, the Official Unsecured
11 Creditors' Committee, also negotiated mechanisms for
12 transparency in the Debtor's operation of its business, and
13 the Committee, Official Unsecured Creditors' Committee, was
14 given standing to pursue certain actions.

15 So, back to my mantra. The bottom line is facts matter,
16 and the facts are that we have sophisticated, well-heeled
17 economic stakeholders who have worked mightily to essentially
18 overhaul the entire corporate governance as to this debtor.
19 They have sanitized the problems.

20 Again, some of these Unsecured Creditors' Committee have a
21 history with this debtor. They have a history with putting
22 checks and balances in place and those not ideally working.
23 It is with this background that they have worked mightily for
24 several weeks with Debtor's professionals to come up with this
25 new corporate governance structure that, in their reasonable

1 view, provides the appropriate oversight and control that the
2 mechanisms perhaps in prior situations did not provide.

3 The U.S. Trustee relies on the strict wording of Section
4 1104 in urging its motion. Specifically, the wording that,
5 quote, The Court shall order the appointment of a trustee for
6 cause, including fraud, dishonesty, incompetence, or gross
7 [mis]management of the affairs of the debtor by current
8 management, either before or after the commencement of the
9 case, or similar cause.

10 The Court believes this statutory provision is aimed at
11 problems or malfeasance with current management. All of this
12 has been fixed. It's a very different scenario than when this
13 case was filed. If there are problems with remaining
14 employees, like in-house lawyers or treasurers or others, the
15 board has the ability to terminate these individuals. But I
16 had no evidence that there are specific problems with any
17 particular remaining individuals.

18 Simply because I or another Court may have made statements
19 in prior rulings about unreliable testimony or may have found
20 evidence of fraudulent transfers is not a problem that taints
21 this completely-overhauled management structure. Again, this
22 was a complete overhaul. The facts and timing are such today
23 that Mr. Dondero is no longer current management. Current
24 management are the words used in Section 1104.

25 This case is no different than numerous other large

1 Chapter 11 cases when, often before the petition date but
2 sometimes after, old board members resign, new board members
3 are brought in, CEOs are ousted. It's common. It avoids the
4 possible need for a Chapter 11 trustee. It brings integrity
5 to the process and hopefully preserves the ability to
6 reorganize. Creditors sometimes demand it. The debtor's
7 professionals sometimes suggest it. Sometimes, current
8 management resigns before being told they'll need to. This is
9 one of the realities with distressed companies.

10 A new board and new management are not only a pragmatic
11 solution, but this Court concludes are totally within the
12 parameters and the provisions and overall structure of Chapter
13 11.

14 At bottom, the professionals for the Debtor and the
15 Official Unsecured Creditors' Committee have fixed the
16 problem, the problems with the current management that existed
17 as of the petition date. I approved the new governance
18 structure pursuant to Sections 363 and 105, and now we don't
19 have the cause that 1104 refers to.

20 Moreover, I have no evidence that a trustee is in the best
21 interest of parties pursuant to Section 1104(a)(2). So, no
22 cause for a Chapter 11 trustee.

23 I reserve the right to supplement or amend in a form of
24 order, but I will ask Debtor's counsel to submit a form of
25 order.

1 All right. Well, turning to the remaining business, I
2 know we had two or three other motions, and there were no
3 objections to those motions.

4 MR. LITVAK: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. LITVAK: Max Litvak; Pachulski Stang Ziehl &
7 Jones; on behalf of the Debtor.

8 THE COURT: Okay.

9 MR. LITVAK: I'm here to present those last three
10 items on the agenda, which are 7, 8, and 9.

11 THE COURT: All right.

12 MR. LITVAK: And Your Honor, if I may suggest that we
13 go in reverse order.

14 THE COURT: All right. I'm pulling out my agenda to
15 the appropriate --

16 MR. LITVAK: Yes, Your Honor. Number 9 is the Mercer
17 retention application.

18 THE COURT: Okay. That is the compensation expert
19 professional, correct?

20 MR. LITVAK: Exactly right, Your Honor. We have no
21 objections to this application, and Mercer has already, some
22 time ago, actually, commenced rendering services for -- to the
23 Debtor with respect to compensation issues.

24 THE COURT: All right. Again, we did not have any
25 written objection. Anybody want to say anything about this

1 application?

2 All right. Well, notice has been proper. We have no
3 objections. They appear to be well-qualified. I approve this
4 under 327 and 328 of the Bankruptcy Code.

5 MR. LITVAK: Your Honor, would you like to see a
6 proposed form of order, or -- it is essentially the same one
7 that we filed with the application, except we have updated the
8 caption because the application was actually originally filed
9 in Delaware.

10 THE COURT: All right. No. You may simply upload it
11 electronically, please.

12 MR. LITVAK: Yes, Your Honor. Will do. Thank you.

13 Moving to Number 8 on the agenda, Your Honor, is the bonus
14 motion. It is the Debtor's motion to pay our ordinary course
15 obligations under employee bonus plans. And Your Honor, there
16 are no pending objections with respect to this motion. The
17 U.S. Trustee has filed no objection. We did negotiate
18 resolution with the Creditors' Committee that I wanted to tell
19 you about.

20 THE COURT: Okay.

21 MR. LITVAK: We have agreed, for purposes of today,
22 to exclude four statutory insiders.

23 THE COURT: All right.

24 MR. LITVAK: So, from our perspective, there are no
25 -- no insiders who are covered by the motion. Or covered with

1 respect to the proposed order that we'd be submitting to you
2 today, which has been reviewed and approved by the Creditors'
3 Committee. There are a few others that are being pulled out
4 as well.

5 But the net result of it, Your Honor, is that we are
6 asking for approval of ordinary course plans in an amount
7 that's substantially reduced from what was initially asked
8 for, the initial request for relief.

9 Specifically, Your Honor, the order for relief here today
10 is with respect to what we've called an annual bonus plan and
11 also what we've called a -- as a deferred bonus plan. The
12 annual bonus plan was actually approved almost a year ago, in
13 February 2019. It relates to employee performance in 2018
14 calendar year. As I mentioned, it's all ordinary course. But
15 the payments are in installments. So it's deferred
16 compensation, which actually is a substantial portion of
17 employee compensation in the industry as well as for this
18 Debtor. Employees agree to take reduced salaries with the
19 expectation that they're going to be compensated substantially
20 with respect to bonuses.

21 And that is, in fact, what happened here, and what has
22 happened in the ordinary course. And in February 2019, the
23 company approved bonuses for employees for their performance
24 in 2018, but employees will only be entitled to receive those
25 bonuses to the extent they continue to be employed with the

1 Debtor on deferred payment dates. And there are four
2 installments. Two were made prepetition and two remain to be
3 paid. And what we're asking for today, Your Honor, is for
4 your authority to continue to make those payments in the
5 ordinary course.

6 So the third installment comes due on February, in
7 February 2020, and then the fourth installment comes due in
8 August 2020. So this year, next month, and then a few months
9 down the road.

10 The deferred bonus plan goes back even further. It was
11 approved in February 2017 for the 2016 calendar year. And it,
12 in the ordinary course, is deferred 39 months, and those
13 payments are actually tied in with certain publicly-traded
14 allocated -- allocated publicly-traded stock. So an employee
15 is awarded a certain amount, and that value is represented in
16 publicly-traded stock, which is actually set aside, held by
17 the company for the benefit of that employee.

18 If the employee sticks around for 39 months, then on the
19 39th month there will be a vesting. And the next vesting will
20 be in May, May 2020 for the February 2017 awards.

21 And the stock in many cases has increased in value, just
22 as the stock market has increased in value, generally
23 speaking. So the amounts that were awarded in February 2017
24 have actually increased in value, and the employees would be
25 expecting that, that if they're continuing to perform and do

1 their job and they're still employed on that date of when
2 there is a vesting, that they would be entitled to that stock
3 at the value -- at the market value of that stock on the
4 vesting date.

5 Your Honor, another important thing that's significant
6 about the Debtor's bonus plans is that they are not
7 guaranteed. Even -- even when they're awarded. An employee
8 has to continue to perform at a very high level or they can be
9 terminated. Frankly, an employee can continue to perform at a
10 high level and still be terminated. So someone can be
11 terminated without cause, and then they will not be entitled
12 to the bonus, unless they're there on the actual payment date.
13 So, come February 28th, the employees that are there, the
14 board will decide which employees are there. Presumably, it's
15 the bulk of the employees. Then those employees will be
16 entitled to what they have been awarded prepetition. And
17 that's what we're asking the Court to approve today.

18 We're not asking Your Honor to approve anything with
19 respect to 2019 bonuses yet. Frankly, the board is still
20 getting its arms around that and making determinations as to
21 what bonuses will be payable.

22 Your Honor, the board, the independent board, has closely
23 evaluated the Debtor's employee compensation structure and
24 reached a decision that most aspects of the bonus should be
25 approved, to avoid potentially catastrophic consequences for

1 this estate.

2 The board has considered input from the Creditors'
3 Committee. The board has decided to make certain
4 modifications to the bonus plans as they were proposed in the
5 initial filing. So the initial motion that we filed was
6 actually filed in Delaware, I believe on November 26, 2019.
7 And the matter was initially set for hearing on December 17th
8 in Delaware. Then venue was transferred, and we have
9 subsequently renoticed the hearing a couple of times to today,
10 ultimately.

11 The bonus amounts -- as I mentioned, Your Honor, the board
12 has decided with respect to the modifications to exclude the
13 four statutory insiders as well as a few others, and the board
14 intends to address the compensation of those employees
15 separately.

16 The bonus amounts that are requested today, Your Honor,
17 after reductions, now aggregate \$1.8 million in February, \$1.2
18 million in May, and \$1.7 million in August, for a grand total
19 of approximately \$4.6 million, Your Honor. That would cover
20 approximately 40 employees.

21 In the original motion, we actually asked for over \$10
22 million, so this is more than cutting it in half. The board
23 has had the benefit of a compensation expert, which is Mercer,
24 who has confirmed that the Debtor's bonus, bonus plans, are
25 well within market, and that if such bonuses are not paid, the

1 Debtor's employees would be severely undercompensated.

2 The bottom line, Your Honor, is that the board has
3 concluded, in its sound business judgment, that continuing to
4 honor the Debtor's ordinary course bonus obligations, as
5 modified, to employees is critical. The failure to do so is
6 likely to cause an employee exodus and will adversely
7 prejudice the Debtor's efforts to maximize value for all
8 constituents.

9 Your Honor, we're asking you to approve the payments, the
10 bonus payments, under Sections 105 and 363 of the Bankruptcy
11 Code as a sound exercise of business judgment. Also, under
12 Section 1107 of the Bankruptcy Code in that the Debtor is
13 exercising its fiduciary duty to try and maximize value,
14 consistent with a couple opinions that we've run across in
15 this district from Judge Lynn.

16 Most recently, Your Honor, there is a decision called *In*
17 *re Tusa* -- T-U-S-A hyphen -- *Expo Holdings*, 2008 Bankr. LEXIS
18 2852. It's Judge Lynn's opinion from 2008 where he clarifies
19 an earlier opinion, *In re CoServ*, 273 B.R. 487. He basically
20 reaches the conclusion, Your Honor, that, under Section 1107,
21 the Debtor has a fiduciary duty to maximize value, and
22 maintaining relationships with employees is a necessity.

23 So, under the necessity of payment doctrine, we would ask
24 Your Honor to approve these payments. Even though they were
25 approved prepetition, they are coming due postpetition. We

1 would ask the Court to approve that.

2 Further, Your Honor, because we have carved out insiders,
3 we do not believe that Sections 503(c)(1) or (c)(2) of the
4 Bankruptcy Code apply at all to what we're asking for today,
5 and that 503(c)(3) also doesn't apply. Even though that
6 section is not limited to insiders, we don't think it applies
7 because this is an ordinary course program and 503(c)(3) talks
8 about outside the ordinary course.

9 Here, the bonus plans are entirely consistent with the
10 ordinary course operations of the Debtor and completely
11 consistent with prepetition practice.

12 Your Honor, in addition to the bonus plans, just as a
13 minor point, there is what is called a dividend reinvestment
14 plan where the Debtor will contribute -- gross up, effectively
15 -- an employee contribution into an investment fund, which is
16 actually with an affiliate called NexPoint. So, basically,
17 employees of the Debtor are given the opportunity to invest in
18 a couple of mutual funds that are run by affiliates. If they
19 choose to do that, then the Debtor will gross up the value of
20 those employees' investments as an employee benefit. So it's
21 really just another form of compensation to employees. It's a
22 15 percent gross-up. And with respect to possible prepetition
23 obligations under the DRIP, they're very nominal. Less than
24 \$30,000, if any. So we are asking approval in the motion up
25 to \$30,000, and then authority to continue the program in the

1 ordinary course.

2 The Debtor also has certain of its own funds invested in
3 these mutual funds, and those mutual funds throw off
4 dividends. And the Debtor in the ordinary course reinvests
5 the dividends in those funds. And the Debtor is asking for
6 authority to continue to do that.

7 These are not huge numbers, Your Honor, but it's -- it's
8 maybe \$10,000 to \$20,000 a month.

9 For these reasons, Your Honor, the Debtor would urge you
10 to approve the motion. If you need any further factual
11 support, I'm prepared to offer it, but the motions are
12 uncontested, as far as we know.

13 THE COURT: All right.

14 MR. LITVAK: Or the motion is.

15 THE COURT: All right. Well, I certainly didn't see
16 written objections. Do we have comments from, first, the
17 Committee? Are you willing to accept these facts as
18 unrefuted, or do you have a desire to examine witnesses on
19 this?

20 MR. TWOMEY: Absolutely not, Your Honor. Just wanted
21 to confirm for Your Honor that the Committee did originally
22 have issues with the scope of the relief requested in the
23 motion as it was filed back in November, but the Committee and
24 its advisors have worked with the Debtor, primarily through
25 their directors and advisors, to narrow the scope of the

1 relief requested to the point where it is, in fact, acceptable
2 to the Committee, as outlined by Mr. Litvak. So, the
3 Committee is now comfortable with the narrowed relief as just
4 outlined and is comfortable with the Court approving that
5 requested relief.

6 THE COURT: All right. Well, we appreciate your role
7 --

8 MR. TWOMEY: Thank you, Your Honor.

9 THE COURT: -- in negotiating some narrowing of the
10 relief.

11 Anyone else? U.S. Trustee or anyone else have issues?
12 All right. Ms. Lambert, you had something?

13 MS. LAMBERT: No. No issues, Your Honor. It is our
14 understanding that any new bonus program will be subject to a
15 separate motion.

16 THE COURT: All right. I think that's what I
17 inferred, but maybe you should clarify on the record.

18 MR. LITVAK: Your Honor, I would like to clarify
19 that, because we -- we actually have not reached that
20 determination. We are evaluating what the bonus plan will
21 look like, and then we'll confer with the board, do some
22 research of our own, and make that determination. But if it
23 would make Ms. Lambert happy, I'm sure we could agree to
24 communicate to her our decision.

25 THE COURT: All right. So think what I'm hearing is

1 you're reserving the right to take the position that any new
2 bonus program would be ordinary course of business and
3 wouldn't need court approval?

4 MR. LITVAK: Yes, Your Honor.

5 THE COURT: All right. Well, then I am going to
6 accept you at your word made on the record that you will
7 communicate, you'll give notice to the U.S. Trustee if any new
8 bonus plan is -- the Debtor desires to implement one and takes
9 the position it doesn't need court approval, and then if she
10 disagrees or the Committee disagrees, someone can file a
11 motion to, whatever the motion would be worded, to have the
12 Court weigh in on the subject.

13 MR. LITVAK: Yes, ma'am.

14 THE COURT: Okay. All right.

15 MR. LITVAK: Your Honor, I do have a proposed form of
16 order, along with a redline against the original form of order
17 that we had filed, if you'd care to see that with respect to
18 the bonus motions.

19 THE COURT: You --

20 MR. LITVAK: If I may approach.

21 THE COURT: You can approach on that.

22 (Pause.)

23 THE COURT: Thank you.

24 MR. LITVAK: The redline primarily reflects changes
25 that were requested by the Creditors' Committee, Your Honor.

1 THE COURT: Okay.

2 MR. LITVAK: And clarifying that the motion is
3 granted as presented at the hearing today minus the few
4 employees, insiders that I had mentioned.

5 THE COURT: All right. Well, the Court is going to
6 approve the bonus motion as narrowed here on the record today.
7 The Court believes that, based on the unrefuted facts, there's
8 a sound exercise of business judgment reflected in this
9 proposal, and that it would certainly be a preservation of
10 value by keeping these bonuses in place that were negotiated
11 or put in place prepetition. So the Court thinks this form of
12 order looks fine and the motion is hereby approved.

13 MR. LITVAK: Thank you very much, Your Honor.

14 With that, I'll move to the last item on the agenda, which
15 is Number 7, the cash management motion, which was filed some
16 time ago as a first-day filing. Judge Sontchi did enter an
17 interim order. We've been operating under the interim order
18 ever since. It's been over three months now.

19 And at the last hearing, we were prepared to present the
20 final order, but the U.S. Trustee, as I understand it, stood
21 up and made a speaking objection to the effect that the Debtor
22 should be required to bond a couple of brokerage accounts.

23 So the Debtor has two brokerage accounts that are at
24 issue. There is a Jefferies account and then there's an
25 account at Maxim. And there is a significant amount in terms

1 of value of securities there. At Jefferies, we're looking at
2 in the range of \$80 million, and at Maxim \$30 million. At
3 Jefferies, there is a margin balance, so basically a
4 prepetition secured claim by Jefferies against the estate of
5 \$30 million.

6 We have gone to these brokers to ask them if they would be
7 willing to participate in a bond or surety relationship of
8 some sort with a third party. We have also gone out and
9 obtained one quote so far with respect to how much that would
10 cost. The one quote was in the range of \$200,000 or \$300,000.

11 The board -- I've discussed this with the board. It is
12 the board's view that spending that money to buy a surety bond
13 is not a good use of the estate's limited resources. But
14 further, as a practical matter, Your Honor, we have gone to
15 Jefferies, and they are unwilling to enter into surety -- they
16 would be required to sign an indemnity agreement with a
17 surety. So if a surety is ever called upon to pay because the
18 securities that are supposed to be there for some reason are
19 not there, then Jefferies would be obligated to reimburse the
20 surety. That's the indemnity. And further, Jefferies would
21 be required to become an approved depository here. They're
22 not willing to do that.

23 So, Your Honor, I think we're at the position, from the
24 Debtor's perspective, that we would ask you to, to the extent
25 that the U.S. Trustee still has an objection, that we would

1 ask you to approve a waiver of the 345 requirement for cause,
2 the cause being that the Debtor does not believe that this is
3 a good use of estate resources. The Debtor is in the business
4 of doing just this, which is money management, investing in
5 securities. This is not a retail business that, on the side,
6 is trying to make some money off securities. This is what the
7 Debtor does. So it is a very unique set of facts here.

8 The Debtor also doesn't have the ability to move the
9 accounts, particularly the one at Jefferies, because Jefferies
10 has a significant margin balance which secures them. So
11 they're not going to let us move the money out. So we're kind
12 of stuck.

13 And it has never been an issue before, Your Honor.
14 Jefferies, incidentally, has, we found out from their website
15 -- it is obviously a highly-regulated entity, as is Maxim --
16 Jefferies has significant insurance in place. Beyond the SIPC
17 coverage for securities accounts, which is tapped at \$500,000,
18 Jefferies has another -- an excess policy of \$24-1/2 million
19 on top of that, and maybe more.

20 So, Your Honor, from the Debtor's perspective, we would
21 ask the Court to give us the waiver here under the unique
22 circumstances here of 345 and that the Debtor be permitted to
23 continue to maintain those two brokerage accounts in the
24 ordinary course.

25 THE COURT: All right. Others wish to be heard?

1 MS. LAMBERT: So, to be clear, Your Honor, the United
2 States Trustee didn't ask them to bond the amounts. The U.S.
3 Trustee asked that the insurance parallel the specific
4 insurance, or the bonding, parallel that, so that if the
5 actual stocks are not there, there's something to go against,
6 and so, therefore, making it parallel to the same kind of
7 posting of collateral with the Fed in case an institution
8 fails.

9 So, it is also possible to get insurance, just as
10 Jefferies has, for the Debtor. And they're still outstanding
11 on several requests. But if Jefferies won't sign the
12 indemnification agreement, they won't sign it. So that's the
13 issue. I mean, could they get insurance separately? I don't
14 know. They haven't tried. But I will want the Court -- I
15 mean, like Judge Houser will never ever grant this kind of
16 relief. I want the Court to be aware that the estate is at
17 risk if there's a problem at Jefferies or if there's a problem
18 at the other institution.

19 THE COURT: All right. Anyone else wish to weigh in?
20 And I'm going to go back to my mantra. Facts matter. I'm
21 not sure Judge Houser has ever had this type of entity. You
22 know, it's not a retail store, it's not a restaurant, it's not
23 an apartment complex. It's a debtor whose reason for existing
24 is money management and investing. Not that it doesn't ever
25 make mistakes, but, again, I think the unique circumstances of

1 this debtor in this case merit a waiver of the Section 345(b)
2 requirement.

3 I think it would not be an exercise of reasonable
4 judgment, under the facts I have before me, to require, you
5 know, a \$200,000 or \$300,000 cost surety bond. So I grant the
6 motion and grant the waiver.

7 And as with any order, I won't require this blue sky
8 language, but certainly if, you know, Jefferies and Maxim, you
9 know, it's well publicized, they go into distress themselves
10 and we need to revisit this ruling, the Court would certainly
11 be willing to revisit the issue if the world changes, and I
12 think that's a good thing to do.

13 All right. Before we end matters on this motion, I left
14 my notes on my desk, but I had in my brain that at one time
15 there were four stray issues that the Committee had. And I
16 just want to double-check these four stray issues were
17 resolved with the settlement. I know there was an issue with
18 regard to a couple, I mean, well, four recurring commitments
19 of the Debtor. One regarding that life settlement entity,
20 where the premium was something like a million dollars a month
21 that Debtor was paying. There was another, you know,
22 Singapore office and a Korea investment company. And I can't
23 remember, I think the other was just general overhead
24 provided. Have those issues been resolved, wrapped up in the
25 settlement? I did not go back and double-check the

1 settlement.

2 MR. POMERANTZ: Your Honor, Jeff Pomerantz. We had
3 interim approval under the cash management to do certain
4 things.

5 THE COURT: Uh-huh.

6 MR. POMERANTZ: But Your Honor is correct that any
7 continued intercompany cash management issues were covered by
8 the protocols. So that is where we will be seeking authority
9 to do any other type of intercompany transactions. It will
10 not be pursuant to this cash management order, but it was
11 important for this cash management order to become final
12 because it did govern the case before the case got transferred
13 here and we took action as we were permitted to do under the
14 interim order.

15 THE COURT: Okay. So without asking you to recite
16 every single sentence of the settlement motion and order,
17 there's some sort of oversight and approval mechanism for
18 those payments, those obligations?

19 MR. POMERANTZ: Correct. Correct. Correct.
20 Intercompany transactions, related-party transactions, is a --

21 THE COURT: Just that general umbrella?

22 MR. POMERANTZ: -- is the general umbrella.

23 THE COURT: Okay.

24 MR. POMERANTZ: And there's a certain process and
25 procedure how we would get approval from that, giving

1 visibility to the Creditors' Committee.

2 THE COURT: Okay. Counsel, did you want to add
3 anything?

4 MR. TWOMEY: Just to confirm that's correct, Your
5 Honor. We had an operating protocol that was approved as part
6 of the settlement. And so, pursuant to that, these types of
7 transactions will be, you know, for example, run by the
8 Committee, and only if there are issues will we have to come
9 back to the Court.

10 THE COURT: The general umbrella --

11 MR. TWOMEY: Yes.

12 THE COURT: -- of intercompany transactions? All
13 right. I bet Retired Judge Nelms' ears perked up when he
14 heard about life settlements. If you don't understand that
15 comment, I'm sure he'll love to talk to you about *Life*
16 *Partners*.

17 MR. POMERANTZ: Yes. We've had those discussions,
18 Your Honor.

19 THE COURT: Okay.

20 MR. POMERANTZ: Your Honor, I think the only thing
21 remaining to be done is a couple of dates.

22 THE COURT: Okay.

23 MR. POMERANTZ: We thought it would be helpful to set
24 sort of, you know, essentially omnibus dates.

25 THE COURT: Okay.

1 MR. POMERANTZ: We may have things relating to the
2 continued bonus programs to bring before the Court. May not.
3 And just so people generally could know when to file things.
4 So we've conferred with the Creditors' Committee counsel. I
5 didn't have the opportunity to confer with the Trustee. But
6 we have a date in February, perhaps either February 19th or
7 20th.

8 THE COURT: Okay.

9 MR. POMERANTZ: And then also a date in March, either
10 the 10th, 11th, or 12th.

11 THE COURT: Okay. Let me see what we can do.

12 (Pause.)

13 THE COURT: Okay. We can give you 2/19 at 9:30 in
14 the morning.

15 (Pause.)

16 THE COURT: Okay. We can give you Wednesday, March
17 11th, at 9:30.

18 MR. POMERANTZ: Thank you very much, Your Honor.

19 THE COURT: All right. So, for now, do we want to
20 absolutely set some of these carryover matters? I know we had
21 the retention application.

22 MR. POMERANTZ: We have the retention applications,
23 we have the PensionDanmark, --

24 THE COURT: The Pension --

25 MR. POMERANTZ: -- and then we have the settlement

1 related to the CLO Issuer. So why don't we put all those
2 three on for the 19th at 9:30 a.m.?

3 THE COURT: Okay. I think it's four things. I think
4 there were two retention applications.

5 So, for now, Traci, we're going to set the Foley Gardere
6 and Lynn Pinkerton retention applications on February 19th, as
7 well as the Pension motion to lift stay. I can't remember the
8 exact name of that. And then, okay, you said there's a CLO
9 Issuers motion?

10 MR. POMERANTZ: Well, it was the -- it was the
11 overall settlement motion, if Your Honor recalls, that I
12 mentioned at the beginning of the hearing.

13 THE COURT: Oh, the language --

14 MR. POMERANTZ: That specific issue on the protocols.

15 THE COURT: -- they were hoping to have for
16 protocols?

17 MR. POMERANTZ: Correct.

18 THE COURT: Okay. Yeah. So we'll carry over the
19 settlement motion between the Committee and the Debtor. Even
20 though I've entered an order, we actually have some carryover
21 language. So we'll put that on the calendar again. No, all
22 of those on February 19th. And, again, you'll coordinate with
23 Traci if you have add-on matters that you need --

24 MR. POMERANTZ: Correct, Your Honor. And then we
25 will file the appropriate agenda of that in advance and

1 provide Your Honor with notebooks so that Your Honor will know
2 exactly what was on. I know Traci was -- did a great job of
3 trying to figure it out, and we didn't make her life easier up
4 until the agenda, but we promise to make both yours and her
5 life easier going forward.

6 THE COURT: Well, for my life, the notebook and
7 everything was great when I started looking at it over the
8 weekend, so thank you. Appreciate it.

9 MR. POMERANTZ: Thank you very much, Your Honor.

10 THE COURT: All right. I appreciate everyone's
11 positions and courtesies today. All right.

12 MR. POMERANTZ: Thank you, Your Honor.

13 THE CLERK: All rise.

14 (Proceedings concluded at 1:17 p.m.)

15 --oOo--

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CERTIFICATE

21

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

23

/s/ Kathy Rehling

01/24/2020

24

Kathy Rehling, CETD-444
25 Certified Electronic Court Transcriber

Date

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 14**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj1
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*Vol. 1
000001*

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000501

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
004704				
004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3_Subscription and Transfer Agreement # 4 Exhibit 4_Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **Friday, June 11, 2021 at 10:00 a.m. (Central Time)** (the “Hearing”) in the above captioned bankruptcy case (the “Bankruptcy Case”):

- Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Doc. 2248] (the “Motion”).

The Hearing on the Motion will be held via WebEx videoconference before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge. The WebEx video participation/attendance link for the hearing is: <https://us-courts.webex.com/meet/jerniga>.

PLEASE TAKE FURTHER NOTICE that a copy of the WebEx Hearing Instructions for the Hearing is attached hereto as Exhibit A; alternatively, the WebEx Hearing Instructions for the

Hearing may be obtained from Judge Jernigan's hearing/calendar site at:
<https://www.txnb.uscourts.gov/judges-info/hearingdates/judge-jernigans-hearing-dates>.

Dated: June 10, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.**

EXHIBIT A

WebEx Hearing Instructions Judge Stacey G. Jernigan

Pursuant to General Order 2020-14 issued by the Court on May 20, 2020, all hearings before Judge Stacey G. Jernigan are currently being conducted by WebEx videoconference unless ordered otherwise.

For WebEx Video Participation/Attendance:

Link: <https://us-courts.webex.com/meet/jerniga>

For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207

Meeting ID: 479 393 582

Participation/Attendance Requirements:

- Counsel and other parties in interest who plan to actively participate in the hearing are encouraged to attend the hearing in the WebEx video mode using the WebEx video link above. Counsel and other parties in interest who will not be seeking to introduce any evidence at the hearing and who wish to attend the hearing in a telephonic only mode may attend the hearing in the WebEx telephonic only mode using the WebEx dial-in and meeting ID above.
- Attendees should join the WebEx hearing at least 10 minutes prior to the hearing start time. Please be advised that a hearing may already be in progress. During hearings, participants are required to keep their lines on mute at all times that they are not addressing the Court or otherwise actively participating in the hearing. The Court reserves the right to disconnect or place on permanent mute any attendee that causes any disruption to the proceedings. For general information and tips with respect to WebEx participation and attendance, please see Clerk's Notice 20-04: https://www.txnb.uscourts.gov/sites/txnb/files/hearings/Webex%20Information%20and%20Tips_0.pdf
- **Witnesses are required to attend the hearing in the WebEx video mode and live testimony will only be accepted from witnesses who have the WebEx video function activated.** Telephonic testimony without accompanying video will not be accepted by the Court.
- All WebEx hearing attendees are required to comply with Judge Jernigan's Telephonic and Videoconference Hearing Policy (included within Judge Jernigan's Judge-Specific Guidelines): <https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan>

Exhibit Requirements:

- Any party intending to introduce documentary evidence at the hearing must file an exhibit list in the case with a true and correct copy of each designated exhibit filed as a separate, individual attachment thereto so that the Court and all participants have ready access to all designated exhibits.
- If the number of pages of such exhibits exceeds 100, then such party must also deliver two (2) sets of such exhibits in exhibit binders to the Court by no later than twenty-four (24) hours in advance of the hearing.

Notice of Hearing Content and Filing Requirements:

IMPORTANT: For all hearings that will be conducted by WebEx only:

- The Notice of Hearing filed in the case and served on parties in interest must: (1) provide notice that the hearing will be conducted by WebEx videoconference only, (2) provide notice of the above WebEx video participation/attendance link, and (3) attach a copy of these WebEx Hearing Instructions or provide notice that they may be obtained from Judge Jernigan's hearing/calendar site: <https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates>.
- When electronically filing the Notice of Hearing via CM/ECF select "at https://us-courts.webex.com/meet/jerniga" as the location of the hearing (note: this option appears immediately after the first set of Wichita Falls locations). Do not select Judge Jernigan's Dallas courtroom as the location for the hearing.

003029

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

**UNOPPOSED EMERGENCY MOTION TO CONTINUE HEARING ON MOTION
FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES P.
SEERY, JR. DUE TO LACK OF SUBJECT MATTER JURISDICTION**

The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Movants”)¹ hereby respectfully request an emergency continuance of their Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. (“Motion”) as follows:

1.

The Motion was scheduled for hearing on June 8, 2021, and Movants requested that it be argued on June 8, but the Debtor’s contempt motion consumed all of the available time set aside by the Court for both hearings on June 8, leaving no time for hearing on the Motion.

¹ CLO HOLDSCO, LTD. filed a *Motion to Withdraw the Reference* [Adversary No. 20-03195, Doc. No. 24], and nothing herein shall be deemed a waiver of their right to a trial by jury on all claims asserted in the Adversary Proceeding nor consent to the entry of final orders in the Adversary Proceeding by the Bankruptcy Court.

2.

The Motion was reset for hearing on Friday, June 11, 2021, at 10:00 a.m. Movants' counsel, Jonathan Bridges, has been and is the counsel prepared to argue the Motion on June 11. However, he has become ill today with a severe fever and other ailments and is unable to proceed with the hearing tomorrow.

3.

Undersigned counsel has provided this motion to Debtors' counsel prior to filing, who have no objection to the Motion. The parties have agreed to a continuance based upon the following:

1. All parties agree that there shall be no further filing of pleadings in connection with the Motion before the continued hearing;
2. Other than responses to the Motion for an Order to Enforce the Order of Reference and the Motion to Dismiss, there will be no further filings by CLO Holdco, Ltd. and The Charitable DAF Fund, L.P. in the District Court action;
3. The hearing will be scheduled for a date which is acceptable to Debtor's counsel, which date is to occur in the next two weeks subject to the Court's calendar.

Dated: June 10, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for The Charitable DAF Fund,
L.P. and CLO Holdco, Ltd.**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

ORDER

Considering the Movants’ Emergency Motion to Continue the Hearing on Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction (“the Motion”), the Court finds that the Motion should be GRANTED.

IT IS ORDERED that the Motion is hereby rescheduled for hearing on the _____ day of _____, 2021, at _____.

SIGNED this ____ day of June, 2021.

J

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

SECOND AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that the following matter is scheduled for hearing on **Friday, June 25, 2021 at 9:30 a.m. (Central Time)** (the “Hearing”) in the above captioned bankruptcy case (the “Bankruptcy Case”):

- Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Doc. 2248] (the “Motion”).

The Hearing on the Motion will be held via WebEx videoconference before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge. The WebEx video participation/attendance link for the hearing is: <https://us-courts.webex.com/meet/jerniga>.

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Hearing may be obtained from Judge Jernigan's hearing/calendar site at:
<https://www.txnb.uscourts.gov/judges-info/hearingdates/judge-jernigans-hearing-dates>.

Dated: June 14, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Plaintiffs

The Charitable DAF Fund, L.P.

and CLO Holdco, Ltd.

EXHIBIT A

WebEx Hearing Instructions Judge Stacey G. Jernigan

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For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207

Meeting ID: 479 393 582

Participation/Attendance Requirements:

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- Attendees should join the WebEx hearing at least 10 minutes prior to the hearing start time. Please be advised that a hearing may already be in progress. During hearings, participants are required to keep their lines on mute at all times that they are not addressing the Court or otherwise actively participating in the hearing. The Court reserves the right to disconnect or place on permanent mute any attendee that causes any disruption to the proceedings. For general information and tips with respect to WebEx participation and attendance, please see Clerk's Notice 20-04: https://www.txnb.uscourts.gov/sites/txnb/files/hearings/Webex%20Information%20and%20Tips_0.pdf
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- If the number of pages of such exhibits exceeds 100, then such party must also deliver two (2) sets of such exhibits in exhibit binders to the Court by no later than twenty-four (24) hours in advance of the hearing.

Notice of Hearing Content and Filing Requirements:

IMPORTANT: For all hearings that will be conducted by WebEx only:

- The Notice of Hearing filed in the case and served on parties in interest must: (1) provide notice that the hearing will be conducted by WebEx videoconference only, (2) provide notice of the above WebEx video participation/attendance link, and (3) attach a copy of these WebEx Hearing Instructions or provide notice that they may be obtained from Judge Jernigan's hearing/calendar site: <https://www.txnb.uscourts.gov/judges-info/hearing-dates/judge-jernigans-hearing-dates>.
- When electronically filing the Notice of Hearing via CM/ECF select "at https://us-courts.webex.com/meet/jerniga" as the location of the hearing (note: this option appears immediately after the first set of Wichita Falls locations). Do not select Judge Jernigan's Dallas courtroom as the location for the hearing.

003036

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:)
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹)
) Case No. 19-34054-sgj11
)
Debtor.)
)
)

**DEBTOR’S SECOND AMENDED WITNESS AND EXHIBIT LIST WITH
RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JUNE 8, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following second amended witness and exhibit list with respect to the *Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Docket

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

No. 2255] (the “Show Cause Order”), which the Court set for hearing at 9:30 a.m. (Central Time) on June 8, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James Dondero;
2. Mark Patrick;
3. Grant Scott (by deposition designation);
4. Gregory V. Demo;²
5. Any witness identified by or called by any other party; and
6. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-1]		
2.	Declaration of John A. Morris in Support of Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-2]		
3.	Exhibit A, the [Proposed] Order on the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-3]		
4.	James Dondero’s Objection to Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest [Docket No. 2237-4]		

² If needed, Mr. Demo will be called as a witness for the sole purpose of authenticating Exhibits 54 and 55, time records from Pachulski Stang Ziehl & Jones, LLP relating to the Show Cause Order.

Letter	Exhibit	Offered	Admitted
5.	Objection to Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-5]		
6.	CLO Holdco’s Objection to HarbourVest Settlement. [Docket No. 2237-6]		
7.	Notice of Deposition to James Dondero [Docket No. 2237-7]		
8.	Transcript of January 11, 2021 Deposition of Michael Pugatch [Docket No. 2237-8]		
9.	Omnibus Reply in Support of Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-9]		
10.	Transcript of January 14, 2021 Hearing [Docket No. 2237-10]		
11.	Order Approving Debtor’s Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 2237-11]		
12.	Original Complaint (Charitable DAF Fund, L.P. v. Highland Capital Management, L.P., Case No. 21-cv-00842, U.S. District Court Northern District of TX) (GScott000389) [Dondero June 1, 2021 Deposition Exhibit 7] [Docket No. 2237-12]		
13.	Email string dated April 19, 2021, between counsel for the Debtor and counsel for the plaintiffs in the DAF Action [Docket No. 2237-13]		
14.	Second email string dated April 19, 2021, between counsel for the Debtor and counsel for the plaintiffs in the DAF Action [Docket No. 2237-14]		
15.	Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course [Docket No. 2237-15]		
16.	Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring		

Letter	Exhibit	Offered	Admitted
	Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 2237-16]		
17.	Plaintiff's Motion for Leave to File First Amended Complaint (Charitable DAF Fund, L.P. v. Highland Capital Management, L.P., Case No. 21-cv-00842, U.S. District Court Northern District of TX) [Docket No. 2237-17]		
18.	CM/ECF Notice dated April 20, 2020 and lodged as Docket No. 8 in the DAF Action [Docket No. 2237-18]		
19.	Transcript of March 22, 2021 Hearing [Docket 2351-1]		
20.	Email from DAF counsel to Debtor's counsel dated April 20, 2021 [Docket 2351-2]		
21.	All communications between Debtor's counsel and the Bankruptcy Court courtroom deputy [Docket 2355-3]		
22.	Debtor's Motion for an Order to Enforce the Order of Reference [Docket 2351-4]		
23.	Grant Scott January 21, 2021 Deposition Transcript		
24.	Grant Scott June 1, 2021 Deposition Transcript		
25.	DAF/CLO Holdco Structure Chart (GScott000007) [Dondero June 1, 2021 Deposition Exhibit 1]		
26.	Amended and Restated Limited Liability Company Agreement of Charitable DAF GP, LLC, effective as of January 1, 2012 (PATRICK_000031) [Dondero June 1, 2021 Deposition Exhibit 2]		
27.	Amended and Restated Investment Advisory Agreement by and between Charitable DAF Fund, L.P., Charitable DAF GP, LLC, and HCMLP, effective July 1, 2014 (GScott000325) [Dondero June 1, 2021 Deposition Exhibit 3]		
28.	January 31, 2021 Meeting Appointment (GScott000011) [Dondero June 1, 2021 Deposition Exhibit 4]		
29.	Email chain re Grant Scott's notice of intent to resign (GScott000018) [Dondero June 1, 2021 Deposition Exhibit 5]		

Letter	Exhibit	Offered	Admitted
30.	Email chain re Highland Adherence Agreement in connection with HarbourVest shares (GScott000085) [Dondero June 1, 2021 Deposition Exhibit 6]		
31.	Email and attached A&R Service and Advisory Agreements and GP Resolutions (GScott000312) [Scott June 1, 2021 Deposition Exhibit 8]		
32.	Notice of CLO Holdco Settlement Agreement [Scott June 1, 2021 Deposition Exhibit 9]		
33.	Email between Grant Scott and Mark Patrick re Complaint (GScott000080) [Scott June 1, 2021 Deposition Exhibit 10]		
34.	Email chain re TerreStar Corporation Equity Investment and Residual Assets held by HO CF (GScott000138) [Scott June 1, 2021 Deposition Exhibit 11]		
35.	Email chain re request for information from Elysium Fund Management, Ltd. (GScott000361) [Scott June 1, 2021 Deposition Exhibit 12]		
36.	Assignment and Assumption of Membership Interest Agreement between Grant J. Scott and Mark E. Patrick dated March 24, 2021 (PATRICK_000006) [Scott June 1, 2021 Deposition Exhibit 13]		
37.	Written Resolutions of the Sole Director of the Company Dated March 25, 2021 (PATRICK_000003) [Scott June 1, 2021 Deposition Exhibit 14]		
38.	Written Shareholder Resolutions of the Sole Shareholder of the Company Made on March 24, 2021 (PATRICK_000012) [Scott June 1, 2021 Deposition Exhibit 15]		
39.	Written Shareholder Resolutions of the Sole Shareholder of the Company Made on March 31, 2021 (PATRICK_000001) [Scott June 1, 2021 Deposition Exhibit 16]		
40.	Written Shareholder Resolutions of the Sole Shareholder of the Company Made on April 2, 2021 (PATRICK_000002) [Scott June 1, 2021 Deposition Exhibit 17]		
41.	Amended and Restated Investment Advisory Agreement by and between Charitable DAF Fund, L.P., Charitable DAF GP, LLC, and HCMLP, effective July 1, 2014 (PATRICK_000923)		

Letter	Exhibit	Offered	Admitted
42.	Amended and Restated Service Agreement by and among HCMLP, Charitable DAF Fund, L.P., and Charitable DAF GP, LLC , effective July 1, 2014 (PATRICK_000938)		
43.	Email from Mark Patrick to Grant Scott dated April 6, 2021 re Urgent Questions (PATRICK_001129)		
44.	Original Complaint (Docket No. 1, PCMG Trading Partners XXIII, LP v. Highland Capital Management, L.P., Case No. 21-cv-01169, U.S. District Court Northern District of TX)		
45.	Defendant’s Motion For Leave to Amend Answer (Docket No. 32, Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., Adv. Pro. No. 21-03004)		
46.	Email chain re NDA for D&O Insurance Quote (GScott000172)		
47.	Check Request dated April 7, 2021 (D1 Landscape & Irrigation) (GScott000354)		
48.	Check Request dated April 7, 2021 (Sanders Lawn & Maintenance) (GScott000355)		
49.	Check Request dated April 7, 2021 (BB Services) (GScott000358)		
50.	Highland Capital Management, L.P.’S Notice of Amended Subpoena to Grant Scott [Docket No. 2366]		
51.	Certificate of Service for Notice of Deposition of Grant Scott (Docket No. 41, Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., et al., Adv. Pro. No. 21-03000)		
52.	Email re Zoom Instructions for June 1, 2021 Deposition of Grant Scott		
53.	Email re Zoom Instructions for January 21, 2021 Deposition of Grant Scott		
54.	Pachulski Stang Billing Detail (April 18 – April 30, 2021)		
55.	Pachulski Stang Billing Detail (May 1 – June 7, 2021)		

Letter	Exhibit	Offered	Admitted
56.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
57.	All exhibits necessary for impeachment and/or rebuttal purposes		
58.	All exhibits identified by or offered by any other party at the Hearing		

[Remainder of Page Intentionally Blank]

Dated: June 16, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 23

1 GRANT SCOTT - 1/21/2021
2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

4 IN RE:)
5) Chapter 11
6 HIGHLAND CAPITAL MANAGEMENT,)
L.P.) Case No.
7) 19-34054-sgj11
Debtor.)
8 -----)
HIGHLAND CAPITAL MANAGEMENT,)
9 L.P.,)
Plaintiff,)
10 vs.) Adversary
Proceeding No.
11) 21-03000-sgj
HIGHLAND CAPITAL MANAGEMENT)
12 FUND ADVISORS, L.P.; NEXPOINT)
ADVISORS, L.P.; HIGHLAND)
13 INCOME FUND; NEXPOINT)
STRATEGIC OPPORTUNITIES FUND;)
NEXPOINT CAPITAL, INC.; and)
14 CLO HoldCo, LTD.,)
Defendants.)
15 -----

16
17 VIDEOCONFERENCE DEPOSITION OF Grant SCOTT
18 Thursday, 21st of January, 2021

19
20
21
22
23 Reported by: Lisa A. Wheeler, RPR, CRR
24 Job No: 188910

25

1 GRANT SCOTT - 1/21/2021

2 January 21, 2021

3 2:02 p.m.

4

5

6 Videoconference deposition of Grant

7 SCOTT, pursuant to the Federal Rules of

8 Civil Procedure before Lisa A. Wheeler,

9 RPR, CRR, a Notary Public of the State of

10 North Carolina. The court reporter

11 reported the proceeding remotely and the

12 witness was present via videoconference.

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1 GRANT SCOTT - 1/21/2021
2 REMOTE APPEARANCES:
3 PACHULSKI STANG ZIEHL & JONES
4 Attorneys for Debtor
5 780 Third Avenue
6 New York, NY 10017
7 BY: JOHN MORRIS, ESQ.
8
9 LATHAM & WATKINS
10 Attorneys for UBS
11 885 Third Avenue
12 New York, NY 10022
13 BY: SHANNON McLAUGHLIN, ESQ.
14
15 SIDLEY AUSTIN
16 Attorneys for the Creditors Committee
17 2021 McKinney Avenue
18 Dallas, TX 75201
19 BY: PENNY REID, ESQ.
20 ALYSSA RUSSELL, ESQ.
21 PAIGE MONTGOMERY, ESQ.
22
23
24
25

1 GRANT SCOTT - 1/21/2021

2 REMOTE APPEARANCES: (Continued)

3 KING & SPALDING

4 Attorneys for Highland CLO Funding, Ltd.

5 500 West 2nd Street

6 Austin, TX 78701

7 BY: REBECCA MATSUMURA, ESQ.

8

9 K&L GATES

10 Attorneys for Highland Capital Management

11 Fund Advisors, L.P., et al.

12 4350 Lassiter at North Hills Avenue

13 Raleigh, NC 27609

14 BY: A. LEE HOGWOOD, III, ESQ.

15 EMILY MATHER, ESQ.

16

17 HELLER DRAPER & HORN

18 Attorneys for The Dugaboy Investment Trust

19 and The Get Good Trust

20 650 Poydras Street

21 New Orleans, LA 70130

22 BY: MICHAEL LANDIS, ESQ.

23

24

25

1 GRANT SCOTT - 1/21/2021

2 REMOTE APPEARANCES: (Continued)

3 KANE RUSSELL COLEMAN & LOGAN

4 Attorneys for Defendant CLO HoldCo Limited

5 Bank of America Plaza

6 901 Main Street

7 Dallas, TX 75202

8 BY: BRIAN CLARK, ESQ.

9 JOHN KANE, ESQ.

10

11 ALSO PRESENT: La Asia Canty

12

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1 GRANT SCOTT - 1/21/2021

2 GRANT SCOTT,

3 called as a witness, having been duly sworn

4 by a Notary Public, was examined and

5 testified as follows:

6 MR. MORRIS: Good afternoon. My

7 name is John Morris. I'm an attorney with

8 Pachulski Stang Ziehl & Jones, a law firm

9 who represents the debtor in the bankruptcy

10 known as In Re: Highland Capital

11 Management, L.P., and we're here today for

12 the deposition of Grant Scott.

13 Before I begin, I would just like to

14 have confirmation on the record that

15 everybody here who's representing their

16 respective parties agrees that this

17 deposition can be used in evidence in any

18 subsequent hearing, notwithstanding the

19 fact that it's being conducted remotely,

20 and that the witness is not in the same

21 room as the court reporter.

22 Does anybody have an objection to

23 the admissibility of the transcript subject

24 to any reservation of -- of actual

25 objections on the record to using this

1 GRANT SCOTT - 1/21/2021

2 transcript going forward?

3 Okay. Nobody's spoken up, so I --

4 I'd like to begin.

5 EXAMINATION

6 BY MR. MORRIS:

7 Q. Good afternoon, Mr. Scott. As I

8 mentioned, my name is John Morris, and we're

9 here for your deposition today. Have you ever

10 been deposed before?

11 A. On two occasions.

12 Q. And -- and when did the -- when did

13 those depositions take place?

14 A. This past October and maybe six to

15 eight years ago.

16 Q. Okay. Can you just tell me

17 generally what the subject matter was of the

18 deposition this past October.

19 A. It was relating to Jim Dondero's --

20 it was a family law issue in -- in -- with

21 respect to Jim Dondero.

22 Q. Okay. And did you testify in a

23 courtroom, or was it a deposition like this?

24 A. I -- right here, actually.

25 Q. Okay. Super. And -- and what about

1 GRANT SCOTT - 1/21/2021

2 the -- the deposition six to eight years ago,
3 do you have a recollection as to what that was
4 about?

5 A. Yeah. It was a -- it was a patent I
6 wrote for Samsung Electronics.

7 Q. Okay.

8 A. And as being the person that I --
9 that wrote it and the patent was in litigation,
10 not -- not being handled by me, but by virtue
11 of having written the patent, I was -- I was
12 deposed --

13 Q. Okay. So you --

14 A. -- on the -- on the patent.

15 Q. Okay. So you've had a little bit of
16 experience with depositions. But just
17 generally speaking, I'm going to ask you a
18 series of questions. It's very important that
19 you allow me to finish my question before you
20 begin your answer.

21 Is that fair?

22 A. Absolutely.

23 Q. And I will certainly try to extend
24 the same courtesy to you, but if I -- if I step
25 on your words, will you let me know that?

1 GRANT SCOTT - 1/21/2021

2 A. Okay.

3 Q. And if there's anything that I ask
4 that you don't understand, will you let me know
5 that as well?

6 A. Yes. I'll try -- I'll do my best.

7 Q. Okay. So this is a virtual
8 deposition. We're not in the same room. I am
9 going to be showing you documents today. The
10 documents will be put up on the screen. This
11 isn't a -- a trick of any kind. If at any time
12 you see a document up on the screen and either
13 you believe or you have any reason to want to
14 read other portions of the document, will you
15 let me know that?

16 A. Yes, I -- yes, I will. Uh-huh.

17 Q. With respect to the Dondero family
18 matter, I really don't want to go into the
19 substance of that, but I do want to know
20 whether you testified voluntarily in that
21 matter or whether you -- whether you testified
22 pursuant to subpoena.

23 A. I would have done that, but the
24 first time I found out about it was a -- was a
25 subpoena that I received. I wasn't given the

1 GRANT SCOTT - 1/21/2021

2 choice.

3 Q. Okay. And do you recall who served
4 the subpoena on you? Actually, let me ask a
5 different question because I'm really not
6 interested in the -- in the details.

7 Did Mr. Dondero serve that subpoena
8 on you or did somebody else?

9 A. His counsel for his ex-wife.

10 Q. Mr. -- so -- so the lawyer acting on
11 behalf of Mr. Dondero's ex-wife served you with
12 the subpoena?

13 A. Correct.

14 Q. Okay. You're familiar with an
15 entity called CLO HoldCo Limited; is that
16 right?

17 A. Yes.

18 Q. Do you know what that entity is?

19 A. Yes.

20 Q. What -- what -- can you describe for
21 me what CLO HoldCo Limited is.

22 A. It's a holding company of assets
23 including collateralized loan obligation-type
24 assets. That's a portion of the overall
25 portfolio. It's an organization that is

1 GRANT SCOTT - 1/21/2021
2 integrated with other entities as part of a
3 charitable -- loosely what we -- what we refer
4 to as a charitable foundation equivalent.
5 Yeah.

6 Q. All right. We'll -- we'll get into
7 some detail about the corporate structure in a
8 moment. Do you personally play any role at CLO
9 HoldCo Limited?

10 A. Yes. My technical title is
11 director, but I -- I don't necessarily know
12 specifically what that title means other than I
13 act, as I understand it, as -- as a trustee for
14 those -- for those assets.

15 Q. And where did you get that
16 understanding?

17 A. Approximately ten years ago from the
18 group that -- that set up the hierarchy.

19 Q. And which group set up the
20 hierarchy?

21 A. Employees at Jim Don- -- as I
22 understand it, employees of Highland along with
23 outside counsel, as I understand it, and also,
24 I guess, input from -- from Jim Dondero.

25 Q. At the time that you assumed the

1 GRANT SCOTT - 1/21/2021
2 role of director of CLO HoldCo Limited, was
3 that entity already in existence?

4 A. I believe so. I'm not certain. I'm
5 not certain.

6 Q. What are your duties and
7 responsibilities as a director of CLO HoldCo
8 Limited?

9 A. Well, my day-to-day responsibilities
10 are to interface with -- with the manager of
11 the -- of the assets of CLO. I do have some
12 role in -- with respect to some of the entities
13 that are -- I -- I have a limited role with
14 respect to a subset of the charitable
15 foundations that receive money from the CLO
16 HoldCo structure, which is commonly referred to
17 as the DAF. There's -- sometimes those are
18 used interchangeably.

19 Q. What terms are used interchangeably?

20 A. Well, the DAF and CLO HoldCo are
21 frequently -- by -- by other people they're --
22 it's the short -- it's the -- I guess it's
23 easier to use the acronym DAF than CLO HoldCo
24 Limited, so I'm frequently having to -- there
25 is a DAF entity so -- that's above -- above CLO

1 GRANT SCOTT - 1/21/2021
2 in terms of the management, and so it's
3 frequently confusing and I'm having to clarify
4 at times which entity we're talking about,
5 but -- but other parties frequently use those
6 terms interchangeably.

7 Q. Okay.

8 MR. MORRIS: Lisa, when we use the
9 phrase DAF, because you'll hear that a lot,
10 it's all caps, D-A-F.

11 BY MR. MORRIS:

12 Q. You mentioned that you interface
13 with the manager of assets of CLOs. Do I have
14 that right?

15 A. Well, of all the assets.

16 Q. Okay. Who is the manager of the
17 assets that you're referring to?

18 A. Highland Capital Management.

19 Q. Highland Capital Management manages
20 all of the assets -- withdrawn.

21 Is it your understanding that
22 Highland Capital Management manages all the
23 assets that are owned by CLO HoldCo Limited?

24 A. Yes.

25 Q. Who makes the investment decisions

1 GRANT SCOTT - 1/21/2021

2 on behalf of CLO HoldCo Limited?

3 A. Highland -- those managers that you
4 mentioned.

5 Q. Okay. I didn't mention anybody in
6 particular.

7 A. Oh, I'm sorry. The -- the -- the
8 money manager -- could you repeat that
9 question? I'm sorry. I'm so sorry.

10 Q. Can you just -- can you just
11 identify for me the person who makes investment
12 decisions on behalf of CLO HoldCo Limited.

13 A. It's -- well, it's -- it's persons
14 as I understand it. I inter- -- interface with
15 a -- with a group, but it's -- it's Highland
16 Capital employee -- Highland Capital Management
17 employees.

18 Q. Okay. Can you just name any of
19 them, please.

20 A. Hunter Covitz, Jim Dondero. Mark
21 Okada's no longer there, but I believe he was
22 involved, and there are others that I interface
23 with.

24 Q. Can you -- can you recall the name
25 of anybody other than Mr. Okada and Mr. Dondero

1 GRANT SCOTT - 1/21/2021

2 and Mr. Covitz?

3 A. Yeah. Over the years I've worked
4 with Tim Cournoyer, Thomas Surgent, but I
5 think -- I think that's the core -- the core
6 group.

7 Q. All right. And is there anybody
8 within that core group who has the final
9 decision-making authority concerning the
10 investments in CLO HoldCo Limited?

11 A. I don't -- I don't know. I'm sorry.
12 Say that again. I just want to -- I'm sorry.
13 I'm trying to be -- I'm not trying to -- I'm
14 trying to be --

15 Q. I understand. And --

16 A. Sorry. If you could just repeat it.

17 Q. Sure. Is there any particular
18 person who has the final decision-making
19 authority for investments that are being made
20 on behalf of CLO HoldCo Limited?

21 A. Amongst that group I am -- I am not
22 sure.

23 Q. Okay. So are there any other
24 directors of CLO HoldCo besides yourself?

25 A. No.

1 GRANT SCOTT - 1/21/2021

2 Q. Is it fair to say that you do not
3 make decisions, investment decisions, on behalf
4 of CLO HoldCo Limited?

5 A. Yes.

6 Q. Does CLO HoldCo Limited have any
7 employees that you know of?

8 A. No.

9 Q. Does CLO HoldCo have any --
10 withdrawn.

11 Does CLO HoldCo Limited have any
12 officers that you know of?

13 A. No.

14 Q. So am I correct that you're the only
15 representative in the world of CLO HoldCo in
16 terms of being a director, officer, or
17 employee?

18 A. Yes.

19 Q. Do you receive any compensation from
20 CLO HoldCo for your services as the director?

21 A. I do now.

22 Q. When did that begin?

23 A. I believe in the middle of 2012.

24 Q. Okay. And had you served as a
25 director prior to that time without

1 GRANT SCOTT - 1/21/2021

2 compensation?

3 A. Yes.

4 Q. And have you been the sole director
5 of CLO HoldCo Limited since the time of your
6 appointment approximately ten years ago?

7 A. Yes.

8 Q. Nobody else has served in that
9 capacity; is that right?

10 A. That is correct.

11 Q. There have been no employees or
12 officers of that entity during the time that
13 you've served as director, correct?

14 A. Yes.

15 Q. Do you know who formed CLO HoldCo
16 Limited?

17 A. I do not.

18 Q. Do you know why CLO HoldCo Limited
19 was formed?

20 A. I believe so.

21 Q. Can you explain to me why -- your
22 understanding as to why CLO HoldCo was formed.

23 A. So as I understand things, Jim
24 Dondero wanted to create a charitable
25 foundation-like entity or entities, and tax

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2 people particularly, I guess, finance people,
3 lawyers, they created this network of entities
4 to carry out that charitable goal. At one
5 point, I thought it was a novel type of
6 institution, if you want to call it, or a
7 novel -- novel type of group of entities, but
8 over time, I came to understand that although
9 not cookie cutter, it -- it follows a general
10 arrangement of entities for legal and tax
11 purposes, compliance purposes, IRS purposes,
12 various insulating purposes to maintain -- or
13 to meet the necessary requisites to carry out
14 that charitable function.

15 Q. When did you come to that
16 understanding?

17 A. Over the last couple of years. I
18 periodically have to refresh my recollection.
19 It's -- it's fairly complex.

20 Q. Okay. In your capacity as the sole
21 director of CLO HoldCo Limited, do you report
22 to anybody?

23 A. No.

24 Q. Other than interfacing with the
25 manager of the assets of the CLO, do you have

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2 any other duties and responsibilities as a
3 director of CLO HoldCo Limited?

4 A. Yes. Sorry. My mouth is a little
5 dry.

6 Q. By the way, if you ever need to take
7 a break, just let me know.

8 A. Okay. Thank you. Now I forgot your
9 question. The -- the -- the --

10 Q. I understand.

11 A. The answer -- the -- the answer is
12 yes. I -- why don't you ask -- ask your
13 question again. I'm sorry.

14 Q. Sure. Other than interfacing with
15 the manager of the assets of the CLO, do you
16 have any other duties and responsibilities as
17 the sole director of CLO HoldCo Limited?

18 A. Yes. So Highland Capital because of
19 its -- the way it's set up to manage or service
20 CLO HoldCo and the DAF, it has a relatively
21 large group of people that I have to interface
22 with to do everything from -- everything from
23 soup to nuts. Finances and the money
24 management is one aspect, but most of my
25 time -- on a day-to-day or week-to-week basis,

1 GRANT SCOTT - 1/21/2021
2 most of my time is spent working with the
3 various compliance and other people for
4 addressing issues of get- -- you know, getting
5 taxes filed. It runs -- it runs the gamut of
6 every aspect of the organization being -- being
7 handled by Highland.

8 Q. Okay.

9 A. You know, unlike -- unlike my
10 financial -- unlike a financial planner that
11 might, you know, manage assets, they -- they do
12 it all, and I interface with them regularly to
13 maintain -- mostly to deal with compliance
14 issues.

15 Q. Who's the com- -- is there a person
16 who's in charge of compliance?

17 A. I believe Thomas Surgent. I
18 mentioned him. I believe he also has that
19 role, but it's -- you know, they do have
20 turnover, I guess, in that. It's -- I guess
21 they refer to it as the back office. I've
22 heard that term be used, but -- basically, it's
23 a large number of people that have changed over
24 time, but it's -- it's more -- I believe it's
25 more than one collectively.

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2 Q. How much time do you devote -- you
3 know, can you estimate either on a weekly or a
4 monthly basis how many -- how much time do you
5 devote to serving as the director of CLO HoldCo
6 Limited?

7 A. I thought about that. Well, let --
8 let's put it this way: There was the
9 prebankruptcy time I spent per day, and then
10 there was the postbankruptcy time I've spent
11 per -- per -- or per week -- excuse me, or
12 per -- I've estimated it as probably a day --
13 it's so intermittent it's -- it's hard, okay?
14 It's -- I don't dedicate my Mondays to only
15 doing that and then Tuesday through Friday I
16 don't, right? I -- it's -- I have to piece
17 together everything that occurs during the
18 week. There might be some weeks where I don't
19 have any contact. There might be every day of
20 the week I have multiple contact. There may be
21 days where from morning to night there is so
22 much contact, it precludes me from doing
23 anything else meaningfully. So -- but I would
24 estimate it's probably three or four -- maybe
25 three days, four days a month when things are

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2 going well.

3 Q. And -- and I think you -- you
4 testified just now that there was kind of a
5 difference between prebankruptcy and
6 postbankruptcy. Do I have that right?

7 A. Yes.

8 Q. And can you tell me -- is it fair to
9 say that before the bankruptcy, you didn't
10 devote much time to CLO HoldCo, or do I have
11 that wrong?

12 A. Well, I -- just the time that --
13 that I mentioned just -- I'm sorry. The -- the
14 time I just mentioned now when you asked me,
15 that was the pre period. Excuse me. I haven't
16 talked about the postbankruptcy period.

17 Q. So are you -- are you -- are you
18 devoting more time or less time since the
19 bankruptcy?

20 A. Much more.

21 Q. Much more since the bankruptcy
22 filing?

23 A. Yes.

24 Q. And so why did the bankruptcy filing
25 cause you to spend more time as a director of

1 GRANT SCOTT - 1/21/2021

2 CLO HoldCo Limited?

3 A. Well, initially, and this would

4 be -- this would be late 2019, it was --

5 aft- -- after the bankruptcy was -- was filed

6 and I obtained counsel, who are on the phone

7 now -- or in this deposition now, excuse me,

8 that was -- that transition occurred because

9 CLO was a debtor -- excuse me, a creditor to --

10 to the debtor and had to take steps to

11 establish its -- its claim. So if I understand

12 the -- things correctly, the -- the debtor

13 identified as part of the filing -- I don't

14 know how bankruptcy works, but if I under- --

15 if my recollection is correct, there's a

16 hierarchy from biggest to smallest, and we were

17 relatively high up. And when I say we or I,

18 I -- I just mean CLO was relatively high up.

19 And so initially, for the first period of so

20 many months, the -- the exclusive focus was on

21 our position as a creditor -- a creditor having

22 a certain claim against a debtor.

23 Q. Can you describe for me your

24 understanding of the nature of the claim

25 against the debtor.

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2 A. It was various obligations that were
3 owed to -- to CLO, things that had been
4 previously donated or -- or agreements that had
5 been set up that transferred certain assets,
6 and it was basically the -- the -- the amounts
7 were derived from those sorts of transactions.

8 Q. Okay. You're a patent lawyer; is
9 that right?

10 A. I -- I'm exclusively a patent
11 attorney, yes.

12 Q. Have you been a patent lawyer on an
13 exclusive basis since the time you graduated
14 from law school?

15 A. From law school, yes.

16 Q. Can you just describe for me
17 generally your educational background.

18 A. So I'm an electrical engineer by
19 training. I graduated from the University of
20 Virginia in 1984. I then went to graduate
21 school at the University of Illinois. I
22 received my master's degree in 1986, and then I
23 immediately joined IBM Research at the Thomas
24 Watson Institute in New York where I was a --
25 my title was research scientist, but I was -- I

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2 guess I was more of a research engineer, if
3 that matters. And I did that until I
4 transitioned -- or I began law school in the
5 fall of 1988, and then I graduated law school
6 in May of 1991.

7 Q. And where did you go to law school?

8 A. University of North Carolina.

9 Q. Do you have any formal training in
10 investing or finance?

11 A. I do not.

12 Q. Do you hold yourself out as an
13 expert in any field of investment?

14 A. None -- none at all.

15 Q. Have you had any formal training
16 with respect to compliance issues? You
17 mentioned compliance issues earlier.

18 A. No.

19 Q. Now, do you have any knowledge about
20 compliance rules or regulations?

21 A. Minimal that I've -- that have
22 occurred organically but -- but generally, no.

23 Q. You don't hold yourself out as an
24 expert in com- -- in the area of compliance,
25 correct?

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2 A. No. No. I'm -- no.

3 Q. Do you have any particular

4 investment philosophy or strategy?

5 MR. CLARK: I'm going to object to

6 the form of the question. And, John,

7 can -- can we get an agreement that -- I

8 know you were objecting just simply on the

9 form basis yesterday -- that objection to

10 form is sufficient today?

11 MR. MORRIS: Sure.

12 MR. CLARK: Okay. And I object to

13 form. Grant, you can answer to the extent

14 you can.

15 THE WITNESS: I forget the question

16 now that you interrupted. I'm sorry.

17 BY MR. MORRIS:

18 Q. So -- so -- and I'm going to ask a

19 different question because in hindsight, that's

20 a good objection.

21 In your capacity as the director

22 of -- withdrawn.

23 Do the employees of Highland that

24 you identified earlier, do they make investment

25 decisions on behalf of CLO HoldCo Limited

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2 without your prior knowledge on occasion?

3 A. On occasion, they do.

4 Q. So there's no rule that your prior

5 approval is needed before investments are made,

6 right?

7 A. I don't know whether they have an

8 internal guideline as to the amount that

9 triggers when they get in touch with me or

10 whether it's a new -- a change, something new,

11 or -- versus recurring. So I don't -- I don't

12 know what they use internally for that metric.

13 Q. Okay. Are you aware of any

14 guideline that was ever used by the Highland

15 employees whereby they were required to obtain

16 your consent prior to effectuating transactions

17 on behalf of CLO HoldCo Limited?

18 A. I understand there was one or more,

19 but I do not know that.

20 Q. Okay. Did you ever see such a

21 policy or list of rules that would require your

22 prior consent before the Highland employees

23 effectuated transactions on behalf of CLO

24 HoldCo Limited?

25 A. Possibly some time ago, but I -- I

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2 don't recall.

3 Q. Okay. So -- withdrawn. I'll --

4 I'll go on.

5 How did you come to be the director

6 of CLO HoldCo?

7 A. I was asked either by Jim Dondero

8 or -- directly or indirectly by -- by Jim

9 Dondero.

10 Q. And who is Jim Dondero?

11 A. Well, at the time, he was the head

12 or one of the heads of Highland Capital

13 Management, a friend of mine.

14 Q. How long have you known Mr. Dondero?

15 A. Since high school so that -- 1976.

16 Q. Where did you and Mr. Dondero grow

17 up?

18 A. In northern New Jersey.

19 Q. Do you consider him among the

20 closest friends you have?

21 A. I think he is my closest friend.

22 Q. Did you two go to college together?

23 A. We actually -- for the last -- last

24 two years I was at UVA, University of Virginia,

25 excuse me, he and I were -- were at UVA. So we

1 GRANT SCOTT - 1/21/2021
2 did not start out at UVA initially, but -- but
3 we both transferred -- I transferred my
4 sophomore year. I was actually a chemical
5 engineer at the University of Delaware when I
6 transferred in, and then he transferred in his
7 junior year. So we were there at college for
8 two years.

9 Q. And -- and based on your
10 relationship with him, is it your understanding
11 that one of the reasons he chose to transfer to
12 UVA is -- is to -- because you were there?

13 A. Oh, no. He transferred -- he --
14 he -- he transferred there because of the -- so
15 he went to the University of -- he -- he went
16 to Virginia Tech University, which is more
17 known as being an engineering school, which I
18 might have wanted to go to, and less a finance
19 business school. And if I understand things
20 correctly, and I believe I do, he transferred
21 to UVA because of the well-known
22 business/finance program, accounting program.

23 Q. And did you -- did you and
24 Mr. Dondero become roommates at UVA?

25 A. We weren't roommates, but we lived

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2 in the -- we were housemates. I'm sorry. We
3 were housemates.

4 Q. So you shared a house together. How
5 would you describe your relationship with
6 Mr. Dondero today?

7 A. It's -- it's been strained a while,
8 for some time, but -- but generally, very good.
9 Good to very good.

10 Q. Without -- without getting personal
11 here, can you just generally identify the
12 source of the strain that you described.

13 A. This -- I think it would be fair to
14 say that this bankruptcy, particularly events
15 in 2020 so some months after the bankruptcy was
16 declared, things have become -- we -- we still
17 have a close friendship, but -- but things
18 are -- are a bit -- are a bit more difficult.

19 Q. Were you ever married?

20 A. I've never been married.

21 Q. Did you serve as Mr. Dondero's best
22 man at his wedding?

23 A. I did.

24 Q. Is it fair to say that -- that
25 Mr. Dondero trusts you?

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2 MR. CLARK: Objection, form.

3 BY MR. MORRIS:

4 Q. Withdrawn.

5 Do you believe that Mr. Dondero

6 trusts you?

7 A. I do.

8 Q. Over the years, is it fair to say

9 that Mr. Dondero has confided in you?

10 MR. CLARK: Objection, form.

11 BY MR. MORRIS:

12 Q. You can answer if you understand it.

13 A. I think so.

14 Q. I -- I -- what's your answer? You

15 think so?

16 A. Maybe you can de- -- I think of

17 confide as -- could you define confide, please.

18 Q. Sure. Is it -- is it fair to say

19 that over the -- let me -- you've known

20 Mr. Dondero for almost 45 years, right?

21 A. Yes.

22 Q. And you consider him to be your

23 closest friend in the world, right?

24 A. Yes.

25 Q. And is it fair to say over the

1 GRANT SCOTT - 1/21/2021
2 course of those 45 years, Mr. Dondero has
3 shared confidential information with you that
4 he didn't want you to reveal publicly to other
5 people?

6 A. Yes.

7 Q. And is it your understanding that
8 because of the nature of your relationship with
9 him, he asked you to serve as the director of
10 CLO HoldCo Limited?

11 A. Yes. I believe it's because he --
12 he trusted -- trusted me with -- with assets
13 relating to his charitable vision. I -- I --
14 yeah. Yes.

15 Q. And is it your understanding that he
16 thought you would help him execute his
17 charitable vision?

18 A. That was the point of attraction
19 initially. It wasn't for money. I wasn't
20 being paid. That was -- the charitable mission
21 was the attraction.

22 Q. Does Mr. Dondero play any role in
23 the management of the CLO HoldCo Limited asset
24 pool?

25 MR. CLARK: Objection, form.

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2 A. I'm sorry. Could you repeat that?

3 My -- my screen went small and then big again.

4 I was distracted.

5 Q. What role does Mr. Dondero play with
6 respect to the management of the CLO HoldCo
7 Limited asset pool?

8 MR. CLARK: Objection, form.

9 A. He is with the company that manages
10 that asset pool. He's one of the people I
11 named previously as managing those assets.

12 Q. He is -- he -- he is the -- do you
13 understand that he has the final
14 decision-making power with respect to the
15 management of the assets that are held by CLO
16 HoldCo Limited?

17 MR. CLARK: Objection, form.

18 A. I believe I ansel -- answered that
19 previously. I -- I don't know who has -- for
20 certainty I do not know who has that within
21 that company. I don't. If -- if -- I -- I
22 don't know, consistent with my prior answer.

23 Q. Did you ever ask anybody who had the
24 final decision-making authority for investments
25 on behalf of CLO HoldCo Limited?

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2 A. I -- I did not.

3 Q. Did you ever make a decision on

4 behalf of -- withdrawn.

5 In your capacity as a director --

6 withdrawn.

7 In your capacity as the sole

8 director of CLO HoldCo Limited, can you think

9 of any decision that you've ever made that

10 Mr. Dondero disagreed with?

11 A. Since -- prior to the bankruptcy,

12 no, not that I'm aware of.

13 Q. And since the bankruptcy?

14 A. There are decisions that I've made

15 that he's disagreed with.

16 Q. Can you identify them?

17 A. Yes.

18 Q. Please do so.

19 A. Okay. So the reason I'm pausing is

20 I'm trying to put these in chronological order

21 and, at the same time, identify maybe some of

22 the more important ones versus the lesser

23 important ones. One of the decisions I made

24 related to a request that I received from the

25 independent board of Highland. I don't know

1 GRANT SCOTT - 1/21/2021
2 how the request was transmitted to me, but I
3 believe the way it played out is as follows: I
4 believe I was asked to call Jim Seery, and the
5 other -- and Russell Nelms, and the third
6 independent director, I believe his name is
7 John. I -- I forget right now what his last
8 name is. They were in New York, said they were
9 in a conference room. I called in. They were
10 very pleasant. They identified who they were,
11 and they had a request, and the request was
12 that I agree to a transfer -- or that I -- that
13 I agree to allow certain assets that were not
14 Highland's assets but they were CLO's as- --
15 assets -- apparently, there was no dispute
16 about that at any point in time, but that I
17 agree to allow certain assets that were due CLO
18 to be transferred to the registry of the
19 bankruptcy court. And either on that call I
20 immediately agreed or ended the call, called my
21 attorney, and then immediately agreed. It was
22 a very -- I accommodated the request quickly.
23 Q. Okay. And can you just tell me at
24 what point in time you spoke with Mr. Dondero,
25 and what did he say that you recall?

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2 A. I don't know when he became aware of
3 that decision. I'm not sure I ever volunteered
4 that the decision was even made, but at some
5 point, it became an issue because he found out
6 through -- if I understand the sequence of
7 events correctly, he found out possibly through
8 his counsel because there was ultimately
9 litigation about that issue. It became known
10 to everyone at some point what I had done, I --
11 I think. And subsequent to that, it became an
12 issue because of CLO HoldCo having fairly
13 significant cash flow issues with respect to
14 its expenses and obligations, including payment
15 of management fees as well as some of the
16 scheduled charitable giving that was -- that
17 was by contract already predefined. My
18 decision to tuck that money -- or to agree
19 to -- my agreement to let that money be tucked
20 away created some -- created some -- created
21 some problems --

22 Q. And -- and --

23 A. -- for CLO HoldCo.

24 Q. Okay. And I just want you to focus
25 specifically on my question, and that is, what

1 GRANT SCOTT - 1/21/2021
2 did Mr. Dondero say to you that -- that causes
3 you to testify as you did, that this is one
4 issue that he didn't agree with?

5 A. I believe his concern was that
6 because it was money that was undisputably to
7 flow to CLO HoldCo that -- which had many, many
8 other nonliquid assets -- this was a form of a
9 liquid asset. It was cash in effect, proceeds.
10 -- that the money should have been allowed to
11 flow to be available for obligations. He
12 didn't under- -- I -- I -- I don't know what he
13 was thinking, but the -- the issue was that the
14 decision to put it into escrow was -- was --
15 was in- -- incorrect, that there was no basis
16 for it.

17 Q. That -- that's an issue where after
18 learning of your decision, he didn't agree with
19 it; is that fair?

20 A. That's right.

21 Q. Okay. Can you think of any decision
22 that you've ever made on behalf of CLO HoldCo
23 Limited where Mr. Dondero had advance knowledge
24 of what you were going to do and he objected to
25 it, but you nevertheless overruled his

1 GRANT SCOTT - 1/21/2021

2 objection and went ahead and did what -- did

3 what you thought was right?

4 A. Okay. Let me -- let me -- I have --

5 I'm sorry.

6 Q. We're here.

7 A. Oh, I'm sorry. I'm having some

8 issues with my screen. So that may have

9 occurred with respect to the original proof of

10 claim. Then there was a subsequent amendment

11 to the proof of claim, and I -- I believe it --

12 I believe that he might have been aware of both

13 of those and was in disagreement with -- with

14 those. But after working with my attorney, we

15 just -- you know, we did what we thought was

16 right, and I still think what we did was right.

17 There was an issue with respect to Har- --

18 HarbourVest that occurred relatively recently

19 where he objected to a decision that I had

20 made. As I understand it, I could have

21 contacted my attorney and changed the decision,

22 but I didn't, and I still think that was the

23 right decision.

24 We have filed plan objections. I

25 can't say if he has any -- in that regard, I --

1 GRANT SCOTT - 1/21/2021
2 I -- I don't know what his thoughts are on
3 objections. They would not have been
4 communicated with -- by me to him, but my
5 attorney might have consulted with his
6 attorney, and there -- they may know what that
7 difference is, but I -- that was just another
8 big decision. I -- I -- maybe that --

9 Q. All right. Let me see if I can --
10 let me see if I can summarize this. So two
11 proofs of claim. Is it fair to say that
12 Mr. Dondero saw those proofs of claim before
13 they were filed?

14 MR. CLARK: Objection, form.

15 BY MR. MORRIS:

16 Q. Withdrawn.

17 A. It --

18 Q. Do -- do you know whether
19 Mr. Dondero saw the proofs of claim before they
20 were filed?

21 A. I don't believe he did.

22 Q. What -- what steps in filing the
23 proofs of claim did he object to that you
24 overruled? Did he think there was -- something
25 should be different about them?

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2 A. So we had to interface with Highland
3 employees at some point to get information to
4 support our proof of claim, and my guess, and
5 it's just a guess, is that he was aware of
6 those inquiries. I -- I'm sorry. I shouldn't
7 speculate. I don't know. But he -- with
8 respect to the original proof of claim, I'm --
9 I'm not aware of what specifically he was
10 objecting to or was -- thought should have been
11 different, but the -- with respect to the
12 amended proof of claim, which reduced the
13 original proof of claim to zero, I think that's
14 where he had a -- an issue.

15 Q. And did you speak with him about
16 that topic prior to the time the amended claim
17 was filed, or did you only speak with him after
18 it was filed?

19 A. I'm not sure the timing of that.

20 Q. And with respect to HarbourVest, did
21 he ask you to object to the settlement on
22 behalf of CLO HoldCo Limited, and is that
23 something that you declined to do?

24 MR. CLARK: Objection, form.

25 A. I'm -- I'm sorry. I was confused

1 GRANT SCOTT - 1/21/2021

2 with the word. Could you please repeat that?

3 Q. Yes. You mentioned HarbourVest

4 before, right?

5 A. Yes.

6 Q. And you mentioned that there was an

7 issue with Mr. Dondero and you concerning

8 HarbourVest; is that right?

9 A. Yes.

10 Q. And did that have to do with whether

11 or not CLO HoldCo Limited would -- would object

12 to the debtor's motion to get the HarbourVest

13 settlement approved?

14 A. Would -- would get the

15 HarbourVest --

16 Q. Settlement approved by the court.

17 A. I'm not trying to be difficult.

18 I'm -- I'm -- could you just repeat that one

19 more time? I'm --

20 Q. What was -- what was --

21 A. There was --

22 Q. Let me try again.

23 A. Okay.

24 Q. What was the issue with respect to

25 HarbourVest that he objected to and -- and you

1 GRANT SCOTT - 1/21/2021
2 overrode his objection and did what you thought
3 was right anyway?

4 A. Okay. Okay. That's -- that's
5 easier for me to understand. I'm sorry. So I
6 had worked with my attorney or he did the work
7 and consulted with -- we consulted, but we had
8 filed an objection, motion objecting to the
9 settlement, if I understand the terminology and
10 nomenclature correctly. Okay. He had -- we
11 had come to an agreement that we had a very
12 valid argument. That argument was evidenced
13 by, I guess it was, our motion that was
14 submitted to the court. On the day of the
15 hearing to resolve this issue, we pulled our
16 request, and that was because I believed it did
17 not have a good-faith basis in law to move
18 forward on.

19 Q. And did you discuss that issue with
20 Mr. Dondero before informing the court that CLO
21 HoldCo Limited was withdrawing its objection,
22 or did he learn about that for the first time
23 during the hearing --

24 MR. CLARK: Objection, form.

25 BY MR. MORRIS:

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2 Q. -- if you know?

3 A. I -- I understand that he learned it
4 during the hearing. I don't know the -- I -- I
5 don't know the -- whether there was any -- I --
6 I don't know for certain on the second half of
7 your question.

8 Q. Let me -- let me try it -- let me
9 try it this way: Did you speak with
10 Mr. Dondero about your decision to withdraw the
11 objection to the HarbourVest settlement prior
12 to the time your counsel made the announcement
13 in court?

14 A. I don't -- I don't believe so. No.
15 No. No. I'm sorry. No.

16 Q. And did --

17 A. Okay. No. Here -- here's where
18 I'm -- I can clarify, okay? I'm sorry. I can
19 clarify.

20 Q. That's all right.

21 A. I gave the decision to my
22 attorney -- I -- I agreed with the
23 recommendation of my attorney, okay? It wasn't
24 my --

25 Q. Did you have a good --

1 GRANT SCOTT - 1/21/2021

2 A. -- thought, okay?

3 THE REPORTER: I didn't --

4 A. Okay. So he --

5 Q. It was a recommendation.

6 A. Yeah. So he -- he called me with a
7 recommendation. It was highly urgent. You
8 know, I was coming out of the men's room, had
9 my phone with me. I got the call.

10 MR. CLARK: Hey, Grant, I -- Grant,
11 I just want to caution you not to -- to --
12 and I don't think counsel is looking for
13 this but not to disclose the -- the
14 substance of any of your communications
15 with counsel, okay?

16 THE WITNESS: Thank you.

17 A. So --

18 THE WITNESS: Thank you. I'm -- I'm
19 sorry.

20 BY MR. MORRIS:

21 Q. It's -- it's really a very simple
22 question. Do you recall --

23 A. He made a recommendation. I -- I --
24 I think I can answer your question without
25 going off tangent. I'm sorry. So he -- my

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2 attorney made a recommendation. I agreed with
3 it. We with- -- I -- I told him to withdraw --
4 or I authorized him to withdraw.

5 Q. Okay.

6 A. Then I received a communication, and
7 I -- I guess the most likely scenario is the
8 motion had been withdrawn by the time Jim
9 Dondero found out.

10 Q. And -- and did he write to you, or
11 did he call you? Did he send you a text?

12 A. He called me.

13 Q. What did he say?

14 A. He was asking why, and I explained,
15 and I said I agreed with the decision and I was
16 sticking with the decision.

17 Q. Let's just -- let's just move on to
18 a new topic, and let's talk about the structure
19 of -- of CLO HoldCo. Are you generally
20 familiar with the ownership structure of CLO
21 HoldCo?

22 A. Yeah. I mean, in terms --

23 Q. Are -- are you -- are you generally
24 familiar with it? It's not a test. I'm just
25 asking do you have a general familiarity --

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2 A. With CLO HoldCo or the entities
3 associated with CLO HoldCo?

4 Q. The latter.

5 A. Yes, I believe so.

6 Q. All right. I've prepared what's
7 called a demonstrative exhibit. It's just --

8 A. Yes.

9 Q. -- just -- it's a document that, I
10 think, reflects facts, but I want to ask you
11 about it.

12 MR. MORRIS: La Asia, can we please
13 put up Exhibit 1.

14 (SCOTT EXHIBIT 1, Organizational
15 Structure: CLO HoldCo, Ltd., was marked
16 for identification.)

17 BY MR. MORRIS:

18 Q. Okay. Can you see that, Mr. Scott?

19 A. Yes, I can.

20 Q. Okay. So I think I took the
21 information from resolutions that were attached
22 to the CLO HoldCo proof of claim, and that's
23 why you got that little footnote there at the
24 bottom of the page. But let's start in the
25 lower right-hand corner and see if this chart

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2 comports with your understanding of the facts.

3 Do you know that CLO HoldCo Limited

4 was formed in the Cayman Islands?

5 A. Yes.

6 Q. And to the best of your knowledge,

7 is CLO HoldCo Limited 100 percent owned by the

8 Charitable DAF Fund, L.P.? If you're not sure,

9 just say you're not sure if you don't know.

10 It's not a test.

11 A. So the -- the -- the familiarity

12 I -- I'm -- I'm familiar with the different --

13 I'm confused with the arrangement of the boxes

14 and the ownership interest versus managerial

15 interest. I believe that's -- that's right.

16 Q. Okay. And -- and you're the sole

17 director of CLO HoldCo Limited, right?

18 A. Yes.

19 Q. And this whole structure was -- the

20 idea for this structure, to the best of your

21 knowledge, was to implement Mr. Dondero's plan

22 for charitable giving; is that fair?

23 A. Yes. Ultimately, yes.

24 Q. And is it fair to say then that

25 he -- he made the decision to establish this

1 GRANT SCOTT - 1/21/2021

2 particular structure, to the best of your
3 knowledge?

4 A. I -- I didn't -- I'm sorry. I
5 didn't hear you very well.

6 Q. To the best of your knowledge, did
7 Mr. Dondero make the decisions to establish the
8 structure that's reflected on this page?

9 A. Oh, I don't know if he made the
10 decision to establish this structure, although
11 it's -- it's -- I'm sorry. Strike that. I --
12 if -- if what you're saying is did he approve
13 of this structure, to my knowledge, yes.

14 Q. Okay. Do you hold any position with
15 respect to Charitable DAF Fund, L.P.?

16 A. I -- I -- your chart says no. I --
17 I -- I thought I had a role there, too.

18 Q. I don't know. I don't have
19 information on that. That's why I'm asking the
20 question.

21 A. I -- I -- I believe -- yes, I
22 believe I have the same role as I do in -- in
23 CLO HoldCo.

24 Q. And that would be director?

25 A. Yes.

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2 Q. And to the best of your knowledge,
3 is the Charitable DAF GP, LLC, the general
4 partner of Charitable DAF Fund, L.P.?

5 A. Yes.

6 Q. And is it your understanding that
7 you are the managing member of Charitable DAF
8 GP, LLC?

9 A. Yes.

10 Q. Does Charitable DAF GP, LLC, have
11 any employees?

12 A. No.

13 Q. Does Charitable DAF GP, LLC, have
14 any officers or directors?

15 A. No.

16 Q. Are you the only person affiliated
17 with Charitable DAF GP, LLC, to the best of
18 your --

19 A. I believe so.

20 Q. Do you receive any compensation for
21 serving as the managing member of Charitable
22 DAF GP, LLC?

23 A. No. The -- I don't interact with it
24 very often. It's -- no, I don't receive any
25 compensation.

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2 Q. Can you tell me in your capacity as
3 the managing member of Charitable DAF GP, LLC,
4 what's the nature of that entity's business?

5 A. It -- it doesn't perform any
6 day-to-day operations. My understanding is --
7 is that it's -- it's there for purposes of
8 compliance. I can't recall the last time I had
9 any activity with respect to that.

10 Q. How about the Charitable DAF Fund,
11 L.P.? I apologize if I've asked you these
12 questions.

13 A. It -- it's the same. I -- I -- my
14 activity is almost exclusively CLO HoldCo.

15 Q. All right. Let me just ask the
16 questions nevertheless. Does Charitable DAF
17 Fund, L.P., have any employees?

18 A. Employees? No.

19 Q. Does it have any officers and
20 directors?

21 A. No.

22 Q. Are you the sole director of
23 Charitable DAF Fund, L.P.?

24 A. Yes, I believe so.

25 Q. So if we -- if we put under

1 GRANT SCOTT - 1/21/2021
2 Charitable DAF Fund, L.P., Grant Scott,
3 director, and we put under CLO HoldCo Limited
4 Grant Scott, director, would everything on the
5 right side of that page be accurate, to the
6 best of your --

7 A. I believe so.

8 Q. Well, let's move to the left side of
9 the page. Have you heard of the entity
10 Charitable DAF HoldCo Limited?

11 A. Yes.

12 Q. Are you the sole director of
13 Charitable DAF HoldCo Limited?

14 A. Yes.

15 Q. How did you become -- how did you
16 come to be the char- -- the sole director of
17 Charitable DAF HoldCo Limited?

18 A. That was when it was established.

19 Q. And did Mr. Dondero ask you to serve
20 in that capacity?

21 A. Yes.

22 Q. And did Mr. Dondero ask you to serve
23 as the managing member of Charitable DA- -- DAF
24 GP, LLC?

25 A. Yes.

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2 Q. And did Mr. Dondero ask you to serve
3 as the director of Charitable DAF, L.P. --
4 withdrawn.

5 Did Mr. Dondero ask you to serve as
6 director of Charitable DAF Fund, L.P.?

7 A. Yes.

8 Q. To the best of your knowledge, does
9 Charitable DAF HoldCo Limited own 99 percent of
10 the limited partnership interests in Charitable
11 DAF Fund, L.P.?

12 A. Yes. The -- the feed -- the -- the
13 feeds -- the -- the three horizontal blocks
14 there that identify Highland Dallas Foundation,
15 Kansas City, Santa Barbara -- there's a fourth
16 of -- relatively de minimus in terms of
17 participation. There's a fourth entity that's
18 missing. It's Dallas -- I forget the name.
19 That -- that -- that structure is -- is a bit
20 dated --

21 Q. Okay.

22 A. -- as it -- as is shown.

23 Q. Okay. So I will tell you and we can
24 look the documents if you want, but attached to
25 CLO HoldCo Limited's claim are a number of

1 GRANT SCOTT - 1/21/2021
2 resolutions, and there's one that I have in
3 mind that shows Charitable DAF HoldCo Limited
4 holding 99 percent of the limited partnership
5 interests of Charitable DAF Fund, L.P., and
6 there's another that shows it being a hundred
7 percent. Do you -- do you know which is
8 accurate at least at this time?

9 A. There's a 1 percent/99 percent
10 division, and I am -- I believe it's the 99
11 percent, but I'm -- I'm getting confused by
12 the -- by the arrangement. I'm so used to
13 another arrangement. I -- I believe the 99
14 percent is correct.

15 Q. Okay. Do you have any understanding
16 as to who owns the other 1 percent of the
17 limited partnership interests of Charitable DAF
18 Fund, L.P.?

19 A. No. This -- this is confusing to
20 me. No.

21 Q. Okay. There are, at least on this
22 page, three foundations that I think you've
23 identified. Are those three foundations
24 together with the fourth that you mentioned the
25 owners of the Charitable DAF HoldCo Limited?

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2 A. Owners?

3 Q. Yes.

4 MR. CLARK: Objection, form.

5 A. They -- they only participate in the
6 money that flows up to them.

7 Q. And what does that mean exactly?

8 A. What's that?

9 Q. What does that -- what do you mean
10 by that? Do the foundations fund Charitable
11 DAF Fund HoldCo Limited?

12 A. Initially. Initially, as I
13 understand it, the money flows downward into
14 the Charitable DAF HoldCo Limited before it
15 ultimately makes its way to CLO HoldCo, and
16 then each of those three entities, the various
17 foundations, obtain participation interest in
18 the money that flows back to them.

19 Q. And -- and is that par- -- are those
20 participation interests in Charitable -- you
21 know what, let -- let me just pull up one
22 document and see if that helps.

23 MR. MORRIS: Can we put up -- I

24 think it's Exhibit Number 5.

25 (SCOTT EXHIBIT 2, Unanimous Written

1 GRANT SCOTT - 1/21/2021

2 Consent of Directors In Lieu of Meeting,
3 was marked for identification.)

4 MR. MORRIS: I apologize. Let's go
5 to --

6 MS. CANTY: I'm sorry, John. I
7 can't hear you. Was that not the exhibit?

8 MR. MORRIS: 4.

9 MS. CANTY: Okay.

10 THE REPORTER: And Mr. Morris, you
11 are -- Mr. Morris, you are breaking up just
12 a little bit at the end of your questions.

13 BY MR. MORRIS:

14 Q. Okay. Do you see the document on
15 the screen, sir?

16 A. Yes, I do.

17 Q. Okay. And so this is a unanimous
18 written consent of the directors of the
19 Highland Dallas Foundation. That's one of the
20 entities that was on the chart.

21 MR. MORRIS: Can we scroll down to
22 the -- the bottom of the document where the
23 signature lines are. Right there.

24 BY MR. MORRIS:

25 Q. Are you a director of the Highland

1 GRANT SCOTT - 1/21/2021

2 Dallas Foundation?

3 A. Yes, selected by them.

4 Q. Selected by whom?

5 A. By that foundation.

6 Q. Are you -- are you a director of all

7 of the four foundations that feed into the

8 Charitable DAF HoldCo Limited entities that --

9 A. No.

10 Q. Which of the four foundations are
11 you a director of?

12 A. This and the Santa Barbara -- I'm
13 sorry, Santa Barbara and Kansas City.

14 Q. So is -- there's one that you're not
15 a director of; is that right?

16 A. Yes.

17 Q. And which one is that?

18 A. The -- could you go back to the --

19 Q. Yeah.

20 MR. MORRIS: Go back to the
21 demonstrative.

22 A. It's the Highland Dallas Foundation
23 and Santa Barbara Foundation.

24 Q. Those are the two that you're a
25 director of?

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2 A. Yes.

3 Q. To the best of your knowledge, does
4 Mr. Dondero serve as the president for each of
5 the foundations that we're talking about?

6 A. Yes.

7 Q. To the best of your knowledge, is
8 Mr. Dondero a director of each of the
9 foundations that we're talking about?

10 A. Say that again. I'm sorry.

11 Q. Is he also a director of each of the
12 foundations?

13 A. Yes.

14 Q. Do you know whether any of the
15 foundations has any employees?

16 A. I believe they do, but I -- I -- I
17 can't say for certain.

18 Q. Does -- withdrawn.
19 Do you know if there are any
20 officers of any of the four foundations other
21 than Mr. Dondero's service as president?

22 A. I'm sorry. Say that one more time,
23 please.

24 Q. Yes. Do you know whether any of the
25 four foundations has any officers other than

1 GRANT SCOTT - 1/21/2021

2 Mr. Dondero's service as president?

3 A. No.

4 Q. You don't know, or they do not?

5 A. I -- I don't believe anyone else

6 has. I -- actually, I should say I don't -- I

7 don't recall. I -- I don't know. I don't -- I

8 don't know.

9 Q. As a director of the Dallas and

10 Santa Barbara foundations, are you aware of any

11 officers serving for either of those

12 foundations other than Mr. Dondero?

13 A. No.

14 Q. Do you know who the beneficial owner

15 of the Charitable DAF HoldCo Limited entity is?

16 A. The beneficial owner?

17 Q. Correct.

18 A. The various -- various trusts that

19 were used to -- that were the vehicles by which

20 the money originally was established within --

21 within -- within CLO HoldCo.

22 Q. Would that be -- would one of them

23 be the Get Good Nonexempt Trust?

24 A. Yes.

25 Q. And you're a trustee of the Get Good

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2 Nonexempt Trust, right?

3 A. Yes.

4 Q. When did you become a trustee of the

5 Get Good Nonexempt Trust?

6 A. Many years ago. I -- I don't

7 remember.

8 Q. Are there any other trustees of the

9 Get Good Nonexempt Trust?

10 A. No.

11 Q. Does the Get Good Nonexempt Trust

12 have any officers, directors, or employees?

13 A. No.

14 MR. CLARK: Objection, form. Sorry.

15 BY MR. MORRIS:

16 Q. Withdrawn.

17 Do you know whether the Get Good

18 Nonexempt Trust has any officers, directors, or

19 employees?

20 A. It does not.

21 Q. And I apologize if I asked this, but

22 are you the only trustee of the Get Good

23 Nonexempt Trust?

24 A. Yes.

25 Q. Is the Dugaboy Investment Trust also

1 GRANT SCOTT - 1/21/2021

2 one of the trusts that has an interest in

3 Charitable DAF HoldCo Limited?

4 A. Yes.

5 Q. Are you a trustee of the Dugaboy

6 Investment Trust?

7 A. I am not.

8 Q. Do you know who is?

9 A. I believe it's his sister.

10 Q. And is that -- you're referring to

11 Mr. Dondero's sister?

12 A. I'm sorry. Yes.

13 Q. And what's the basis for your

14 understanding that Mr. Dondero's siv- -- sister

15 serves as the trustee of the Dugaboy Investment

16 Trust?

17 A. Many years ago there was a -- there

18 was a clerical error that identified me as the

19 trustee of the Dugaboy. That error was present

20 for approximately two weeks or a week and a

21 half before it was detected and corrected, and

22 so I know from that correction that it's Nancy

23 Dondero.

24 Q. Are there any other trusts that have

25 an interest in Charitable DAF HoldCo Limited

1 GRANT SCOTT - 1/21/2021

2 besides those trusts, to the best of your

3 knowledge?

4 A. No.

5 Q. Is it your understanding based on

6 what we've just talked about that the Get Good

7 Nonexempt Trust and the Dugaboy Investment

8 Trust are the indirect beneficiaries of CLO

9 HoldCo Limited?

10 A. Yes.

11 Q. Can you tell me who the

12 beneficiaries are of the Get Good trust?

13 A. I mean, Jim Dondero.

14 Q. And -- and what is that -- is that

15 based on the trust agreement -- your knowledge

16 of the trust agreement?

17 A. Yes.

18 Q. Do you have an understanding of who

19 the beneficiary is of the Dugaboy Investment

20 Trust?

21 A. I don't know anything about that

22 trust.

23 MR. MORRIS: Okay. All right.

24 Let's take a short break and reconvene at

25 3:30 Eastern Time. We've been going for a

1 GRANT SCOTT - 1/21/2021

2 while.

3 MR. CLARK: Thank you.

4 MR. MORRIS: Okay. Thank you.

5 (Whereupon, there was a recess in

6 the proceedings from 3:20 p.m. to

7 3:31 p.m.)

8 BY MR. MORRIS:

9 Q. Mr. Scott, earlier I think you

10 testified that you interfaced with the folks at

11 Highland in connection with your duties as the

12 director of CLO HoldCo Limited, right?

13 A. Yes.

14 Q. Are you aware of any written

15 agreement between Highland Capital Management

16 and CLO HoldCo Limited?

17 A. Yes, the various servicer

18 agreements.

19 Q. Okay. Are you aware that

20 Mr. Dondero resigned from his position at

21 Highland Capital Management sometime in

22 October?

23 A. No.

24 Q. Have you communicated with anybody

25 at Highland Capital Management about the

1 GRANT SCOTT - 1/21/2021

2 affairs of CLO HoldCo Limited at any time since
3 October?

4 A. Yes.

5 Q. Anybody other than Jim Seery?

6 A. Yes.

7 Q. Okay. Let's start with Mr. Seery.

8 You've spoken with him before, right?

9 A. Yes.

10 Q. Do you have his phone number?

11 A. Yes.

12 Q. How many times have you spoken with

13 Mr. Seery, to the best of your recollection,

14 just generally? It's not a test.

15 A. Three, maybe four times.

16 Q. Okay. Can you identify by name

17 anybody else at Highland that you've spoken

18 with since -- in the last two or three months?

19 A. I spoke to Jim Dondero. I've spoken

20 with Mike Throckmorton. The usual suspects, so

21 to speak. Mark Patrick, Mel- -- Melissa

22 Schroth.

23 Q. Can you recall anybody else?

24 A. No. No. Sorry.

25 Q. Did you -- did you -- withdrawn.

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2 Do you recall the subject matter of
3 your discussions with Mr. Throckmorton?

4 MR. CLARK: Objection, form.

5 BY MR. MORRIS:

6 Q. Withdrawn.

7 Do you recall your -- the subject
8 matter of your communications with
9 Mr. Throckmorton?

10 MR. CLARK: Objection, form.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. I -- I regularly interface with
14 Mr. Throckmorton regarding approvals of
15 expenses, and he's my sort of -- he's my point
16 person for approving wire transfers and things
17 of that nature.

18 Q. How about Mr. Patrick, what -- what
19 area of responsibility does he have with
20 respect to CLO HoldCo Limited?

21 A. He -- he doesn't, to my knowledge.

22 Q. Do you recall the nature of the
23 substance of any communications that you've had
24 with Mr. Patrick since -- you know, the last
25 two or three months?

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2 A. Yes. Or -- yes.

3 Q. And what -- what are the nature of
4 those conversations or the substance?

5 A. He was -- he was one of the
6 individuals that helped to establish the
7 hierarchy for the -- what I keep referring to
8 as the charitable foundation.

9 Q. And -- and do you recall why you
10 spoke to him in the last -- or -- withdrawn.

11 Do you recall the nature of your
12 communications in the last two or three months
13 with Mr. Patrick?

14 A. I --

15 MR. CLARK: And hold on, Grant. I'm
16 going to caution -- my understanding -- I
17 believe Mr. Patrick's an attorney, and so
18 I'm going to caution you that you shouldn't
19 disclose the substance of -- of those
20 communications based on the attorney-client
21 privilege.

22 MR. MORRIS: Well, I'm -- I -- I am
23 the lawyer for the company so -- I guess
24 there are other people on the phone and I
25 appreciate that, but let's see if we can --

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2 I don't mean to be contentious here, so it
3 wouldn't -- I -- I'd be part of the
4 privilege anyway.

5 BY MR. MORRIS:

6 Q. But in any event, can you tell me
7 generally -- I'm just looking for general
8 subject matter of your conversations with
9 Mr. Patrick.

10 A. I asked him how I would go about
11 re- -- resigning my position.

12 Q. And when did that conversation take
13 place?

14 A. Within the last two weeks.

15 Q. Have you made a decision to resign?

16 A. No.

17 Q. I think you mentioned Melissa
18 Schroth. Do I have that right?

19 A. Yes.

20 Q. Can you describe generally the
21 communications you had with Ms. Schroth in the
22 last few months.

23 A. They -- she has e-mailed me certain
24 documents that I needed to sign. I had a
25 conversation with her about -- about some

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2 home -- home improvements, home construction
3 with respect to Jim Dondero's home in Colorado,
4 and that's -- I -- I think that's -- that's it.

5 Q. Okay. Do you recall communicating
6 with anybody at Highland in the last three
7 months other than Mr. Dondero,
8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?

9 A. I -- I spoke with Jim Seery this
10 week.

11 Q. Anybody else?

12 A. I don't -- I don't know.

13 Q. Okay.

14 A. I don't think so.

15 Q. In your communications with
16 Mr. Seery, did you two ever discuss his reasons
17 for making any trade on behalf of any CLO?

18 A. No.

19 Q. In your discussions with Mr. Seery,
20 did you ever tell him that you believed that
21 Highland Capital Management had breached any
22 agreement in relation to any CLO?

23 A. Have I had that discussion with Jim
24 Seery?

25 Q. Yes.

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2 A. No.

3 Q. In your discussions with Mr. Seery,
4 did you ever tell him that you thought Highland
5 Capital Management was in default under any
6 agreement in relation to the CLOs?

7 A. No.

8 Q. I want to focus in particular on the
9 shared services agreement. In -- in your
10 discussions with Mr. Seery, did you ever tell
11 him that you believed that Highland Capital
12 Management was in default or in breach of its
13 shared services agreement with CLO HoldCo
14 Limited?

15 A. No.

16 Q. In your communications with
17 Mr. Seery, did you ever indicate any concern on
18 the part of CLO HoldCo Limited with respect to
19 Highland Capital's Man- -- Highland Capital
20 Management's performance under the shared
21 services agreement?

22 A. No.

23 Q. As you sit here today, do you have
24 any reason to believe that Highland Capital
25 Management has done anything wrong in

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2 connection with its performance as the
3 portfolio manager of the CLOs in which CLO
4 HoldCo Limited has invested?

5 MR. CLARK: Object to form.

6 A. In terms of the -- are you saying --
7 please say that again. I'm sorry.

8 Q. That's okay. I ask long questions
9 sometimes so forgive me, but I'm trying to
10 get -- I'm trying to be precise so that's why
11 it's difficult sometimes. But let me try
12 again.

13 Does CLO HoldCo Limited contend that
14 Highland Capital Management has done anything
15 wrong in the performance of its duties as
16 portfolio manager of the CLOs in which CLO
17 HoldCo has invested?

18 MR. CLARK: Objection, form.

19 A. Yes. It's -- it's outlined in our
20 objections to -- to the plan.

21 Q. Okay. Any -- are you aware of
22 anything that's not contained within CLO Holdco
23 Limited's objection to the plan?

24 MR. CLARK: Objection, form.

25 A. I don't know if this is responsive

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2 to your quest -- request, but two -- two
3 issues, I believe, also pose an in- -- a
4 problem for CLO HoldCo. One is we are paying
5 for services. I think I referred to the
6 services as being soup to nuts, but we are not
7 getting the full services. We haven't been for
8 some time. So we're likely overpaying. There
9 was a Highland Select Equity issue, 11-month
10 payment that was delayed which I was unaware of
11 was due. Normally, I would have interfaced
12 with someone at Highland about that, but my
13 attorney -- but my -- my attorney had to make a
14 request for payment, and that payment was
15 ultimately made. I -- other than that, I -- I
16 don't -- I don't know. I don't believe so.

17 Q. I want to distinguish between the
18 shared services agreement between Highland
19 Capital Management and CLO HoldCo Limited on
20 the one hand and on the other hand the
21 management agreements pursuant to which
22 Highland Capital Management manages certain
23 CLOs that CLO HoldCo invests in.

24 You understand the distinction that
25 I'm making?

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2 A. Now I do. I'm sorry. I didn't

3 appreciate that.

4 Q. Okay. So let's just take each of

5 those pieces one at a time. You mentioned your

6 concern about services. That's a concern that

7 arises under the shared services agreement,

8 right?

9 A. Yes.

10 Q. And you mentioned something about a

11 delayed payment having to do with Highland

12 Select. Do I have that generally right?

13 A. Correct.

14 Q. And is that a concern that you have

15 that arises under the shared services

16 agreement?

17 A. It's not the agreement with respect

18 to the CLOs as I understand it.

19 Q. Okay. So then let's turn to that

20 second bucket. You were aware -- you are

21 aware, are you not, that Highland Capital

22 Management has certain agreements with CLOs

23 pursuant to which it manages the assets that

24 are owned by the CLOs?

25 A. I'm so sorry. Could you please --

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2 Q. I'll try again.

3 A. I'm just -- I'm sorry. I was
4 distracted and -- and I -- I'm sorry for asking
5 you to repeat it again. Please --

6 Q. Okay.

7 A. Please re- --

8 Q. Are you aware that CLO HoldCo
9 Limited has made investments in certain CLOs?

10 A. Oh, yes, certainly.

11 Q. And are you aware that those CLOs
12 are managed by Highland Capital Management?

13 A. Yes. As the -- as the servicer,
14 yes.

15 Q. Okay. Have you ever seen any of the
16 agreements pursuant to which Highland Capital
17 Management acts as a servicer?

18 A. I've seen a few, yes.

19 Q. Does CLO HoldCo Limited contend that
20 it is a party to any agreement between Highland
21 Capital Management and the CLOs?

22 MR. CLARK: Object to form. And I
23 just want to note for the record that
24 Mr. Scott is here testifying in his
25 individual capacity, I believe, not as a

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2 corporate representative.

3 MR. MORRIS: Fair enough. But he is
4 the only representative so...

5 MR. CLARK: Fair enough. I just
6 want that made -- stated for the record,
7 but I also object as to form.

8 MR. MORRIS: Got it.

9 A. It's a third-party beneficiary under
10 the agreements.

11 Q. And is that because of something you
12 read in the document, or is that just your
13 belief and understanding?

14 A. My belief and understanding.

15 Q. And is that belief and understanding
16 based on anything other than conversations with
17 counsel?

18 A. In -- in -- recently it has, but I
19 don't recall from previous interactions over
20 the years how we discussed that or how I came
21 to -- to understand that.

22 Q. Does HCLO [sic] HoldCo -- did -- in
23 your capacity as the sole director of HCLO
24 HoldCo Limited, are you aware of anything that
25 Highland Capital Management has done wrong in

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2 connection with the services provided under the
3 CLO management agreements?

4 MR. CLARK: Objection, form.

5 A. I -- I don't -- I don't -- I

6 don't -- your answer's no.

7 Q. In your capacity as the director of
8 CLO HoldCo Limited, are you aware of any
9 default or breach under the CLO management
10 agreements that -- that Highland Capital
11 Management has caused?

12 MR. CLARK: Objection, form.

13 A. We have raised the issue about
14 ongoing sales in various -- I'm not sure
15 whether they represent a technical breach,
16 though.

17 Q. Okay. Are you aware of any
18 technical breach?

19 MR. CLARK: Objection, form.

20 A. No.

21 Q. I'm sorry. You said, no, sir?

22 A. My answer's no.

23 Q. Thank you. Do you know who made the
24 decision to cause the CLO HoldCo Limited entity
25 to invest in the CLOs that are managed by

1 GRANT SCOTT - 1/21/2021

2 Highland Capital?

3 A. The select -- ultimately, I had to.

4 Q. I thought you testified earlier that

5 you didn't make decisions as to investment. Do

6 I have that wrong?

7 A. The selection.

8 Q. Okay.

9 A. I -- I'm --

10 Q. So -- so explain to me --

11 A. I have to approve -- I have to

12 approve the selection. I'm sorry. But the

13 people making -- I was putting that in the camp

14 of the people that make the selection.

15 Q. Okay. Do you know if -- do you know

16 if there are CLOs in the world that exist that

17 aren't managed by Highland Capital Management?

18 MR. CLARK: Objection, form.

19 A. Are there CLOs in the -- in the

20 world that are not --

21 Q. Yes.

22 A. Yes. It's -- it's a well-known --

23 it's a well-known --

24 Q. In your capacity as the director of

25 CLO HoldCo Limited, did you ever consider

1 GRANT SCOTT - 1/21/2021

2 making an investment in a CLO that wasn't
3 managed by Highland?

4 A. No.

5 Q. Is there any particular reason why
6 you haven't given that any consideration?

7 A. That hasn't been my role. That's
8 not my expertise. That's been something
9 Highland has done and, quite frankly, over the
10 years brilliantly so, no.

11 Q. You're aware that HCM, L.P., has
12 filed for bankruptcy, right?

13 A. Yes.

14 Q. When did you learn that Highland had
15 filed for bankruptcy?

16 A. After the fact sometime in late --
17 late 2019.

18 Q. Since the bankruptcy filing, have
19 you made any attempt to sell CLO HoldCo
20 Limited's position in any of the CLOs that are
21 managed by Highland?

22 A. No.

23 Q. So notwithstanding the bankruptcy
24 filing, you as the director haven't made any
25 attempt to transfer out of the CLOs that are

1 GRANT SCOTT - 1/21/2021

2 managed by Highland, correct?

3 A. Correct.

4 Q. Did you ever give any thought to

5 exiting the CLO vehicles that were managed by

6 Highland in light of its bankruptcy filing?

7 A. No.

8 Q. Have you ever discussed with

9 Mr. Seery anything having to do with the

10 management -- withdrawn.

11 Have you ever discussed with

12 Mr. Seery any aspect of the debtor's management

13 of the CLOs in which CLO HoldCo Limited is

14 invested?

15 A. No.

16 Q. You mentioned earlier a request to

17 stop trading. Do I have that right?

18 A. Yes.

19 Q. Okay. And are you aware that a

20 letter was written purportedly on behalf of CLO

21 HoldCo Limited in which a request to stop

22 trading was made?

23 A. As a cos- -- yeah. Yes.

24 Q. Okay. Have you ever seen that

25 letter before?

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2 A. Yes.

3 MR. MORRIS: Can we put up on the
4 screen -- I think it's now Exhibit 6. It's
5 Exhibit DDDD.

6 (SCOTT EXHIBIT 3, Letter to James A.
7 Wright, III, et al., from Gregory Demo,
8 December 24, 2020, with Exhibit A
9 Attachment, was marked for identification.)

10 MR. MORRIS: Can we scroll down to,
11 I guess, what's Exhibit A. Ri- -- right
12 there.

13 BY MR. MORRIS:

14 Q. You see this is a letter Dece- --
15 dated December 22nd?

16 A. Yes.

17 Q. In the first paragraph there there's
18 a reference to the entities on whose behalf
19 this letter is being sent.

20 Do you see that?

21 A. Yes.

22 Q. Okay. So this letter was sent on
23 December 22nd. Did you see a copy of it before
24 it was sent?

25 A. A -- a draft -- an earlier draft of

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2 this I did.

3 Q. Okay. Did you provide any comments
4 to it?

5 A. I did.

6 MR. CLARK: Well, hold on. Grant,
7 let me caution you. To the extent you
8 provided comments to counsel, we're going
9 to assert the attorney-client privilege on
10 those comments.

11 MR. MORRIS: It's just a yes-or-no
12 question. I'm not looking for the
13 specifics.

14 MR. CLARK: Thank you.

15 A. Yes.

16 Q. Are you aware that earlier letters
17 were -- withdrawn.

18 Are you aware that prior to December
19 22nd, the entities other than CLO HoldCo
20 Limited that are listed in this pers- -- first
21 paragraph had sent a letter making the same
22 request?

23 A. With respect to a letter, no. No,
24 I -- I did not.

25 Q. Are you aware as you sit here now

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2 that the entities other than CLO HoldCo Limited
3 that are listed in the first paragraph made a
4 motion in the court asking the court for an
5 order that would have prevented Highland from
6 making any transactions for a limited period of
7 time?

8 A. Yes.

9 Q. Did you know that motion was being
10 made prior to the time that it was made?

11 A. I'm not sure.

12 Q. Did you ever think about whether CLO
13 HoldCo Limited should join that particular
14 motion?

15 A. I believe we were -- my attorney was
16 aware of it. I don't recall our discussion
17 about it. We were aware -- when I say we, I
18 mean collectively -- and did not join it.

19 Q. Okay. Can you tell me why you did
20 not join it.

21 MR. CLARK: And, again, Grant, to --
22 to the extent it's based on communications
23 with counsel, you're free to say that
24 but -- but not to disclose any substance of
25 communications with counsel.

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2 A. The subject of this letter on the
3 22nd which yielded the original letter you
4 briefly showed me on the 24th as well as an
5 additional letter on the 28th identified two
6 points as I understand it. The first point is
7 what I believe is the somewhat innocuous
8 request to halt sales, not a demand in any way.
9 And the second more substantive issue has to do
10 with steps to remove Highland or a subsequent
11 derived entity from Highland from the various
12 services agreements that you had previously --
13 we had previously discussed. Neither of those
14 issues met the require- -- neither of those
15 issues led us to believe that a motion such as
16 what you've just mentioned was -- was right --

17 Q. Okay.

18 A. -- because no -- no decision has
19 been made on that.

20 Q. Okay.

21 MR. MORRIS: So I want to go back to
22 my question and move to strike as
23 nonresponsive, and I'll just ask my
24 question again.

25 BY MR. MORRIS:

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2 Q. Why did CLO HoldCo Limited decide
3 not to participate in the earlier motion that
4 was brought by the other entities that are
5 identified in Paragraph 1 that asked the court
6 to stop Highland from engaging in trades?

7 A. John, I'm so sorry. There was a
8 feedback loop that came up when you started to
9 re- -- re- -- recite -- restate your question.
10 I'm sorry.

11 Q. That's okay. Why did CLO HoldCo
12 Limited decide not to join in the earlier
13 motion where the entities listed in Paragraph 1
14 asked the court to order Highland not to make
15 any further trades? Why did they not join that
16 motion?

17 A. The -- the issue didn't rise to
18 the -- I don't believe we had formulated a
19 legal basis sufficient to justify such steps.
20 We hadn't laid the foundation necessary to --
21 to do that.

22 Q. Are you aware of what the court
23 decided?

24 A. By virtue of the original letter you
25 sent me dated the -- or show -- showed

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2 initially dated the 24th, I have a general
3 understanding of what they decided.

4 Q. Did you -- did you ever review the
5 transcript of the hearing where the other
6 parties asked the court to stop Highland from
7 engaging in any further trades on the CLOs?

8 A. I did not.

9 Q. Is there anything different about
10 the request in this letter, to the best of your
11 knowledge, from the request that was made of
12 the court just six days earlier?

13 MR. CLARK: Objection, form.

14 A. Yes. There's a -- in -- in my -- my
15 view there's a substantial difference between
16 filing an action converting a request into
17 essentially a demand versus a gentle request
18 with multiple caveats, that that request is not
19 a demand.

20 Q. Okay. Let me ask you this: Are you
21 aware -- what -- when did you first learn that
22 Highland was making trades in its capacity as
23 the servicer of the CLOs? When -- when did you
24 first learn that Highland was doing that? Ten
25 years ago, right? I mean --

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2 A. Oh. Oh. Oh, I'm -- yeah. Yeah.

3 Oh, yes. I'm sorry. Of course.

4 Q. Right? I mean, Highland has been
5 making trades on behalf of CLOs for years,
6 right?

7 A. Yes.

8 Q. And Highland was making trades on
9 behalf of CLOs throughout 2020, to the best of
10 your knowledge, right?

11 A. Yes.

12 Q. And you know when Jim Dondero was
13 still with Highland, he was making trades on
14 behalf of CLO -- on behalf of the CLOs, right?

15 A. Yes.

16 Q. And you never objected when Jim
17 Dondero was doing it; is that right?

18 A. That is correct.

19 Q. Okay. So what changed that caused
20 you in your capacity as the director of CLO
21 HoldCo to request a full stoppage of trading?

22 A. It was my understanding that because
23 of the bankruptcy and the removal of Jim
24 Dondero that the replacement decision-makers
25 did not have the expertise where I felt

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2 comfortable with them making those decisions,

3 but...

4 Q. I thought you testified earlier that

5 you weren't aware that Mr. Dondero left

6 Highland. Am I mistaken in my recollection?

7 A. I think you said in October, and

8 I -- as I -- there's some con- -- I have

9 confusion about when he left versus when he was

10 still there but other -- but he was not making

11 those trades.

12 Q. Okay. Fair enough. The bankruptcy

13 has nothing to do with your desire to stop

14 trading, right, because Highland traded for a

15 year after the bankruptcy and never took any

16 action to try to stop Highland from trading on

17 behalf of the CLOs, fair?

18 A. The -- Highland as of right now

19 isn't the same entity it was -- well, the

20 decision-making team -- the -- the financial

21 decision-making team for CLO Holdco's is no

22 longer the team I have worked with, and upon

23 discussion with counsel, we agreed -- I agreed

24 to this letter, which I did, to just maintain

25 the status quo.

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2 Q. How did you form your opinion that
3 the debtor doesn't have the expertise to
4 execute trades on behalf of the CLOs today?
5 What's the basis for that belief?

6 A. I -- as I understood it, the -- the
7 people historically making that decision were
8 no longer making that decision.

9 Q. Who besides Mr. Dondero --
10 withdrawn.

11 Who are you referring to?

12 A. Well, Mr. Dondero is one. I don't
13 know the names, but I -- I understood it to
14 mean that the group previously responsible, for
15 exam- -- for example, Hunter Covitz, including
16 Hun- -- him, were no longer involved in the
17 decision-making process, but...

18 Q. How did you -- how -- how -- who
19 gave you the information that led you to
20 conclude that Hunter Covitz was no longer
21 involved in the decision-making process?

22 A. Specifically him and that name being
23 mentioned, I -- I -- I wasn't informed of his
24 speci- -- him -- him being removed. I was
25 under the impression that the team that had

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2 previously been doing that was no longer doing
3 it.

4 Q. And what gave you that impression?

5 A. Was communications I had with my
6 attorney.

7 Q. Okay. Is there any source for your
8 information that led you to conclude that the
9 team was no longer there that was able to
10 engage in the trades on behalf of the CLOs
11 other than your attorneys?

12 A. Well, this -- this letter -- I -- I
13 think the answer is no.

14 Q. Thank you. Do you know if Jim -- do
15 you have an opinion or a view as to whether Jim
16 Seery is qualified to make trades?

17 A. This --

18 MR. CLARK: Objection, form.

19 A. I don't know -- I spoke to Jim Seery
20 earlier this week. You -- you asked me whether
21 I had his number. I said I did. That's only
22 because he called me. My phone rang with his
23 number. It was a number I did not recognize,
24 it was not in my contacts, but he left me a
25 voice mail so I called him back. Then I

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2 updated my contacts to -- to add his name so
3 now I have his name. And during that
4 conversation he informed me that he did have
5 that expertise --

6 Q. And --

7 A. -- without me making any inquiry.
8 He volunteered that.

9 Q. But you hadn't made any inquiry
10 prior to the time that you authorized the
11 sending of this letter; is that fair?

12 A. That's correct.

13 Q. Do you know whether Mr. Seery, in
14 fact, engaged in transactions on behalf of the
15 debtor since he was appointed back in January?

16 A. I do not.

17 Q. Did you ask that question prior to
18 the time you authorized the sending of this
19 letter?

20 A. I did not.

21 Q. Can you identify a single
22 transaction that Jim Seery has ever made that
23 you disagree with?

24 A. No.

25 Q. Can you identify any transaction

1 GRANT SCOTT - 1/21/2021
2 that the debtor made on behalf of any of the
3 CLOs since the time that you understand
4 Mr. Dondero left Highland that you disagree
5 with?

6 A. No.

7 Q. Did you have any discussion with any
8 representative of any of the entities listed on
9 this document where they told you they believe
10 Jim Seery didn't have the expertise to engage
11 in transactions on behalf of the whole -- of
12 the CLOs?

13 A. You -- your question -- I'm -- I'm
14 sorry. I'm trying to be -- I'm trying to be a
15 hundred perc- -- I'm trying to be accurate
16 here.

17 Q. Let me interrupt you and just say,
18 I'm very grateful for your testimony. I know
19 this is not easy, and I do believe that you're
20 earnestly and honestly trying to answer the
21 questions the best you can. So no apologies
22 necessary anymore. If you need me to repeat
23 the question or rephrase it, just say that,
24 okay?

25 A. Please -- yes.

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2 Q. Okay.

3 A. Please -- please repeat that.

4 Q. Did you ever communicate with any
5 employee, officer, director, representative of
6 any of the entities that are on this page
7 concerning the debtor's ability to service the
8 CLOs?

9 A. I believe so.

10 Q. And can you identify the person or
11 persons?

12 A. I think it's Jim Dondero.

13 Q. Anybody else other than Mr. Dondero?

14 A. No.

15 Q. When did you have that conversation
16 or those conversations with Mr. Dondero?

17 A. This letter is dated the 22nd --

18 Q. Correct.

19 A. -- right?

20 Q. Yes.

21 A. I believe that's the Tuesday before
22 Christmas, and this would have been on the
23 21st, the Monday.

24 Q. What do you recall about your
25 conversation on the 21st regarding the

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2 substance of this particular letter?

3 A. Jim Dondero described why he
4 believed sales being made on an ongoing basis
5 after a request was made to stop was im- --
6 improper.

7 Q. Do you -- do you rely on what
8 Mr. Dondero said to you during that phone call
9 on December 21st in -- in deciding to join in
10 this particular letter?

11 A. No.

12 Q. Did you only then rely on the
13 information you obtained from counsel?

14 A. Yes. I -- I -- I -- I considered
15 this letter to be nearly the most gentle
16 request imaginable amongst lawyers to maintain
17 the status quo.

18 Q. And the request that's made in this
19 letter is perfectly consistent with what
20 Mr. Dondero told you on the 21st of December,
21 correct?

22 A. I don't -- no.

23 Q. How --

24 MR. MORRIS: Can we go to the end of
25 this letter, please. All right. Right

1 GRANT SCOTT - 1/21/2021

2 there.

3 BY MR. MORRIS:

4 Q. Do you see the request that's in the
5 last sentence?

6 A. Yes.

7 Q. Is that the same thing that
8 Mr. Dondero told you should happen, that --
9 that there should be no further CLO
10 transactions at least until the issues raised
11 and addressed by the debtor's plan were
12 resolved substantively?

13 A. Yes.

14 Q. Is there anything that he said
15 that's inconsistent with the request that's
16 made here?

17 MR. CLARK: Objection, form.

18 A. This -- and can you -- can you show
19 me earlier parts?

20 Q. Of course. You know what, I'll
21 withdraw the question.

22 And let me see if I can do it this
23 way: In your discussion with Mr. Dondero, did
24 he indicate that he had seen a draft of this
25 letter?

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2 A. No. And I didn't -- I didn't have a
3 discussion with him. I -- I merely listened to
4 him. There was no -- I -- I had no input to
5 the conversation.

6 Q. Okay. I -- I did -- I didn't --
7 I -- I appreciate that. So he called you; is
8 that right?

9 A. We -- we called in.

10 Q. Oh, was it --

11 A. I --

12 Q. Was it --

13 A. I don't know --

14 Q. Was it --

15 A. I don't know the sequence of the
16 calls. I'm sorry.

17 Q. Was there anybody on the call other
18 than you and Mr. Dondero, the call that you're
19 describing on December 21st?

20 A. Yes, my attorney and an attorney --
21 I believe the attorney that signed this letter.

22 Q. Okay. And I just want to focus on
23 what Mr. Dondero said. Did he -- did he say
24 during the call that Highland should not be
25 engaging in any further CLO transactions?

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2 A. He took a more -- if I can
3 characterize his mental -- I looked at the
4 issue of maintaining the status quo since there
5 was somebody that was complaining about it,
6 that that -- because it -- it isn't assets of
7 Highland, it doesn't adversely affect Highland.
8 If -- if stopping the sales -- you know, my --
9 my thought was -- is if stopping the sales
10 reduces the likelihood of litigation
11 disputes -- you already saw that there was the
12 one from middle of December. I -- I thought
13 that would be the more appropriate way to go.
14 I didn't think there'd be any harm.

15 Q. And was that your --

16 A. I think -- I think Jim Dondero had a
17 more legalistic view of its impro- -- im- --
18 improper nature.

19 Q. And did he share that view with you?

20 A. On Monday, yes.

21 Q. Can you describe for me your
22 recollection of what he said about the
23 legalistic view?

24 A. Just the mention of -- all I recall
25 is in terms of -- the law associated with it

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2 was -- the Advisers Act was mentioned --

3 Q. Did you have --

4 A. -- but I don't -- I don't know what

5 that is. You know, I don't know what that is.

6 Q. And you -- and -- and you never --

7 it never occurred to you to pick up the phone

8 and -- and to speak with Mr. Seery to see why

9 it was he thought he should be engaging in

10 transactions?

11 A. No. And -- but I -- my lack of

12 volunteering a phone call to Jim Seery isn't --

13 it's -- it's because of -- I -- I thought any

14 phone call by me to Jim Seery would be

15 inappropriate because he's represented by

16 counsel. I mean, we were working on claims

17 against him --

18 Q. Okay.

19 A. -- right, so...

20 Q. Did you -- did you -- did you think

21 to instruct your lawyers to reach out to

22 Mr. Seery to actually speak to him instead of

23 just sending a letter like this and to -- and

24 to ask -- and to maybe inquire as to why he

25 thought it was appropriate to engage in

1 GRANT SCOTT - 1/21/2021
2 transactions before they made a request six
3 days after the court threw out their suit as
4 frivolous? I'll withdraw that. That's too
5 much.

6 A few days later did you authorize
7 the sending of another letter to the debtor in
8 which you suggested that the -- the entities on
9 behoove -- on -- on whose behalf the letter was
10 sent might take steps to terminate the CLO
11 management agreements?

12 A. I did not see -- so there is a --
13 there is a December 28th letter.

14 MR. MORRIS: Let's just go to the
15 next letter, and -- and let's just call
16 that up.

17 BY MR. MORRIS:

18 Q. I think it's -- I think it's
19 actually dated December 23rd. It was the next
20 day.

21 A. Yes.

22 (SCOTT EXHIBIT 4, Letter to James A.
23 Wright, III, et al., from Gregory Demo,
24 December 24, 2020, with Exhibit A
25 Attachment, was marked for identification.)

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2 BY MR. MORRIS:

3 Q. And do you recall that the next day
4 CLO HoldCo Limited joined in another letter to
5 the debtors? Do you have that recollection?

6 A. Yes. Not -- not be- -- yes, I do,
7 but -- yes, I do.

8 Q. Did you see this letter before it
9 was sent?

10 A. I don't believe so.

11 Q. Did you authorize the sending of
12 this letter?

13 A. I gave -- I relied on my attorney to
14 guide me through this process.

15 Q. I appreciate that.

16 A. I let him make that call on this
17 letter, which is -- copies most of the prior
18 letter and then adds another issue.

19 Q. Okay. Do you have an understanding
20 of what that issue is?

21 A. Yes.

22 Q. And what is your understanding of
23 what that additional issue is?

24 A. Somewhere in this letter of the 23rd
25 there's an -- there's an -- an inclusion of

1 GRANT SCOTT - 1/21/2021

2 a -- a statement of an -- a future intent.

3 Q. A future intent to do what?

4 A. To remove Highland as the servicer
5 of the agreements you talked to me about
6 previously.

7 Q. Can you tell me whether there's a
8 factual basis on which CLO HoldCo Limited
9 believes that the debtor should be removed as
10 the servicer of the portfolio manager of the
11 CLOs?

12 A. Yes. There are -- there are
13 multiple bases to consider subject to all the
14 other conditional language in the request of
15 these letters to consider that going forward
16 but no decision. That intent is an intent to
17 evaluate, not an intent to take any action. I
18 haven't authorized any action. I don't feel
19 comfortable with my knowledge base at this
20 time, but it's something being explored.

21 Q. So knowing everything that you know
22 as of today, you have not yet formed a decision
23 as to whether CLO HoldCo Limited will take any
24 steps to terminate Highland's portfolio
25 management agreements, correct?

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2 A. I don't -- I don't want to be
3 difficult, but I'm -- I'm confused yet again
4 with your question. But I have not -- there --
5 there are a number of cr- -- a number of issues
6 that with my nonfinance background would
7 suggest to me that they -- they may be bases
8 for -- for cause, to -- to assert a cause. And
9 I've been conferring with my attorney about
10 that, but it's very preliminary and no -- no
11 decision has been made. I -- no decision is
12 being made.

13 Q. So what -- what are the factors that
14 are causing you to consider possibly seeking to
15 begin the process of terminating the CLO
16 management agreements?

17 A. Well, I guess I would break them
18 down into maybe two categories, maybe more.
19 The one that resonates most with me -- I don't
20 know -- maybe because even though I'm a patent
21 attorney, I guess at one point I was an
22 attorney. But the thing that resonates most
23 with me --

24 Q. You are an attorney.

25 A. -- at the moment -- well, now you

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2 know why I'm a patent attorney and not one of
3 you guys. But the thing that resonates with me
4 the most from a legal substantive, black letter
5 law sort of issue is the plan for
6 reorganization, which we've objected to. I've
7 re- -- I've reviewed the objection, and that
8 sets forth our -- that sets forth my position,
9 and I consider that to be quite material. The
10 others are issues of practical effects of
11 what's happened thus far with the bankruptcy,
12 the termination of the experts with a long
13 track record of success, the soon-to-be
14 termination of all employees, the cancellation
15 of various representation agreements, things of
16 that nature looked at from an additive sort of
17 perspective.

18 Q. You know that -- can we refer to the
19 counterparties under the CLO management
20 agreements as the issuers? Are you familiar
21 with that term?

22 A. I -- I am familiar with the term
23 issuers, yes.

24 Q. Okay. And do you understand --

25 A. There's an agreement between the --

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2 I'm sorry.

3 Q. There's an agreement between the
4 issuers and Highland pursuant to which Highland
5 manages the CLO assets, right?

6 A. With res- -- yes.

7 Q. Okay. And do you understand what's
8 going to happen to those management contracts
9 in connection with the plan of reorganization?

10 A. Partially.

11 Q. What's your partial understanding?

12 A. Well, I -- I wouldn't want to
13 characterize it as a partial understanding. I
14 mean, with respect to part of the agreement.

15 Q. Okay.

16 A. Okay. Our plan objection lays out
17 our basis for objecting to steps that Highland
18 is actively taking to preclude us from the full
19 rights that we have as third-party
20 beneficiaries under that agreement, and they're
21 not de minimus. They're quite material. They
22 relate to cause issues and no-cause issues, for
23 example, as out- -- as outlined in our --
24 our -- our objections.

25 Q. Okay. Did you ever make any attempt

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2 to speak with any issuer concerning Highland's
3 performance under the CLO management
4 agreements?

5 A. No.

6 Q. Why not?

7 A. I -- I don't have any facts --
8 understand I -- I get all of the reports
9 periodically from Highland -- from Highland.
10 I -- I don't have a basis that I'm aware of to
11 complain about performance issues. This is a
12 legal issue that I'm talking about.

13 Q. So you have no basis to suggest that
14 Highland hasn't performed under the CLO
15 management agreements, correct?

16 A. Well, Highland as of right now,
17 the -- the issue really is as -- as to what's
18 next, not -- not -- I -- I don't -- I don't
19 believe I have facts that support a com- --
20 a -- an issue right now. It's -- it's --
21 it's -- it's going forward that is the problem.

22 Q. I --

23 A. That's -- you know, that's --

24 Q. Have you given any thought to
25 speaking with the issuers to try to get their

1 GRANT SCOTT - 1/21/2021
2 views as to what they think is going to happen
3 in the future?

4 A. No.

5 Q. They're the -- they're the actual
6 direct beneficiaries under the CLO management
7 agreements, to the best of your understanding,
8 right?

9 A. Yes. Their rights may not be
10 impacted; it's CLO Holdco's rights that are
11 going to be adversely impacted. So it's -- I
12 don't know that our view is in alignment with
13 their view. But to answer your question, no,
14 we did not contact them.

15 Q. Do you have any knowledge or
16 information as to any assertion by the issuers
17 that Highland is in breach of any of the CLO
18 management agreements?

19 A. No.

20 Q. Do you have any knowledge or
21 information as to whether or not any of the
22 issuers believe that Highland is in default
23 under the CLO management agreements?

24 A. No, I don't have any of those facts.

25 Q. Are you aware that the issuers are

1 GRANT SCOTT - 1/21/2021
2 negotiating with Highland to permit Highland to
3 assume the CLO management agreements and to
4 continue operating under them?

5 A. I believe so --

6 Q. Is that --

7 A. -- but they're --

8 Q. Go ahead. I'm sorry.

9 A. As I understand it, Highland
10 wants -- Highland or its subsidiary -- or
11 its -- its -- its postbankruptcy relative --
12 post- -- excuse me, that Highland
13 postbankruptcy -- or postplan confirmation
14 wants to move forward, substitute itself for
15 the prior issuer -- no, sorry, substitute
16 itself for the prior servicer under those
17 agreements to assume those agreements but in
18 the process of assuming those agreements,
19 carving out a bunch of provisions that from a
20 legal standpoint and a potentially future
21 practical and monetary standpoint are quite
22 substantial, and that has to relate to the
23 removal rights based on cause and without
24 cause. As I understand it, that's all set
25 forth in our plan objection.

1 GRANT SCOTT - 1/21/2021

2 Q. Okay. Are you aware of a third
3 letter that was sent to Highland on behalf of
4 CLO HoldCo and the other entities that are
5 listed in this document?

6 A. The December 28th letter, is that
7 what you mean?

8 Q. It's actually December 31st, if I
9 can refresh your recollection.

10 MR. MORRIS: Can we put up Exhibit
11 F?

12 (SCOTT EXHIBIT 5, Letter to Jeffrey
13 N. Pomerantz from R. Charles Miller,
14 December 31, 2020, was marked for
15 identification.)

16 BY MR. MORRIS:

17 Q. You remember that there was a letter
18 dated on or about December 31st that was
19 sent -- oh, actually, you know, I apologize.
20 If we scroll down to the -- to the next -- to
21 the first box, there actually is no mention of
22 CLO HoldCo.

23 Are you aware that Mr. Dondero was
24 evicted from Highland's offices as of the end
25 of the year?

1 GRANT SCOTT - 1/21/2021

2 A. I -- I didn't know the time, but I
3 understand he's no longer there.

4 Q. Does CLO HoldCo Limited contend that
5 it was damaged in any way by Mr. Dondero's
6 eviction from the Highland suite of offices?

7 MR. CLARK: Objection, form.

8 A. I -- I don't have any information to
9 support that as of this time.

10 Q. It's not -- it's not a belief that
11 you hold today?

12 A. I don't have a belief of that, yes.

13 MR. MORRIS: All right. Let's take
14 a short break. I may be done. I -- I'm
15 grateful, Mr. Scott, and don't want to
16 abuse your time. Give me -- let -- just
17 let -- let's come back at 4:50, just eight
18 minutes, and if I have anything further, it
19 will be brief.

20 (Whereupon, there was a recess in
21 the proceedings from 4:42 p.m. to
22 4:49 p.m.)

23 MR. MORRIS: Okay. Mr. Scott, thank
24 you very much for your time. I have no
25 further questions.

1 GRANT SCOTT - 1/21/2021

2 THE WITNESS: Thank you.

3 MR. CLARK: We will reserve our
4 questions.

5 THE WITNESS: I appreciate it, John.

6 MR. MORRIS: Take care. Thanks for
7 your time and your -- and your diligence.
8 I do appreciate it. Take care, guys.

9 THE REPORTER: Okay.

10 MR. CLARK: Thank you.

11 MR. HOGWOOD: No questions from us.

12 (Time Noted: 4:50 p.m.)

13

14

15

16

GRANT SCOTT

17

18 Subscribed and sworn to before me

19 this day of 2021.

20

21

22

23

24

25

1 GRANT SCOTT - 1/21/2021

2 C E R T I F I C A T E

3 STATE OF NORTH CAROLINA)

4) ss.:

5 COUNTY OF WAKE)

6

7 I, LISA A. WHEELER, RPR, CRR, a

8 Notary Public within and for the State of New

9 York, do hereby certify:

10 That GRANT SCOTT, the witness whose

11 deposition is hereinbefore set forth, having

12 produced satisfactory evidence of

13 identification and having been first duly sworn

14 by me, according to the emergency video

15 notarization requirements contained in G.S.

16 10B-25, and that such deposition is a true

17 record of the testimony given by such witness.

18 I further certify that I am not

19 related to any of the parties to this action by

20 blood or marriage; and that I am in no way

21 interested in the outcome of this matter.

22 IN WITNESS WHEREOF, I have hereunto

23 set my hand this 21st day of January, 2021.

24 -----

25 LISA A. WHEELER, RPR, CRR

1 GRANT SCOTT - 1/21/2021

2 -----I N D E X-----

3 PAGE

4 EXAMINATION BY MR. MORRIS 7

5

6

-----EXHIBITS-----

7

PAGE

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9 EXHIBIT 1 Organizational Structure: 46
CLO HoldCo, Ltd.

10 EXHIBIT 2 Unanimous Written Consent of 54
Directors In Lieu of Meeting

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12 EXHIBIT 3 Letter to James A. Wright, 78
13 III, et al., from Gregory
Demo, December 24, 2020, with
Exhibit A Attachment

14 EXHIBIT 4 Letter to James A. Wright, 96
15 III, et al. From Gregory
Demo, December 24, 2020, with
Exhibit A Attachment

16

17 EXHIBIT 5 Letter to Jeffrey N. 105
Pomerantz from R. Charles
18 Miller, December 31, 2020

18

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EXHIBIT 24

1 Grant Scott

2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 In Re: Case No.

6 HIGHLAND CAPITAL MANAGEMENT L.P., 19-34054

7 Debtor, Chapter 11

8 _____
9 HIGHLAND CAPITAL MANAGEMENT, Adversary No.

10 L.P., 21-03003-sgi

11 Plaintiff,

12 Vs.

13 JAMES D. DONDERO,

14 Defendant.

15
16 Virtual Zoom Deposition of Grant Scott

17 Tuesday, June 1, 2021

18 At 2:00 p.m.

19
20
21
22
23 Reported by LeShaunda Cass-Byrd, CSR, RPR

24 TSG Job No. 194692

25

Grant Scott

Videoconference Deposition of Grant Scott,
pursuant to Federal Rules of Civil Procedure, before
LeShaunda Cass Byrd, CSR, RPR, a Notary of the State
of North Carolina. The Court Reporter reported the
proceeding remotely and the witness was present via
videoconference

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1 Grant Scott

2 APPEARANCES OF COUNSEL:

3 On behalf of Debtor:

4 BY: GREGORY DEMO, Esq.
5 JOHN MORRIS, Esq.
6 Pachulski Stang Ziehl & Jones
780 Third Avenue
New York, New York 10017

7 BY: SHANNON McLAUGHLIN, Esq.
8 Latham & Watkins
885 Third Avenue
New York, New York 10022.

9
10 On behalf of the Creditors Committee:

11 BY: PAIGE MONTGOMERY, Esq.
12 Sidley Austin
2021 McKinney Avenue
Dallas, Texas 75201.

13 On behalf of the Witness:

14 BY: JOHN KANE, Esq.
15 Kane Russell Coleman & Logan
901 Main Street
Dallas, Texas 75202

16
17 On behalf of CLO HoldCo & the DAF:

18 BY: JONATHAN BRIDGES, Esq.
19 Sbaiti & Company
1201 Elm Street
Dallas, Texas 75270

20
21 Also Present:

22 Mark Patrick
23 Amelia Hurt
La Asia Canty, Paralegal

24

25

1 Grant Scott

2 EXAMINATION OF GRANT SCOTT

3 By Mr. Morris 6

4 By Mr. Kane 103

5 By Mr. Morris 105

6 DEPOSITION EXHIBITS

7 EXHIBIT DESCRIPTION PAGE

8 Exhibit 1 DAF CLO HoldCo Structure Chart 8

9 Exhibit 8 E-mail Exchange, Bates GScott000312 19

10 Exhibit 9 Notice of Settlement 44

11 Exhibit 10 E-mail Exchange, Bates GScott000080 75

12 Exhibit 11 E-mail Exchange, Bates GScott000138 80

13 Exhibit 12 E-mail Exchange, Bates GScott000361 88

14 Exhibit 13 Assignment and Assumption of

15 Membership Interest Agreement

16 Exhibit 14 Written Resolutions of the Sole

17 Director of the Company, Dated

18 March 25, 2021 94

19 Exhibit 15 Written Resolutions of the Sole

20 Shareholder of the Company, Dated

21 March 24, 2021 97

22 Exhibit 16 Written Resolutions of the Sole

23 Shareholder of the Company, Dated

24 March 31, 2021 97

25

Grant Scott

Exhibit 17 Written Resolutions of the Sole
Shareholder of the Company, Dated
April 2, 2021

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1 Grant Scott

2 GRANT SCOTT,

3 having been first duly sworn, was examined and

4 testified as follows:

5 EXAMINATION

6 BY MR. MORRIS:

7 Q. Good afternoon, Mr. Scott.

8 A. Good afternoon, John.

9 Q. Okay. As you recall, my name is John
10 Morris. I'm an attorney with Pachulski Stang Ziehl &
11 Jones. We represent Highland Capital Management LP, a
12 debtor in a bankruptcy case that is pending in the
13 Northern District of Texas.

14 Do you recall any of that?

15 A. Yes.

16 Q. Okay. And we are here today for your
17 deposition, and I appreciate your compliance with the
18 subpoena. Just a few ground rules to remind you, I'm
19 going to ask you a series of questions, and it's
20 important that you allow me to finish my question
21 before you begin your answer; is that fair?

22 A. Yes.

23 Q. And I will attempt to give you the same
24 courtesy, but if for some reason I step on your words,
25 just let me know that because I don't mean to cut you

1 Grant Scott

2 off. Okay?

3 A. Okay.

4 Q. If there's anything that I ask you that you
5 do not understand, will you let me know?

6 A. Yes, sir.

7 Q. If you need a break at any time, will you
8 let me know?

9 A. Yes.

10 Q. Okay. Because this deposition is being
11 conducted remotely, we are going to be putting
12 documents on the screen. I'm not attempting to trick
13 you in any way. If you believe there is any of
14 portion of a document that you need to see, either to
15 put something in context or to refresh your
16 recollection, I encourage to let me know that, and I
17 will be happy to accommodate you. Okay?

18 A. Okay.

19 Q. Okay. Have you seen the subpoena that the
20 debtors served on your lawyer in this case?

21 A. The one relating to my deposition?

22 Q. Correct.

23 A. Yes.

24 Q. And are you here today pursuant to that
25 subpoena?

1 Grant Scott

2 A. Yes.

3 Q. So today's deposition concerns a particular
4 motion that the debtor filed recently where the debtor
5 is seeking to hold certain individuals and entities in
6 contempt of court. Have you seen or reviewed the
7 debtor's motion that was filed?

8 A. I have seen the e-mails which I kept, but I
9 have not read them.

10 Q. Okay. I want to just begin with some
11 background.

12 MR. MORRIS: And then I would ask Ms.
13 Canty to put up what we will mark as
14 Exhibit -- you know, let's pick up the
15 numbering from this morning, La Asia. Did
16 we use 7 this morning?

17 Actually, this is going to be Exhibit
18 1. It's the same document that we had this
19 morning.

20 MS. CANTY: Yes.

21 MR. MORRIS: We will call it Exhibit
22 1, and it's an organizational chart. If we
23 can just put that on the screen.

24 (Deposition Exhibit 1 was marked for
25 identification.)

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Okay. Have you seen this before,
4 Mr. Scott?

5 A. Yes.

6 Q. Do you know what it is?

7 A. It's the -- yes. The DAF CLO HoldCo
8 structure chart.

9 Q. And this is structure chart that you
10 produced in response to the subpoena; is that right?

11 A. Correct.

12 Q. You are familiar with the gentleman named
13 Mark Patrick; is that right?

14 A. Yes.

15 Q. Is it your understanding that Mr. Patrick
16 was one of the individuals that helped establish the
17 hierarchy that is depicted on Exhibit 1?

18 A. Yes.

19 Q. And what is the basis for that
20 understanding?

21 A. That goes back many years to the
22 origination of my role.

23 Q. Okay. And do you recall that you assumed
24 your role in or around 2012?

25 A. Yes.

1 Grant Scott

2 Q. Okay. Did you know Mr. Patrick prior to
3 the time that you assumed your role?

4 A. I did not.

5 Q. Okay. Do you know -- withdrawn.

6 Do you have any knowledge as to whether
7 anybody other than Mr. Patrick helped establish the
8 hierarchy that is depicted on Exhibit 1?

9 A. There was a law firm name that came to
10 mind, and there was an expert, I gather, a lawyer that
11 was familiar with charitable entities that I believe
12 was involved.

13 Q. Can you identify any -- withdrawn.

14 At the time that you understood Mr. Patrick
15 had helped to create this hierarchy, did you
16 understand who employed Mr. Patrick?

17 A. Yes. I believe so.

18 Q. Who did you believe Mr. Patrick worked for
19 at that time?

20 A. Highland Capital Management.

21 Q. Can you identify any other person at
22 Highland Capital Management who was involved in the
23 creation of this hierarchy?

24 A. No.

25 Q. Okay. Now for looking at the hierarchy

1 Grant Scott

2 here, for the period for approximately 10 years prior
3 to March 24th, 2021, you served as the managing member
4 of the charitable DAF GP, LLC, correct?

5 A. Correct.

6 Q. And for approximately 10 years prior to
7 March 30 -- 20 -- withdrawn.

8 For approximately 10 years prior to March
9 24th, 2021, you were the sole director of charitable
10 DAF HoldCo, LTD, correct?

11 A. Correct.

12 Q. And for approximately 10 years prior to
13 March 24th, 2021, you were the sole director of
14 charitable DAF Fund LP, correct?

15 A. I believe that is correct.

16 Q. And for approximately 10 years prior to
17 March 24, 2021, you served as the sole director of CLO
18 HoldCo Limited, correct?

19 A. Yes. That is correct.

20 Q. Did you serve in any capacity for any other
21 entity that is depicted on this sheet at any time
22 prior to March 24th, 2021?

23 A. If you go -- if you look at the top of that
24 chart where it's directed at the charitable giving
25 components, I had some involvement with various

1 Grant Scott

2 members of some of those organizations.

3 Q. And would they be the ones that are
4 labelled as third parties or as supporting
5 organizations?

6 A. The -- the third party organizations.
7 And -- and possibly the supporting organizations.

8 Q. Do you know what the difference is between
9 a third party and a supporting organization as those
10 phrases are used on Exhibit 1?

11 A. I don't recall anymore what the delineation
12 is between those two.

13 Q. Okay. Do you hold any position today with
14 any of the entities that are depicted on Exhibit 1?

15 A. I do not -- I do not believe so. Well, I
16 believe technically, I'm still -- I may still be a
17 director of CLO HoldCo, but I -- I'm not certain of
18 the status as of today.

19 Q. Is there a particular reason why you may
20 remain today as a director of CLO HoldCo Limited?

21 A. I don't know if the -- I don't know if the
22 transfer after my resignation has been completely
23 finalized, and I haven't -- yeah. I don't know how
24 close it is to being completely finalized. I'm not --
25 I'm not sure.

1 Grant Scott

2 Q. But your intent is to resign as the
3 director of CLO HoldCo Limited; is that right?

4 A. Yes.

5 Q. And the only reason that that hasn't
6 happened yet, is it fair to say, is for administrative
7 reasons?

8 MR. BRIDGES: Objection. Assumes
9 facts not in evidence.

10 BY MR. MORRIS:

11 Q. You can answer.

12 A. I --

13 Q. Withdrawn. I will ask a different
14 question.

15 Do you know why your intended resignation
16 from CLO HoldCo Limited has not yet become effective?

17 MR. BRIDGES: The same objection.
18 Facts not in evidence.

19 BY MR. MORRIS:

20 Q. You can go ahead.

21 MR. KANE: I object to form, also.
22 Grant, go ahead.

23 THE WITNESS: I do not.

24 BY MR. MORRIS:

25 Q. Okay. Do you hold any positions of any

1 Grant Scott

2 kind today with any entity that you believe is either
3 directly or indirectly owned or controlled by
4 Mr. Dondero?

5 A. I don't believe so.

6 Q. Do you have -- I'm just going to explore
7 that for a little bit.

8 Do you know have -- do you know whether you
9 continue to HoldCo any position with any NexBank
10 entity?

11 A. I'm not in -- no, I don't have any
12 involvement with NexBank.

13 Q. Okay.

14 MR. KANE: Hey, John, can you shed a
15 little light on why that is relevant?

16 MR. MORRIS: I'm just trying to find
17 connections between Mr. Scott and
18 Mr. Dondero because I -- I just -- I
19 think -- I think the purpose of the
20 deposition is to try to -- to try to deduce
21 facts that are related to whether or not
22 Mr. Dondero is going to be a responsible
23 party under the contempt motion. So I'm
24 just looking for --

25 MR. KANE: I understand. I'm just

1 Grant Scott

2 trying to figure out Grant's -- you know,
3 whether he has a --

4 MR. MORRIS: That is all right. I'm
5 moving on anyway.

6 MR. KANE: Appreciate it.

7 BY MR. MORRIS:

8 Q. Now looking at the chart, Mr. Scott, I
9 believe you testified that you were either the
10 managing member or a director of each of the DAF
11 entities and CLO HoldCo Limited.

12 Do I have that right?

13 A. I believe that is correct.

14 Q. All right. Is it your understanding that
15 Mr. --

16 A. Excuse me. I am sorry. Currently or was?

17 Q. Was. Up until March 24th.

18 A. Okay. Correct.

19 Q. All right. Let me ask the question again
20 so it's clean.

21 Did you serve as either the managing member
22 or the director for each of the charitable DAF
23 entities and the CLO HoldCo Limited entity for
24 approximately 10 years prior to March 24th, 2021?

25 MR. KANE: Objection. Form. Go

1 Grant Scott

2 ahead, Grant.

3 (Reporter clarification.)

4 THE WITNESS: I believe so.

5 BY MR. MORRIS:

6 Q. And is it your understanding that Mr. Mark
7 Patrick replaced you in those capacities on or about
8 March 24th, 2021?

9 A. It's my understanding that on March 24th,
10 the management shares that I had previously -- that
11 had been in my name were transferred to him. I am not
12 sure how that impacts the current status in the
13 various other entities.

14 Q. Okay. During the time that you served as
15 the managing member of the charitable DAF GP LLC, that
16 entity had no officers or employees, correct?

17 A. I believe that is correct.

18 MR. KANE: Object to the form.

19 BY MR. MORRIS:

20 Q. And you served as the sole director of that
21 entity during the time that you served as the
22 director, correct?

23 A. I believe that is correct.

24 Q. And during the period of time that you
25 served as a director of charitable DAF HoldCo Limited,

1 Grant Scott

2 you were the only person to serve in that capacity; is
3 that correct?

4 A. I believe so.

5 Q. And during the period that you served as
6 director of charitable DAF HoldCo Limited, that entity
7 had no officers or employees, correct?

8 A. I believe that is correct.

9 Q. During the time that you served as a
10 director of charitable DAF Fund LP, you were the sole
11 director of that entity, correct?

12 A. Correct.

13 Q. And during the time that you served as the
14 sole director of charitable DAF Fund LP, that entity
15 had no officers or employees, correct?

16 A. I believe that is correct.

17 Q. You served as the sole director of CLO
18 HoldCo Limited; is that right?

19 A. Yes. That is correct.

20 Q. And during the period that you served as
21 the sole director of CLO HoldCo Limited, that entity
22 had no officers or employees, correct?

23 A. That is correct.

24 Q. Is that why the DAF had certain agreements
25 with Highland Capital Management LP pursuant to which

1 Grant Scott

2 HCMLP provided back office and advisory and investment
3 services?

4 MR. KANE: Objection. Form.

5 THE WITNESS: I think that is
6 correct.

7 BY MR. MORRIS:

8 Q. Do you recall that that DAF had agreements
9 with Highland Capital Management that were amended and
10 restated in 2014?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I understand there were
13 various agreements over the years that had
14 been restated. I'm not entirely sure
15 anymore of the dates that we received
16 that --

17 MR. MORRIS: Okay. Let's mark --

18 THE WITNESS: I'm sorry?

19 MR. MORRIS: Let's mark as Exhibit

20 8 --

21 MR. BRIDGES: Objection. Objection.
22 Please let the witness answer his question.

23 MR. MORRIS: Let's mark this --

24 MR. BRIDGES: No. Please allow the
25 witness to continue his answer.

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Grant, do you have anything else to add?

4 A. You had asked me -- you asked about a
5 specific date, I think, 2014. I just -- I don't know
6 what the dates are or were.

7 Q. That is what I heard you say. Is there
8 anything else that you have to add?

9 A. No, I don't -- I don't think so.

10 Q. I didn't think so either.

11 MR. MORRIS: Let's go to Exhibit 8,
12 please, the next document.

13 (Deposition Exhibit 8 was marked for
14 identification.)

15 MR. MORRIS: Okay. If we could just
16 scroll down a little bit. Just to the
17 e-mail.

18 BY MR. MORRIS:

19 Q. All right. Were you familiar with Caitlin
20 Nelson and Helen Kim and Thomas Surgent and David Klos
21 in and around August 2004?

22 A. I believe they were all Highland employees.

23 Q. Okay.

24 MR. MORRIS: Can we just scroll up to
25 the next e-mail, please?

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Okay. Do you see that Mrs. Kim sends you
4 an e-mail on August 26th, 2014?

5 A. Yes. I see that.

6 Q. And do you see that she had attached for
7 your review and execution, drafts of an amended and
8 restated service agreement and amended and restated
9 advisory agreement and GP resolutions?

10 A. I do see that.

11 Q. Okay. Do you have any recollection as to
12 whose idea it was to amend and restate those
13 agreements at that moment in time?

14 A. I do not.

15 Q. Do you have any recollection as to why
16 those agreements were amended and restated at that
17 time?

18 A. No, I do not.

19 Q. Okay. Let's just scroll down and just show
20 Mr. Scott the agreements. I'm not going to ask
21 anything substantive about it. But do you see here is
22 the -- if we can stop right there -- the Amended and
23 Restated Service Agreement that is dated from the
24 first day of July, 2014, and it's between the DAF
25 Fund -- the charitable DAF Fund LP, the charitable DAF

1 Grant Scott

2 GP LLC, as well as Highland Capital Management LP.

3 Do you see that?

4 A. I do see that.

5 Q. Do you recall that the entity that is
6 commonly referred to as the DAF had a service
7 agreement with Highland Capital Management LP?

8 A. I believe that is correct. Yes.

9 Q. Do you recall whether -- whether the
10 service agreement was ever the subject of any
11 negotiations?

12 A. I don't know.

13 Q. Did you participate in any negotiations
14 concerning the service agreement that was entered --
15 entered in between the entity known as the DAF and
16 Highland Capital Management LP?

17 MR. KANE: Objection to form.

18 John, will you clarify the time
19 period?

20 BY MR. MORRIS:

21 Q. Right here. 2014.

22 A. Sir, I don't recall anything about this
23 with respect to 2014.

24 Q. Do you know if -- if the agreement was ever
25 amended at any time after 2014? And when I use the

1 Grant Scott

2 phrase "agreement," I'm specifically referring to the
3 Amended and Restated Service Agreement that we are
4 looking at.

5 A. I believe -- I think there was a further
6 amended and restated agreement.

7 Q. Okay. Did you participate in any
8 negotiations concerning that further amended and
9 restated agreement?

10 A. I don't remember.

11 Q. Do you remember offering any comments
12 concerning any subsequent amendment or restatement?

13 A. I don't -- I don't remember.

14 Q. Did you ever hire outside counsel to assist
15 you in the negotiation of any service agreements with
16 Highland Capital Management LP?

17 A. I did not.

18 Q. Do you -- do you recall who prepared each
19 of the service agreements to which the DAF was a
20 party?

21 A. I don't remember.

22 Q. To the best of your recollection, would it
23 have been inhouse counsel at Highland Capital
24 Management?

25 MR. KANE: Objection. Form.

1 Grant Scott

2 THE WITNESS: I don't -- I don't
3 know.

4 BY MR. MORRIS:

5 Q. Can you recall the name of any law firm
6 that was involved in the drafting or the negotiation
7 of any service agreement between the entity known as
8 the DAF and Highland Capital Management LP?

9 MR. KANE: Objection. Form.

10 THE WITNESS: I don't remember any.

11 BY MR. MORRIS:

12 Q. Can you recall during your tenure as the
13 managing member of the DAF GP LLC, whether there was
14 any particular term or provision in any service
15 agreement that was the subject of negotiation or even
16 discussion?

17 A. I don't remember those -- any of those
18 discussions.

19 Q. Do you know if they took place or you just
20 can't remember them?

21 A. I just can't remember them.

22 Q. Do you recall ever seeing multiple drafts
23 of any service agreement that you -- withdrawn.

24 Did you personally sign service agreements
25 on behalf of the entity known as the DAF?

1 Grant Scott

2 A. I believe so.

3 Q. And the agreements that you signed on
4 behalf of that entity, were any of them -- were there
5 multiple drafts of any such agreement?

6 A. There were frequently multiple drafts or
7 agreements. But I just don't remember them.

8 Q. Do you remember whether you personally ever
9 provided any comments to any particular draft?

10 A. I do not.

11 Q. Let me ask you this: Are you familiar with
12 the phrase "arm's length negotiations"?

13 A. Yes.

14 Q. And can you tell me what your understanding
15 is of an arm's length negotiation?

16 A. Well, it would depend on the nature of the
17 parties. For example, a -- two strangers would
18 have -- arm's length would differ from the nature of
19 an agreement between parties maybe having fiduciary or
20 related obligations.

21 Q. Let me ask you this --

22 A. I don't know what the black -- I don't know
23 what the blackball definition is to that term.

24 Q. Would you agree that arm's length
25 negotiations take place between two parties that are

1 Grant Scott

2 acting out of their own self interest?

3 MR. KANE: Objection.

4 MR. BRIDGES: Objection to form and
5 foundation.

6 BY MR. MORRIS:

7 Q. Withdrawn. Withdrawn.

8 MR. BRIDGES: Calls for a legal
9 opinion.

10 BY MR. MORRIS:

11 Q. Mr. Scott, do you believe that the service
12 agreements between the entity known as the DAF and
13 the -- and Highland Capital Management LP were arm's
14 length agreements?

15 MR. BRIDGES: Objection. Again, lack
16 of foundation, calls for a legal opinion.

17 MR. MORRIS: Okay. I'm not asking
18 for a legal opinion. I'm asking for
19 Mr. Scott's view of it, so I will try one
20 more time.

21 BY MR. MORRIS:

22 Q. Mr. Scott, do you believe that the service
23 agreements between the DAF and HCMLP were the subject
24 and result of arm's length negotiations?

25 MR. BRIDGES: Objection. Foundation,

1 Grant Scott

2 calls for legal opinion.

3 BY MR. MORRIS:

4 Q. You can answer, sir.

5 A. I don't have any reason to believe they
6 weren't. But I --

7 Q. Well --

8 A. I don't recall them. I -- I can't give --
9 I mean, I don't know.

10 Q. Did get any advice from anybody at any time
11 before entering into the agreement on behalf of the
12 DAF?

13 MR. BRIDGES: Objection to form.

14 THE WITNESS: With respect to
15 agreements generally, I often received
16 advice, sometimes in writing, sometimes by
17 telephone. I just -- with respect to this
18 agreement and -- I just don't recall.

19 BY MR. MORRIS:

20 Q. Yeah, okay. Maybe I asked a bad question,
21 so let me try again, Mr. Scott.

22 Do you recall whether you ever got any
23 advice from anybody at any time with respect to any
24 service agreement that you entered into on behalf of
25 the entity known as the DAF and HCMLP?

1 Grant Scott

2 MR. BRIDGES: Objection, asked and
3 answered.

4 MR. KANE: Form.

5 BY MR. MORRIS:

6 Q. You can answer sir.

7 A. Yes, I just -- I don't recall.

8 Q. Okay. How about with respect to the
9 advisory agreement? Can we scroll down to page -- I
10 think it's 341? Oh, no, those are the resolutions.

11 Did Highland Capital Management take
12 responsibility for preparing the corporate resolutions
13 for the DAF entities and CLO HoldCo Limited?

14 MR. BRIDGES: Objection, foundation.

15 MR. KANE: Object to the form.

16 BY MR. MORRIS:

17 Q. You can answer, sir.

18 A. Do I know who prepared those documents?

19 Q. Yeah.

20 A. I don't.

21 Q. Did you prepare -- have you ever prepared
22 any corporate resolutions for any of the DAF entities
23 or CLO HoldCo Limited?

24 A. I have not.

25 Q. To the best of your knowledge, have all of

1 Grant Scott
2 the corporate resolutions for each of the DAF entities
3 and CLO HoldCo Limited been prepared by inhouse
4 counsel at HCMLP?

5 MR. BRIDGES: Objection. Form.

6 THE WITNESS: I don't know the
7 division of labor within HCMLP, whether it
8 was inhouse and/or outside counsel. I
9 just -- I just don't know.

10 BY MR. MORRIS:

11 Q. Are you aware that inhouse counsel prepared
12 resolutions on behalf of the DAF entities and CLO
13 HoldCo Limited?

14 MR. BRIDGES: Objection. Form.

15 THE WITNESS: Yes.

16 BY MR. MORRIS:

17 Q. You are aware of that, right?

18 A. I believe inhouse counsel was -- no,
19 that's -- I've frequently worked with inhouse counsel.
20 I -- but I just don't know with respect to these
21 agreements whether I worked with them on -- on these
22 agreements. I just don't have a present recollection
23 of any of this.

24 Q. And I'm just asking if you have a present
25 recollection of anybody other than inhouse counsel

1 Grant Scott

2 ever preparing any resolutions for any of the DAF
3 entities or CLO HoldCo Limited?

4 MR. BRIDGES: Objection. Asked and
5 answered.

6 MR. KANE: Objection. Form.

7 BY MR. MORRIS:

8 Q. You can answer, Mr. Scott.

9 A. It's -- it's conceivable that documents
10 were forwarded to me exclusively, but who prepared
11 them in the background? I don't know.

12 Q. Okay. I don't want to know what's
13 conceivable. I'm again, asking you to focus on what
14 you know or what you don't know or what you recall.

15 Do you have any recollection in your mind
16 of anybody other than Highland inhouse counsel
17 preparing any resolutions on behalf of any DAF entity
18 or CLO HoldCo, Limited?

19 MR. KANE: Objection to form.

20 He has answered that question three
21 times.

22 MR. MORRIS: He has not. But thank
23 you. He told me --

24 BY MR. MORRIS:

25 Q. Just ask it again -- answer again, please.

1 Grant Scott

2 A. Sir, inhouse counsel can -- let's say
3 inhouse counsel exclusively provided me with all of
4 the agreements. I don't necessarily know who prepared
5 them. I thought that's what you were asking me. I'm
6 sorry.

7 Q. From the time you assumed the role of sole
8 authorized representative of the DAF and CLO HoldCo
9 through January 1st, 2021, can you think of any
10 resolution or consent or corporate document that was
11 not prepared by HCMLP?

12 MR. KANE: Objection. Form.

13 THE WITNESS: If "prepared" means it
14 was forwarded to me by them, then I am -- I
15 don't recall receiving any documents
16 outside them as -- outside of that conduit
17 of -- of information flow, I guess.

18 BY MR. MORRIS:

19 Q. Okay. And during that same period of time,
20 can you think of any resolution or consent or
21 corporate document that you signed after you
22 personally had provided substantive comments or asked
23 for changes?

24 MR. BRIDGES: Objection. Asked and
25 answered.

1 Grant Scott

2 THE WITNESS: I don't -- I don't
3 recall.

4 BY MR. MORRIS:

5 Q. Okay. From the time you assumed your role
6 as the sole authorized representative of the DAF and
7 CLO HoldCo through the beginning of this year, can you
8 think of any resolution or consent or other corporate
9 document that you signed where you or the DAF or
10 CLO HoldCo obtained independent counsel?

11 MR. BRIDGES: Objection. Asked and
12 answered.

13 MR. KANE: Objection to form.

14 THE WITNESS: Since January 1st of
15 this year?

16 BY MR. MORRIS:

17 Q. Prior to January 1st of this year.

18 MR. BRIDGES: Same objection. Asked
19 and answered.

20 THE WITNESS: Yeah, I don't recall.

21 BY MR. MORRIS:

22 Q. Okay. Do you recall that I took your
23 deposition back in January; is that right, sir?

24 A. Correct.

25 Q. And do you recall that you testified that

1 Grant Scott
2 during the two-week period leading up to the
3 deposition you discussed the possibility of resigning
4 from your positions with Mr. Patrick?

5 A. Yes. I'm not sure -- I'm not sure of the
6 exact timing. We had -- we had multiple conversations
7 about it.

8 Q. When was the first time you thought about
9 resigning?

10 A. The -- I don't know the exact date. I know
11 the event. It was the day I -- I had a conversation
12 with my -- my attorney, John Kane, about.

13 MR. KANE: Grant, hold on. You don't
14 need to have any discussions about
15 conversations between you and counsel.
16 That's attorney client privileged.

17 THE WITNESS: Understood. I'm sorry.

18 It's when I became aware of the
19 outcome of the escrow hearing sometime in I
20 guess early or mid 2020.

21 BY MR. MORRIS:

22 Q. And can you describe for me your
23 understanding of what the escrow hearing was about?

24 A. So I had agreed to allow certain CLO HoldCo
25 and calculated assets to be put in the court registry,

1 Grant Scott

2 and there was a motion that was made to have those
3 released. There was an evidentiary hearing that my
4 attorney attended -- or rather CLO HoldCo's attorney
5 attended, John Kane, and based on our discussions of
6 the outcome, I began contemplating my -- my
7 resignation.

8 Q. And what about the outcome that prompted
9 you to consider resigning?

10 A. It -- it was the first time, I guess, where
11 I thought my friendship with Jim Dondero would likely
12 adverse or could adversely affect CLO HoldCo from the
13 standpoint of demonstrating independence. I thought
14 maybe I -- yeah.

15 Q. Did -- did you and Mr. Dondero have a
16 conversation at around the time of the escrow hearing
17 that caused you concern about your relationship with
18 Mr. Dondero?

19 A. It wasn't with respect to concern over my
20 relationship with Mr. Dondero. It -- it was my
21 concern about CLO HoldCo. I'm sorry, I didn't
22 understand your question.

23 Q. I may have misunderstood. So what was your
24 concern about CLO HoldCo?

25 MR. KANE: Objection. Asked and

1 Grant Scott

2 answered.

3 BY MR. MORRIS:

4 Q. You can answer, sir.

5 A. My concern was that my friendship with
6 Jim Dondero would eventually provide a presumption
7 that anything that I did in my role was in some way
8 influenced by my friendship and not independence.

9 And so I -- that's when I started thinking
10 about resigning. That was one of the reasons why I
11 was thinking about resigning, but that's -- that's
12 when it began, to my recollection.

13 Q. And what were the other reasons that you
14 can recall that caused him to consider resigning at
15 around the time of the escrow hearing?

16 A. Around the escrow hearing that was at -- it
17 was later.

18 Q. When was the next time that you recall
19 thinking again about the possibility of resigning?

20 A. Well, there was a -- I mean, it was as 2020
21 went on, I guess maybe over the course of about six
22 months, there were certain developments during that
23 time that led me to have other reasons for thinking --
24 resigning was something I should -- I should do.

25 Q. Were you -- were you ever concerned prior

1 Grant Scott
2 to the date that you gave notice of your intent to
3 resign, that you didn't have the ability to act
4 independently from what Mr. Dondero wanted you to do?

5 A. No.

6 MR. KANE: Object to form.

7 THE WITNESS: If I understand your
8 question -- well, actually could you repeat
9 that question.

10 BY MR. MORRIS:

11 Q. You know, I'll try and get to specific
12 conversations. That might be the better way to deal
13 with this.

14 Do you recall that there came a point in
15 time when CLO HoldCo filed an objection to a proposed
16 settlement with the group of entities known as
17 HarbourVest?

18 A. Yes. CLO HoldCo filed an objection. Yes.

19 Q. And -- and do you recall that prior to the
20 hearing where the Court was going to consider whether
21 or not to approve the HarbourVest settlement, you
22 caused CLO HoldCo to withdraw the objection?

23 A. I authorized the withdraw.

24 Q. And did you believe that you were acting in
25 CLO HoldCo's best interest when you made the decision

1 Grant Scott

2 to withdraw CLO HoldCo's objection to the HarbourVest
3 settlement?

4 A. I was following counsels' advice,
5 CLO HoldCo's counsel's advise. So...

6 MR. KANE: Be careful, Grant.

7 BY MR. MORRIS:

8 Q. I'm just asking you if you believed at the
9 time that you made the decision you were acting in
10 CLO HoldCo's best interest?

11 MR. BRIDGES: Objection. Foundation.

12 THE WITNESS: I believe --

13 BY MR. MORRIS:

14 Q. What is your answer, sir?

15 A. Yes, I believe I was acting in CLO HoldCo's
16 best interest.

17 Q. Did you have any motivation to withdraw
18 CLO HoldCo's objection to the HarbourVest settlement
19 other than your belief that you thought that was the
20 right thing to do, based on the advice of counsel that
21 you received and your own assessment of the situation?

22 MR. BRIDGES: Objection. Form,
23 foundation, compound.

24 MR. KANE: Objection, form.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. You can answer, sir.

3 A. Yes. I was following advice of counsel,
4 and I thought that was the best thing to do.

5 Q. You thought you were doing the right thing,
6 right?

7 A. At that time, yes.

8 Q. Did you ever discuss your decision to
9 withdraw CLO HoldCo's objection to the HarbourVest
10 settlement with Mr. Dondero?

11 A. Decision? No.

12 Q. Did you discuss with Mr. Dondero the fact
13 that the objection had been withdrawn at your
14 direction?

15 A. Yes.

16 Q. Can you tell me everything you remember
17 about your communications with Mr. Dondero on that
18 topic?

19 A. He just asked whether I had indeed
20 authorized it. That's it.

21 Q. That's the only question that he asked?

22 A. Yes. And I said yes.

23 Q. Did he -- did he suggest that you had acted
24 inappropriately in any way?

25 A. He didn't make any suggestion.

1 Grant Scott

2 Q. Did he say that you had acted
3 inappropriately?

4 A. No.

5 Q. Did he suggest that you had breached your
6 fiduciary duties to anybody?

7 MR. BRIDGES: Objection. Asked and
8 answered.

9 BY MR. MORRIS:

10 Q. You can answer, sir.

11 A. He just wanted to know if I had in fact
12 authorized it, and I said yes. And then the
13 conversation was over.

14 Q. Okay. Do you recall that there came a
15 subsequent time -- actually withdrawn.

16 Before that, do you recall that you
17 authorized CLO HoldCo to amend its proof of claim?

18 A. Yes.

19 Q. And do you remember that pursuant to the
20 amended proof of claim, the value of the claim was
21 reduced to zero?

22 A. That is correct.

23 Q. Did you ever discuss with Mr. Dondero the
24 amended proof of claim?

25 A. No.

1 Grant Scott

2 Q. You never had a conversation with him about
3 the decision to amend the proof of claim?

4 A. No, I don't think so.

5 Q. And you never discussed with him your
6 decision to reduce the proof of claim to zero dollars?

7 MR. BRIDGES: Objection to form.

8 THE WITNESS: I don't believe so.

9 BY MR. MORRIS:

10 Q. Okay. Do you recall that in late January,
11 CLO HoldCo was a defendant in a lawsuit that was
12 commenced by the debtor?

13 A. Yes.

14 Q. And do you recall that you authorized
15 CLO HoldCo to enter into a settlement agreement with
16 the debtor?

17 A. Correct.

18 Q. Did you ever discuss that settlement
19 agreement with Mr. Dondero?

20 A. I was on a phone call where the agreement
21 was discussed.

22 Q. And what do you recall about the
23 discussions?

24 MR. BRIDGES: Objection to the
25 extent -- to the extent that lawyers were

1 Grant Scott

2 privy to those discussions. We haven't
3 made that clear yet.

4 THE WITNESS: I'm sorry. I had a
5 conversation -- well, actually, I
6 participated in a call. I was on the call.
7 A number of the attorneys were on the call.

8 MR. BRIDGES: Objection. Objection.
9 Privileged. On behalf of CLO HoldCo and
10 the DAF, I'm instructing the witness not to
11 answer that question.

12 MR. MORRIS: He is not your client,
13 number 1. Number 2, he hasn't identified
14 who was on the call. How are you doing
15 this? How are you doing this? He hasn't
16 even told you who was on the call.

17 MR. BRIDGES: I'm happy to answer
18 your question if you don't shout over my
19 answer.

20 The privilege belongs to the
21 entities, not to him, and those entities
22 are my clients, I'm asserting a privilege.

23 MR. MORRIS: You don't --

24 BY MR. MORRIS:

25 Q. Mr. -- Mr. Scott, can you please tell me

1 Grant Scott

2 who was on the call?

3 THE WITNESS: Am I allowed to answer?

4 MR. BRIDGES: Yes, you are. You can
5 answer that question, who was on the call.

6 THE WITNESS: Oh. John Kane was on
7 the call. Jim Dondero was on the call. I
8 was on the call, and there were at least
9 two other attorneys on the call, but I'm
10 not -- I'm not sure who -- I'm not sure who
11 they were -- I mean, their names.

12 BY MR. MORRIS:

13 Q. What was the subject matter of the call?

14 A. The call was to give clarification of a --
15 on how a lack of communication had occurred, and that
16 communication related to --

17 MR. BRIDGES: Objection. Objection.
18 Just the subject matter is all that you can
19 answer without violating privilege here,
20 the general subject matter.

21 THE WITNESS: The general subject
22 matter related to the flow of information
23 between the time I settled, signed off on
24 the --

25 MR. KANE: I think -- Grant, you're

1 Grant Scott

2 going -- you're going too specific.

3 Talking about the general subject matter of

4 the call, so you avoid privilege issues.

5 Just big picture.

6 MR. BRIDGES: Flow of information

7 sounds like a big picture. Mr. Morris, I

8 think we're done on this line of

9 questioning.

10 BY MR. MORRIS:

11 Q. Mr. Scott, at the time of this

12 conversation, had CLO HoldCo already settled with the

13 debtor?

14 A. Yes.

15 Q. So CLO HoldCo was no longer a defendant in

16 the litigation; is that right?

17 A. Correct.

18 Q. Okay. Can you tell me what was discussed

19 during the conversation?

20 MR. BRIDGES: Objection. Privileged

21 for the same reasons we just discussed. I

22 am instructing the witness not to answer

23 because the privilege belongs to CLO HoldCo

24 and the DAF.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. Are you going to follow that instruction,
3 Mr. Scott?

4 A. Yes.

5 Q. Did you ever have a discussion other than
6 the one that counsel is preventing you from describing
7 with Mr. Dondero on the subject of CLO HoldCo's
8 settlement with the debtor?

9 MR. BRIDGES: Objection to the set
10 up, to the lack of foundation to that
11 question.

12 Sir, if you've got an issue with my
13 privilege objection, please feel free to
14 explain. If there's a factual mistake you
15 think I'm making, please feel free to
16 explain.

17 But -- but using pejoratives to
18 describe the objection to the witness is
19 improper. I object to it.

20 MR. MORRIS: Okay. That's fine. I
21 don't see what -- you prevented him from
22 answering the question, right? So I don't
23 know what's pejorative. Your sense of
24 pejorative is very different from mine.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. Mr. -- Mr. Scott, did you have any other
3 conversation with Mr. Dondero besides the one that I'm
4 not being allowed to inquire about?

5 A. I'm sorry, is there any objection to my
6 answer?

7 Q. No.

8 A. No, I do not.

9 Q. Did you resign -- did you give notice of
10 your intent to resign at around the same time that you
11 had this conversation with all of the lawyers?

12 A. No. It was beforehand.

13 Q. Okay. Let's -- let's put up the settlement
14 agreement first. I think it's the next exhibit,
15 Exhibit 9?

16 (Deposition Exhibit 9 was marked for
17 identification.)

18 BY MR. MORRIS:

19 Q. Okay. Just to refresh your recollection,
20 sir, do you see that this is -- if we can just scroll
21 down a little bit, it's dated January 26th.

22 And do you see it's signed by your lawyer
23 and my law firm?

24 A. Correct.

25 Q. And if we can scroll down to the agreement

1 Grant Scott

2 itself, is that the agreement that you entered into on
3 behalf of CLO HoldCo, on or around January 26th, 2021?

4 A. I believe so.

5 Q. And did you tell Mr. Dondero of your
6 intention to enter into this agreement before you did
7 so?

8 A. No.

9 Q. And Mr. Dondero never told you that he
10 disagreed with your decision to enter into this
11 agreement; is that right?

12 MR. KANE: Objection to form.

13 THE WITNESS: It's correct that he
14 never did.

15 MR. MORRIS: Yeah. Okay. Can we go,
16 please, to the document that is marked
17 Scott Bates stamp 18. It's at the bottom
18 of page 5 of the exhibit, La Asia.

19 If we can start at the bottom.

20 BY MR. MORRIS:

21 Q. Do you know what this e-mail is, sir?

22 A. Yes. This is my resignation e-mail, for
23 lack of a better word.

24 Q. And why did you send your resignation
25 e-mail at that moment in time?

1 Grant Scott

2 A. Why did I send it at the end of January?

3 Q. What caused you to send this e-mail at that
4 moment in time?

5 A. Well, I mean, there are a couple of
6 reasons. It was -- it was necessary that I do it, and
7 the time seemed right in view of the events in
8 January. It was like a good transition point from my
9 perspective.

10 Q. And why was it necessary at that time?

11 A. Well, there was --

12 MR. BRIDGES: Objection. Assumes
13 facts not in evidence.

14 BY MR. MORRIS:

15 Q. You can answer.

16 A. I previously testified during this
17 deposition that throughout 2020, the desire -- or,
18 rather, the appropriateness of my wanting to resign
19 was expanding, and based on what had happened in
20 January and December as well, but mostly January, I
21 basically just did a critical mass on whether I could
22 sustain my role, given my commitments to my existing
23 firm and given my discussions with the managing
24 members of my existing firm.

25 And it -- there was just no way I could

Grant Scott

1
2 continue with the time commitment required. I had
3 made various promises and representations to my firm
4 throughout 2020 that the bankruptcy would be handled
5 relatively efficiently and wouldn't require a great
6 deal of time commitment. And then I guess the straw
7 that broke the camel's back was the second lawsuit,
8 meaning me personally, and it just -- from a personal
9 standpoint, the most significant factor was just my --
10 my being overwhelmed, trying to sustain my career and
11 engage in what seem like the 2021 that was going to
12 involve my having to defend two lawsuits. And I felt
13 like I got CLO HoldCo through the bankruptcy and then
14 that was a good jumping off point.

15 Q. What -- why did you send this e-mail to
16 Mr. Dondero?

17 A. I knew, or at least I reasonably believed
18 he would know where to who to send it to because I
19 wasn't exactly sure.

20 Q. So you were the managing member of the
21 general partnership and the director of the other DAF
22 entities and CLO HoldCo Limited, and you were not sure
23 who to send your notice of resignation to.

24 Do I have that right?

25 MR. KANE: Objection. Form. That's

1 Grant Scott

2 John Kane.

3 THE WITNESS: Yes. I didn't know who
4 best to inform my decision.

5 BY MR. MORRIS:

6 Q. And why did you think that Mr. Dondero
7 would know?

8 MR. BRIDGES: Objection. Asked and
9 answered.

10 THE WITNESS: He knows a lot more
11 about the workings of -- I mean, it was --
12 CLO HoldCo and the charitable admission was
13 something that he worked to develop with
14 others 10 years ago, and he was committed
15 to the charity and he knew all of the
16 players and I just -- I guess I just
17 assumed he would know where to direct it.

18 BY MR. MORRIS:

19 Q. Did you ever ask?

20 A. He knew how to effectuate -- he knew how to
21 effectuate -- or I thought he knew how to effectuate
22 my resignation by directing it to the appropriate
23 personnel.

24 Q. Did you ever ask him who it should be
25 directed to?

1 Grant Scott

2 A. No.

3 Q. Looking at the third paragraph, it says,
4 quote, my resignation will not be effective until I
5 approve of the indemnification provisions and obtain
6 any and all releases.

7 Do you see that?

8 A. Yes.

9 Q. Why did you condition the effectiveness of
10 your resignation on those things?

11 A. Well, although I'm a patent attorney and
12 basically just a technical writer that doesn't deal
13 with legal issues all of the time, it seemed like
14 appropriate language.

15 I have a number of outstanding litigations
16 where I am named personally, and the actions that I
17 took which resulted in my being sued were actions I
18 took on behalf of CLO HoldCo solely in that position,
19 and so I thought just to have the appropriate notice
20 that I would like indemnification to help -- to help
21 deal with those litigation matters. That is all.

22 Q. Did anybody suggest to you at any time
23 prior to the time that you sent this e-mail, that any
24 of the DAF entities or CLO HoldCo Limited might have
25 claims against you?

1 Grant Scott

2 A. No. No.

3 Q. Were you concerned that Mr. Dondero or
4 anyone acting on his behalf might sue you?

5 A. No.

6 Q. Did Mr. Dondero ever threaten to sue you?

7 A. No.

8 Q. Did you ever obtain the Indemnity provision
9 and any and all necessary releases that you asked for
10 in this e-mail?

11 A. Not yet.

12 Q. And what does that mean?

13 A. I understand that those provisions are --
14 indemnification proposals are in the works, I think.

15 Q. And do you know who is negotiating --
16 withdrawn.

17 Is somebody negotiating those
18 indemnification and release provisions on your behalf?

19 A. My -- my attorney would be.

20 Q. And do you know if your attorney is
21 negotiating with anybody concerning potential
22 indemnification and release provisions for you?

23 A. I don't know specifically, no.

24 Q. Do you know if he is -- if -- from whom do
25 you want to obtain releases?

1 Grant Scott

2 MR. BRIDGES: Objection. Facts not
3 in evidence.

4 BY MR. MORRIS:

5 Q. Withdrawn.

6 When you refer to any and all necessary
7 releases, who did you want to obtain releases from?

8 A. CLO HoldCo.

9 Q. Anybody else?

10 A. Well, I mean, and -- and the related
11 entities in that structure chart that you showed.
12 I'm -- I'm -- understand that to me, that is just
13 boilerplate legal language to put in a resignation,
14 you know, just to cross the T's, dot the I's, so to
15 speak. I'm not anticipating that will be -- that will
16 be a problem. I am sorry.

17 Q. You asked for this more than three months
18 ago now, right?

19 A. Correct.

20 Q. Do you know why you haven't gotten what you
21 asked for more than three months ago?

22 MR. BRIDGES: Objection. Form.

23 THE WITNESS: I -- I don't.

24 BY MR. MORRIS:

25 Q. But you still want the releases, right?

1 Grant Scott

2 A. I would like to, yes.

3 Q. Did you ever have any discussion with
4 Mr. Dondero about the releases that you wanted?

5 A. No.

6 Q. Have you communicated with Mr. Dondero
7 since -- since you sent this e-mail?

8 A. Yes.

9 Q. Other than the birth date text that he sent
10 to you, have you spoken with him?

11 A. In February.

12 Q. So you haven't spoken to him since then?

13 A. That is correct.

14 Q. What did you speak to him about in
15 February?

16 A. He called me to ask me if I knew anything
17 about in particular -- I think it might have been an
18 asset of CLO HoldCo, if I was aware of whether it had
19 been purchased or sold, and I just told them I didn't
20 know what he was -- I didn't know what -- I didn't
21 know what he was referring to. That was the last
22 conversation that we had.

23 Q. Can I refer to the period from the date of
24 this --

25 MR. MORRIS: Actually, let's look

1 Grant Scott

2 at -- let's scroll up a little bit, please.

3 BY MR. MORRIS:

4 Q. Did Mr. Dondero ever try to talk you out of
5 resigning?

6 A. No.

7 MR. MORRIS: Can you scroll up?

8 THE WITNESS: I -- I am sorry. I
9 need to correct that. I had conversations
10 with him where I had expressed, not so much
11 a desire to resign, but a belief that it --
12 it made strategic sense or was appropriate.
13 And it had to do with this issue of my
14 independence, and he suggested that family
15 members and friends are not precluded from
16 occupying positions of trust like trustees
17 and things like that, and that there was
18 nothing per se wrong with my -- my activity
19 with CLO HoldCo by virtue of being a friend
20 of his. So in that sense, he was trying to
21 talk me out of that, I guess.

22 BY MR. MORRIS:

23 Q. When did that conversation take place?

24 A. We had a number of those in 2020 and
25 January of 2021.

1 Grant Scott

2 MR. MORRIS: Can we scroll up just a
3 little bit on this e-mail, please?

4 MR. BRIDGES: May I ask what exhibit
5 number this is? I've lost track. I am
6 sorry.

7 MS. CANTY: This is Exhibit 5 from
8 earlier. We are continuing the numbers.
9 So this was marked as Exhibit 5 in this
10 morning's deposition.

11 MR. BRIDGES: Thank you so much.

12 BY MR. MORRIS:

13 Q. Do you see where Mr. Dondero wrote to
14 you -- it's just of above the yellow highlighting
15 at -- 9:57 a.m. This is the next day. Quote, you
16 need to tell me ASAP that you have no intent to divest
17 assets.

18 Do you see that?

19 A. Yes.

20 Q. Did Mr. -- do you have any understanding as
21 to why he said that to you?

22 A. I know that he was mistaken in that
23 statement.

24 Q. Right. Do you have any understanding as to
25 whether Mr. Dondero had the ability to stop you from

1 Grant Scott

2 selling assets?

3 A. No. It wasn't -- it was a misunderstanding
4 about what the word "divest" meant in the subject
5 line.

6 Q. And did you understand that until you
7 corrected him, he was concerned and he expressed the
8 concern to you not to sell any assets?

9 MR. KANE: Objection to form.

10 THE WITNESS: No. It had -- I am
11 sorry. There -- the term "divest" was
12 maybe not a term I should have used.

13 However, my understanding was that my -- my
14 status at CLO HoldCo had a property related
15 aspect to it. And I used that term to
16 emphasize that I would need to -- that that
17 property aspect would need to be
18 transferred, meaning to the next entity or
19 person. He mistook it as something being
20 sold. It had nothing to do with that.

21 That is all.

22 BY MR. MORRIS:

23 Q. I understand that. But did you
24 understand -- did you have any understanding as to
25 what interest he had and whether or not assets were

1 Grant Scott

2 being sold?

3 MR. BRIDGES: Object to form.

4 MR. KANE: Objection. Asked and
5 answered.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. No. I had -- I had no idea what he was --

9 Q. Okay. Let's -- let's -- can we -- can we
10 call the period of time between the time you sent this
11 notice of your intent to resign in March 24, 2021 as
12 the interim period?

13 A. Sure.

14 Q. And that's the period during which you had
15 expressed your intent to resign, but your resignation
16 had not yet become effective; is that fair?

17 A. I guess it was the period of time when --
18 yes. I guess that is correct.

19 Q. Okay. Is it fair to say that there were
20 certain things you needed to do during the interim
21 period on behalf of CLO HoldCo and the DAF entities
22 before -- even before your resignation became
23 effective?

24 A. Yes.

25 Q. Okay. Was someone designated to act as

1 Grant Scott
2 your liaison with respect to matters concerning the --
3 the DAF entities and the CLO HoldCo during the interim
4 period?

5 MR. KANE: Objection. Form.

6 THE WITNESS: I had conversations
7 with Mark Patrick in February when I came
8 to -- to believe he -- he would be director
9 elect, so to speak, in terms -- in terms of
10 moving forward.

11 BY MR. MORRIS:

12 Q. During the interim period, did you have any
13 understanding as to whether Mr. Patrick had any
14 authority to act on behalf of any of the DAF entities
15 or CLO HoldCo?

16 MR. KANE: Objection. Form.

17 THE WITNESS: I came to believe he
18 did, upon signing the management shared
19 transfer agreement.

20 BY MR. MORRIS:

21 Q. Okay. So that was -- that was on or about
22 March 24th, 2021, right?

23 A. Correct.

24 Q. So I'm asking just about the interim period
25 between January 31st, 2021 when you sent your notice

1 Grant Scott
2 of intent to resign, and March 24th. That is what I
3 am defining as the interim period.

4 So with that understanding, did you have
5 any reason to believe that Mr. Patrick had any
6 authority to act on behalf of any of the DAF entities
7 or CLO HoldCo during the interim period?

8 A. Well, it was -- he was part of a group of
9 entity -- a group of individuals that were with an
10 entity that had taken over from -- from Highland, and
11 so in -- certainly in that capacity, he -- as -- as
12 occurred for 10 years or more prior, that -- in that
13 role, you certainly had rights to -- to perform or to
14 act on CLO's behalf here.

15 Q. And what entity are you referring to?

16 A. I think it's the Highgate Consulting Group,
17 the Highland employees that took over -- or that
18 created that entity.

19 Q. And did the -- do you have an understanding
20 as to whether the Highgate Employment Group succeeded
21 to Highland Capital Management LP in the shared
22 services capacity or in the investment advisory
23 capacity or something else?

24 MR. BRIDGES: Object to form.

25 (Reporter clarification.)

1 Grant Scott

2 THE WITNESS: I'm not entirely sure
3 of that.

4 BY MR. MORRIS:

5 Q. So is --

6 A. But he -- but --

7 Q. I am sorry. Did you finish your answer?

8 A. I'm not -- I'm not sure of the delineation
9 between the two.

10 Q. So on what basis did you believe that
11 Mr. Patrick had the authority to act on behalf of the
12 DAF entities and CLO HoldCo during the interim period?

13 MR. BRIDGES: Objection. Asked and
14 answered.

15 THE WITNESS: We had -- we had had a
16 number of conversations. And over the
17 course of a number of weeks, I came to -- I
18 came to understand that he would be the
19 director going forward. So...

20 BY MR. MORRIS:

21 Q. How did you come to that understanding?

22 A. Through the conversations that we had had,
23 I guess.

24 Q. What conversations did you have with Mr. --
25 were these conversations with Mr. Patrick?

1 Grant Scott

2 A. They were conversations about the workings
3 with outside counsel to arrange the -- to arrange the
4 transfer of my responsibilities to another person or
5 entity at first, and then I came to learn that that
6 person was -- was -- would be Mark.

7 Q. Do you know who selected mark?

8 A. I do not.

9 Q. Do you know how Mark was selected?

10 A. I -- I do not.

11 Q. Did you ever ask Mark how he was selected?

12 A. I did not.

13 Q. Did you ever ask Mark who selected him?

14 A. I did not.

15 Q. Did you ever ask anybody at any time how
16 Mr. Patrick was selected to succeed you?

17 A. No, I did not.

18 Q. Did you ask anybody at any time as to who
19 made the decision to select Mr. Patrick to succeed
20 you?

21 A. No, I did not.

22 MR. BRIDGES: Objection. Facts not
23 in evidence and foundation.

24 BY MR. MORRIS:

25 Q. Okay. Do you have any understanding today,

1 Grant Scott

2 as to who has the authority to select your --
3 withdrawn.

4 Do you have any understanding today, as to
5 who had the authority to select your replacement?

6 A. I do not.

7 MR. MORRIS: All right. Let's take a
8 short break. And I am certainly -- I'm
9 closer to the end than the beginning. It's
10 3:22 Eastern Time. Let's come back at
11 3:35, please, and hopefully I will be
12 finished by about 4, 4:15.

13 (Recess taken.)

14 BY MR. MORRIS:

15 Q. I want to go back, Mr. Scott, to the time
16 that you became appointed the managing member of the
17 general partnership and to the director of the other
18 DAF entities and CLO HoldCo. Do you remember how that
19 came to be?

20 A. My recollection is that various law firms
21 and Mark Patrick had a role in its creation and
22 configuration following some -- it's -- I believe it's
23 modeled after some expert -- expert in the field. I
24 am sorry. I don't know if I answered your question.

25 Q. You did not. So let me try it again. Do

1 Grant Scott

2 you recall how it came to be that you assumed those
3 positions?

4 A. Ten years ago I accepted that role.

5 Q. And who offered the role to you?

6 A. Jim Dondero.

7 Q. Did -- did you communicate with anybody
8 other than Mr. Dondero concerning the opportunity that
9 he presented to you to assume these roles prior to the
10 time you accepted the position?

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. Withdrawn.

14 A. Possibly or --

15 Q. Withdrawn. Let me ask -- let me ask --
16 it's a good objection.

17 Mr. Scott, prior to the time that you
18 assumed your positions with the DAF entities and
19 CLO HoldCo, did you speak with anybody other than
20 Mr. Dondero, about the duties and responsibilities of
21 those positions?

22 MR. KANE: Objection to form.

23 THE WITNESS: The only thing that
24 comes to mind is Hunton & Williams. But
25 I -- I'm not sure. I don't know.

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Do you have any memory of interviewing with
4 anybody?

5 A. I don't have any recollection of that, no.

6 Q. Did you submit a resume of any kind?

7 A. Possibly a CV. But I -- I just don't
8 remember anymore.

9 Q. Do you know who made the decision to select
10 you to serve in those capacities?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I don't know.

13 BY MR. MORRIS:

14 Q. Did anybody -- withdrawn.

15 Did you meet with Patrick before or after
16 you assumed these roles?

17 A. It's going back 10 years. I -- I'm not
18 sure.

19 MR. MORRIS: Can we put up on the
20 screen a document that we marked this
21 morning. I believe it's Exhibit 2.

22 BY MR. MORRIS:

23 Q. And this is a document titled An Amended
24 and Restated Limited Liability Company Agreement of
25 Charitable DAF GP LLC.

1 Grant Scott

2 Do you see that?

3 A. Yes.

4 Q. And do you see that it's effective January
5 1, 2012?

6 And if we could go to the last page. And
7 is that your signature, sir?

8 A. That is correct.

9 Q. And is this the document that you signed on
10 March 12th, 2012, pursuant to which you became the
11 general partner of the DAF GP?

12 MR. KANE: Objection. Form.

13 THE WITNESS: It's not March 12th.

14 It's dated as March 21st, just to clarify,
15 but I believe so.

16 BY MR. MORRIS:

17 Q. I appreciate that. I'm going to ask the
18 question again, just because I was wrong and I want to
19 get it right.

20 Is this the document you signed on or about
21 March 21, 2012, pursuant to which you became the
22 managing member of the DAF GP, LLC?

23 A. I believe so.

24 Q. Okay. And you replaced Mr. Dondero in that
25 capacity; is that right?

1 Grant Scott

2 A. Yes.

3 Q. And your recollection is that Mr. Dondero
4 presented the opportunity to you; is that right?

5 MR. KANE: Objection. Form.

6 THE WITNESS: Yes. I guess you could
7 call it an opportunity.

8 BY MR. MORRIS:

9 Q. And do you have any recollection as to
10 whether or not anybody else was involved in the
11 decision to offer the opportunity to you?

12 A. I -- I don't recall.

13 Q. Okay. We can take that down, please.

14 Do you recall whether Mr. Patrick was
15 involved in your selection as the replacement
16 management member of the DAF GP, LLC in 2012?

17 A. I have no recollection.

18 MR. KANE: Objection to form.

19 Yes. Okay.

20 BY MR. MORRIS:

21 Q. I want to go back to what we had defined
22 earlier as the interim period, and that was the period
23 between January 31st, 2021, when you sent in that
24 notice and March 24, 2021, when you transferred the
25 shares. That is what we were calling the interim

1 Grant Scott

2 period, right?

3 A. Yes.

4 Q. Okay. Is it fair to say that Mr. Patrick
5 served as your primary contact with respect to matters
6 concerning CLO HoldCo and the DAF during the interim
7 period?

8 A. Yes.

9 Q. Okay. And, in fact, Mr. Patrick gave you
10 instructions on what to do for the DAF and the
11 CLO HoldCo on certain matters during the interim
12 period, correct?

13 MR. KANE: Objection to form.

14 THE WITNESS: Periodically, yes.

15 BY MR. MORRIS:

16 Q. I am sorry. What is the answer?

17 A. Periodically, yes.

18 Q. Okay. Did somebody ever tell you that you
19 should follow Mr. Patrick's instructions?

20 A. No, I don't believe so.

21 Q. And, Mr. Patrick, to the best of your
22 knowledge, didn't HoldCo any positions with any of the
23 DAF entities or CLO HoldCo Limited, correct?

24 MR. KANE: Objection to form.

25 MR. BRIDGES: Object to foundation.

1 Grant Scott

2 BY MR. MORRIS:

3 Q. You can answer.

4 A. During the interim period?

5 Q. Correct.

6 A. I do not believe so.

7 Q. If Mr. Patrick didn't hold any positions,
8 why did you follow his instructions?

9 MR. BRIDGES: Objection.

10 MR. KANE: Objection. Go ahead,
11 sorry.

12 MR. BRIDGES: Facts not in evidence.

13 MR. KANE: And objection to form.

14 BY MR. MORRIS:

15 Q. You can answer, sir.

16 A. Yes. Well, there -- I mean, there was a
17 lot of activity that was required to transfer over
18 from how things had been handled under Highland, to
19 how they would now be handled under -- with the
20 services being provided by Highgate, and he was a
21 member, and he was the point person, I guess, and he
22 was my main interface to get those large numbers of
23 issues resolved.

24 There was -- you know, it was a very busy,
25 challenging time.

1 Grant Scott

2 Q. Did you sign any agreement on behalf of any
3 of the DAF entities or CLO HoldCo with the entity that
4 you are referring to as Highgate?

5 A. I'm not sure.

6 Q. Do you have any recollection at all of ever
7 signing any agreements in your capacity as the
8 authorized representative of any of the DAF entities
9 or CLO HoldCo and Highgate?

10 MR. KANE: Objection. Form.

11 THE WITNESS: I -- I don't recall.

12 BY MR. MORRIS:

13 Q. And I may have asked you this already. If
14 I have, I'm sure there will be an objection. But do
15 you recall if Highgate was providing services
16 equivalent to the shared services that Highland
17 previously provided, or was it providing investment
18 advisory services of the type Highland previously
19 provided?

20 MR. KANE: Objection to form.

21 MR. BRIDGES: Objection.

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know the delineation of the
25 services they were providing.

1 Grant Scott

2 Q. Do you know whether during the interim
3 period, any entity other than Highgate was providing
4 services on behalf of any of the DAF entities or
5 CLO HoldCo?

6 A. Well, I knew from various wires that were
7 approved, that various entities were providing
8 services. Law firms, for example.

9 Q. But was there any -- any entity other than
10 Highgate that was providing any of the services that
11 had previously been provided by Highland?

12 A. Well, Highland provided a lot of legal
13 services. I don't know that Highgate had the same
14 capability. So I don't know how to answer that.

15 Q. All right. I'm going to try a different
16 way.

17 Before -- before 2021, the DAF entities had
18 both a shared services arrangement and an investment
19 advisory arrangement with Highland.

20 Do I have that right?

21 A. Yes.

22 Q. During the interim period, Highland was no
23 longer providing any of those services, correct?

24 A. That's what I understand, yes.

25 Q. Did anybody replace Highland in the

1 Grant Scott

2 provision of those services during the interim period?

3 MR. BRIDGES: Objection, asked and
4 answered.

5 BY MR. MORRIS:

6 Q. You can answer, sir.

7 A. I mean, besides the services Highgate
8 were -- was -- were providing, I'm not sure.

9 Q. And -- and I do know that I've asked this
10 before, but now with that context: Do you know
11 whether Highgate was providing services of the shared
12 services type, or the investment advisory type, or you
13 just don't know?

14 MR. BRIDGES: Objection to the form.

15 THE WITNESS: At least I would think
16 mostly the shared services type.

17 BY MR. MORRIS:

18 Q. Okay. Is it your understanding that under
19 the shared services agreement, that Highgate had the
20 ability to make decisions on behalf of any of the DAF
21 entities or CLO HoldCo?

22 MR. BRIDGES: Objection.

23 MR. KANE: Objection to form.

24 MR. BRIDGES: Misstates testimony.

25 THE WITNESS: Yeah, my prior

1 Grant Scott

2 testimony was I didn't see the agreements,
3 so I don't know.

4 BY MR. MORRIS:

5 Q. You haven't seen any agreement with
6 Highgate; is that right?

7 A. I don't recall that I have.

8 Q. Do you have any understanding as to whether
9 Highgate had the authority to bind any of the DAF
10 entities or CLO HoldCo during the interim period?

11 MR. BRIDGES: Objection. Calls for a
12 legal conclusion.

13 THE WITNESS: I don't know.

14 BY MR. MORRIS:

15 Q. Do you have any understanding as to whether
16 Mark Patrick had the ability as an individual to bind
17 any of the DAF entities or CLO HoldCo during the
18 interim period?

19 MR. BRIDGES: Objection. Calls for a
20 legal conclusion.

21 MR. KANE: Objection. Calls for a
22 legal conclusion.

23 THE WITNESS: I don't know.

24 BY MR. MORRIS:

25 Q. Okay. And I'm just asking as a matter of

1 Grant Scott
2 fact, to be clear. I'm not asking for any legal
3 conclusions. I'm asking for your understanding as the
4 authorized representative of the DAF entities and
5 CLO HoldCo during the interim period.

6 So with that -- with that background as the
7 authorized entity, that -- withdrawn.

8 As the authorized representative during the
9 interim period, did you have any understanding as to
10 whether Mr. Patrick had the authority to bind any of
11 the DAF entities or CLO HoldCo during that time?

12 MR. KANE: Objection.

13 MR. BRIDGES: Objection. Calls for
14 legal conclusion. Also, objection as to
15 vagueness of the question.

16 BY MR. MORRIS:

17 Q. I'm sorry, Mr. Scott, did you answer?

18 A. I did not. No, I have not. I --

19 Q. I apologize.

20 A. I don't know what the status of his legal
21 authorization was.

22 Q. Do you recall that in early March, you
23 bought a couple of events to Mr. Patrick's attention?

24 A. I know that I forwarded documents to his
25 attention, yes.

1 Grant Scott

2 Q. And why did you forward documents to
3 Mr. Patrick's attention during the interim period?

4 A. Because I was resigning, and I understood
5 that he was essentially going to be, or was the
6 director elect, and I just thought it appropriate to
7 bring such things to his attention.

8 Q. And when did you -- when did you learn that
9 he was doing to be the director elect?

10 A. I -- I believe it was February. Sometime
11 in February.

12 Q. Do you recall how you learned that he was
13 going to become the director elect?

14 A. I can't point to a specific conversation.
15 I can't -- I can't point to the specific conversation.
16 At some point, it went from being some future third
17 party, and I came to believe it would be him. I'm
18 not -- I'm not sure of the timing.

19 Q. Okay. Do you know from whom you learned
20 that he was going to be the director elect?

21 A. I believe it was him.

22 Q. Okay. So he told you that he was going to
23 replace you; is that right?

24 A. I don't know that he said it specifically.
25 I don't remember our conversations.

1 Grant Scott

2 Q. Did you ever do anything to confirm with
3 anybody that Mark Patrick was going to be the director
4 elect, or did you just take his word for it?

5 A. I did not independently confirm it, no.

6 Q. Did you ever ask Mr. Dondero if -- if he
7 approved of the selection of Mr. Patrick as your
8 successor?

9 A. I did not.

10 Q. Did you ever discuss with Mr. Dondero, the
11 topic of who would be your successor?

12 A. Going back. Prior to the interim period, I
13 had recommended him, Mark.

14 Q. Did you -- did you discuss Mr. Patrick's
15 selection as your successor with anybody in the world
16 at any time other than Mr. Patrick?

17 A. I talked with my attorney about it. But I
18 don't think so. No.

19 Q. Did you talk with anybody that you believed
20 was authorized to make the decision on behalf of the
21 DAF entities and CLO HoldCo about your successor?

22 A. No, I did not.

23 MR. MORRIS: Can we put up the
24 document that was marked, La Asia, on Page
25 7, as Bates number 80.

1 Grant Scott

2 (Deposition Exhibit 10 was marked for
3 identification.)

4 BY MR. MORRIS:

5 Q. Do you see that -- if you scroll just down
6 a little bit. I guess not.

7 Mr. Patrick wrote an e-mail to you and
8 said, "The successor will respond to this complaint,"
9 and at the top you wrote "understood" --

10 A. Yes.

11 Q. -- or the top of the e-mail.

12 Do you recall that in early March, you
13 received a new complaint in which CLO HoldCo was named
14 the defendant?

15 A. I believe this -- this was the unsecured
16 creditors' committee complaint; is that correct?

17 Q. I think so, but it's your testimony. I'm
18 just asking you if you recall that in early March,
19 CLO HoldCo was sued?

20 A. Yes. I think this was the second lawsuit
21 that I was referring to personally.

22 Q. Okay. And so this -- this actually
23 occurred after the time you had already given notice,
24 right?

25 A. Yes.

1 Grant Scott

2 Q. Yeah. And was the first lawsuit, the one
3 that you settled, before you gave notice?

4 A. No. The -- no, both lawsuits are pending.

5 Q. Okay. Do you know when the -- who's the
6 plaintiff in the first one?

7 A. Acis.

8 (Reporter clarification.)

9 THE WITNESS: Acis, A-C-I-S.

10 BY MR. MORRIS:

11 Q. So the debtor never sued you personally; is
12 that right?

13 A. Not yet.

14 Q. And is it right that Mr. Patrick told you
15 that -- that the successor will respond to the
16 complaint?

17 A. Yes.

18 Q. Now, he's not referring to himself yet, is
19 he?

20 A. That appears correct, yes.

21 Q. Does that refresh your recollection that
22 you had not known yet as of March 2nd who the
23 successor would be?

24 A. I guess it does.

25 MR. MORRIS: Can we put up the next

1 Grant Scott

2 exhibit, please, the one ending in -- the
3 one Bates number 85. And please remind us,
4 La Asia, what exhibit number are we up to?

5 MS. CANTY: We're up to 10, but the
6 one I'm about to put up is Exhibit 6 from
7 earlier today.

8 MR. MORRIS: Thank you very much.

9 BY MR. MORRIS:

10 Q. Now, if we can just scroll down a little
11 bit. Do you remember something called an Adherence
12 Agreement being discussed in March of 2021?

13 A. A what agreement?

14 Q. Adherence Agreement.

15 A. I see that. Was it directed to me?

16 Q. Yeah. If we can just scroll up.

17 Okay. So right there, do you see that
18 Thomas Surgent sends it to Mr. Kane? The subject is
19 'Adherence Agreement.'

20 A. Yes.

21 Q. And you do see that you forwarded that
22 e-mail to Mr. Patrick on the same day, March 2nd?

23 A. Yes.

24 Q. And it says "This relates to the second
25 issue from the debtor."

1 Grant Scott

2 Do you see that?

3 A. Yes.

4 Q. And the first issue was the complaint that
5 we just looked at; is that right?

6 A. I believe that's correct.

7 Q. And the Adherence Agreement is the second
8 issue that you wanted to bring to Mr. Patrick's
9 attention on March 2nd, correct?

10 A. Yes.

11 Q. And did you understand that the debtor had
12 requested that CLO HoldCo sign the Adherence Agreement
13 in connection with the consummation -- or in
14 connection with the HarbourVest settlement?

15 A. I don't know that I formed an opinion of
16 what was being requested. I just forwarded it to the
17 person the best to be able to handle going forward.

18 Q. Okay. And can we just scroll up a little
19 bit on this e-mail.

20 Do you see that Mr. Patrick gave you
21 instructions, quote, "Do not sign the Adherence
22 Agreement from the debtor," close quote.

23 A. Yes.

24 Q. Okay. And you followed Mr. Patrick's
25 instructions, right?

1 Grant Scott

2 A. Yes. I resigned. I wasn't going to do
3 anything to -- yes. Yes.

4 Q. You actually hadn't resigned yet. Well,
5 withdrawn.

6 Your resignation had not become effective
7 yet, correct?

8 A. Yes. I guess I gave a March 1st date, but
9 it dragged on, so technically, I was still in that
10 role, but quite frankly, any issue that could be
11 pushed to the future for the -- I was going to push it
12 to the future.

13 Q. Did -- did Mr. Patrick ever tell you that
14 he had spoken with Mr. Dondero about any of the issues
15 that you were communicating with him about?

16 A. No.

17 Q. Do you recall also on March 2nd --
18 March 2nd seems like it was a busy day. Do you recall
19 also, on March 2nd, that you were informed of an
20 opportunity, whereby, CLO HoldCo Limited could
21 purchase certain equity in a company called TerreStar?

22 MR. KANE: Objection. Form.

23 THE WITNESS: I'm familiar with the
24 name TerreStar.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. And do you remember communicating with
3 Mr. Patrick about an opportunity that had been
4 presented to CLO HoldCo in early March about the
5 opportunity to purchase certain equity in TerreStar?

6 A. Vaguely.

7 Q. Okay.

8 MR. MORRIS: Can we put up the next
9 exhibit, please?

10 (Deposition Exhibit 11 was marked for
11 identification.)

12 BY MR. MORRIS:

13 Q. And if we can just scroll down, there's Joe
14 Sowin. Do you know who Joe Sowin is?

15 A. I've worked with him over the years.

16 Q. And do you see that Joe Sowin is the next
17 point?

18 A. I see that.

19 MR. KANE: Objection. Form.

20 BY MR. MORRIS:

21 Q. And does this refresh your recollection
22 that on or about March 2nd, 2021, Mr. Sowin wrote to
23 you about an opportunity to purchase from HOCF
24 approximately 5,000 shares issued by TerreStar?

25 A. I see that.

1 Grant Scott

2 Q. Okay. Did you communicate with Mr. Sowin
3 from time to time?

4 A. Yes.

5 Q. Did you ever tell Mr. Sowin that he should
6 direct all communications to Mr. Patrick?

7 A. I don't know if I did or not. Who -- who
8 did I get this -- did this come through Highgate?

9 Q. I can only look at what you see.

10 Can we scroll up to the next e-mail.

11 And you forwarded it to Mr. Patrick; is
12 that right?

13 A. Yes. It appears so.

14 Q. And -- and you asked him for his thoughts,
15 right?

16 A. Yeah. I didn't -- yeah.

17 Q. Okay. And if we can scroll up and just
18 take a look at Mr. Patrick's response. It says --

19 A. Okay. I see that.

20 Q. Yeah. It's at the top. "Please --"

21 A. I see that.

22 Q. Okay. And did you act -- withdrawn.

23 Did you follow Mr. Patrick's instructions,
24 as set forth in this e-mail?

25 A. I think I responded favorably to Joe's

1 Grant Scott

2 recommendation.

3 Q. Well, Mr. Patrick told you to act on the
4 request below. Do you see that?

5 MR. BRIDGES: Objection. Form.

6 Objection. Misstates the exhibit.

7 BY MR. MORRIS:

8 Q. Okay. I will quote the exhibit. Do you
9 see that Mr. Patrick said, quote, "Please act on the
10 request below"?

11 A. I do see that, yes.

12 Q. And did you act on the request below?

13 MR. KANE: Objection to form. Asked
14 and answered.

15 THE WITNESS: I did.

16 BY MR. MORRIS:

17 Q. Thank you.

18 Do you recall any issues coming up
19 concerning directors' and officers' insurance for the
20 DAF entities or CLO HoldCo Limited? And I'm
21 specifically referring to the interim period.

22 A. Relating to --

23 MR. BRIDGES: Objection. Vague.

24 BY MR. MORRIS:

25 Q. Directors' and officers' insurance. Let me

1 Grant Scott

2 ask the question again, Mr. Scott.

3 During the interim period, do you remember
4 any issues arising with respect to directors' and
5 officers' insurance for any of the DAF entities or
6 CLO HoldCo?

7 A. I don't -- I don't recall.

8 Q. Do you know who Chris Rice is?

9 A. Yes.

10 Q. Who is Chris Rice?

11 A. He is an employee at Highgate.

12 Q. Are you familiar with an entity called
13 Elysium?

14 A. The name sounds familiar.

15 Q. All right.

16 MR. MORRIS: La Asia, can we mark the
17 next exhibit? It's in the middle of page
18 9, Bates number 361.

19 MS. CANTY: This is going to be 12.

20 MR. MORRIS: Thank you. And if we
21 can scroll towards the bottom.

22 (Deposition Exhibit 12 was marked for
23 identification.)

24 BY MR. MORRIS:

25 Q. Do you remember that there was this firm

1 Grant Scott

2 called Elysium?

3 A. Yes. Now I remember.

4 Q. And they were asking you for information?

5 A. That is correct.

6 Q. Did you ever provide the information to
7 Elysium that had been requested back in February?

8 A. No, I did not.

9 Q. Is there a reason why you didn't respond to
10 Elysium's request for information?

11 A. Because of the transition, I thought much
12 of the information that they were requesting was going
13 to be changing, so I -- I -- I didn't know that it was
14 particularly urgent. But I -- I figured it would be a
15 waste of time to give him information which would be
16 changed in any -- at any moment.

17 Q. Okay. Can we just scroll up a little bit
18 and see what happened with this request.

19 So you actually responded the same day and
20 told Mr. -- Mr. Robins that you were working on it.
21 Do I have that right?

22 A. Yes. That's correct.

23 Q. Is that a true statement at the time you
24 wrote it?

25 A. Yes. I'm working on this, meaning not me

1 Grant Scott
2 personally. I mean, I'm work- -- I wanted to let him
3 know that I'd received the e-mail, and then I
4 forwarded it to Highgate, thinking that at any moment,
5 they would be able to provide the information, so I
6 just wanted, as a courtesy, to let them know that I'd
7 received it and was aware of this request. That's --
8 that's all.

9 Q. Okay. You didn't let him know that there
10 was a transition in the works, right?

11 A. No. No, I -- I may have.

12 Q. Yeah, you may have. Let's see what happens
13 next.

14 So in early March, he asked -- he follows
15 up; is that fair?

16 A. Yes.

17 Q. Okay. Let's go to the next e-mail.

18 And you forwarded to Mark Patrick, a month
19 later; is that right?

20 A. Yes. I'm -- there may have been an interim
21 e-mail where I --

22 Q. Okay. But the long and the short of it is
23 you never -- you -- you didn't respond to these
24 inquiries from Elysium; is that right?

25 MR. KANE: Objection.

1 Grant Scott

2 MR. BRIDGES: Objection.

3 MR. MORRIS: Withdrawn. Withdrawn.

4 BY MR. MORRIS:

5 Q. You didn't provide a substantive response
6 to Elysium; is that right?

7 MR. KANE: Objection. Assumes facts
8 not in evidence.

9 MR. MORRIS: That is why I'm asking
10 the question.

11 BY MR. MORRIS:

12 Q. Go ahead, Mr. Scott. You can answer.

13 A. I did not provide a substantive response to
14 their inquiry.

15 Q. Okay. Thank you.

16 Can we go to the top. In fact -- in fact,
17 you were instructed by Mr. Patrick to do nothing,
18 correct?

19 MR. BRIDGES: Objection. Misstates
20 the testimony.

21 THE WITNESS: No.

22 BY MR. MORRIS?

23 Q. Sir, the e-mail says "Do nothing," correct?

24 A. That is correct, and they were handling it,
25 not me.

1 Grant Scott

2 Q. Okay. Now, did you resign on or about
3 March 24th, 2021?

4 A. Yes. That's -- that's when the transfer --
5 share of transfer.

6 Q. Okay.

7 MR. MORRIS: Can we put the next
8 exhibit up, please. It's the one at the
9 top at page 10. It's file 3, document 5.

10 MR. BRIDGES: Mr. Morris, can I ask
11 you how it is for time because you told us
12 earlier -- you teased us with a 4:15 end
13 time, potentially.

14 MR. MORRIS: Yeah, I'm just on the
15 last couple of documents.

16 MR. BRIDGES: Thank you.

17 MR. MORRIS: You bet.

18 BY MR. MORRIS:

19 Q. Do you see this is a document called an
20 Assignment and Assumption of Membership Interest
21 Agreement?

22 A. Yes.

23 MR. MORRIS: And if we can scroll
24 down.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. Did you sign this document?

3 A. Yes, sir.

4 Q. Okay. Do you know what this document is?

5 A. I believe it's the Management Share
6 Transfer Agreement.

7 Q. Okay. And do you know who prepared it?

8 A. I do not.

9 Q. Did you assign something pursuant to this
10 document?

11 A. Yes. The -- the -- the management shares.

12 MR. MORRIS: Okay. Can we go to the
13 first page, please?

14 BY MR. MORRIS:

15 Q. And do you see in paragraph 1, there is a
16 description of the assignment and assumption of the
17 signed interest?

18 A. Yes, I see that.

19 Q. Okay. Does that paragraph describe
20 everything that you assigned to Mr. Patrick?

21 A. In this agreement. Yes.

22 MR. BRIDGES: Objection. Calls --
23 objection. Calls for a legal conclusion.

24 MR. KANE: I join the objection.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. You can answer, sir.

3 A. Yes. I mean, it says what it says. But
4 yes, that is what I was transferring.

5 Q. And can you identify for me anything that
6 you know that you ever assigned to Mr. Patrick that is
7 not set forth in paragraph 1?

8 MR. BRIDGES: Objection. Form.

9 THE WITNESS: I'm unaware of
10 anything.

11 BY MR. MORRIS:

12 Q. Do you know if -- if the items and assets
13 that are set forth in paragraph 1 had any value?

14 MR. KANE: Objection. Form.

15 THE WITNESS: They had value, maybe
16 not monetary.

17 BY MR. MORRIS:

18 Q. And what value did they have?

19 A. I believe they had the property interest
20 that I referred to previously.

21 Q. And what property interest are you
22 referring to?

23 MR. KANE: Objection. Form. Calls
24 for a legal conclusion.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. You can answer. Sir, it's your words we
3 need.

4 A. The shares were the -- these management
5 shares were the -- I was treating as property.

6 Q. Do you have any understanding as to what
7 the value of the management shares was at the time you
8 entered into this agreement?

9 A. I did not.

10 Q. Did you have any understanding as to
11 whether those management shares held any particular
12 rights at the time you entered into this agreement?

13 MR. KANE: Objection to form.

14 THE WITNESS: My understanding was
15 they had my rights previously. Ultimately.

16 BY MR. MORRIS:

17 Q. And what rights did you believe flowed from
18 the management shares?

19 A. The controlling rights that flowed down to
20 the various entities.

21 Q. Did you receive anything in return in
22 exchange for your assignment of these property
23 interests and the other assets set forth in paragraph
24 1?

25 A. It allowed me to finally resign. That is

1 Grant Scott
2 what I received. I mean, it ended my -- it ended my
3 role as a -- maybe as an agent, or an employee or
4 whatever. Those are my substantive rights, as I
5 understood it.

6 Q. Okay. So you -- you surrendered the
7 substantive rights in an exchange -- you no longer had
8 your substantive rights?

9 MR. BRIDGES: Objection. Asked and
10 answered.

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. You can answer, sir. Did you get anything
14 other than -- withdrawn.

15 Did you get anything other than what you
16 already described?

17 A. Relief. Yes.

18 Q. Excellent. Did you ever consider assigning
19 these interests or assets to anybody other than
20 Mr. Patrick?

21 A. I did not.

22 Q. Did you ever consider -- did you have any
23 belief as to whether the interests that were assigned
24 were freely tradeable?

25 MR. BRIDGES: Objection. Calls for a

1 Grant Scott

2 legal conclusion.

3 MR. KANE: I join the objection.

4 THE WITNESS: I didn't make -- I did
5 not make an assessment of that.

6 BY MR. MORRIS:

7 Q. Do you know -- withdrawn.

8 Do you have any understanding as to whether
9 there were any restrictions on the transferability of
10 the interests that you assigned pursuant to this
11 agreement?

12 MR. KANE: Objection. Calls for a
13 legal conclusion.

14 THE WITNESS: I did not.

15 BY MR. MORRIS:

16 Q. Did you let anybody know that you were
17 willing to assign the interests that are described in
18 paragraph 1 other than Mr. Patrick?

19 A. Anyone that I -- conceivably, anyone that I
20 let know that was at all familiar with the structure,
21 anyone that was informed of my desire to resign would
22 have arguably have known that.

23 Q. Okay. I'm not asking you to put yourself
24 in the shoes of anybody else. I'm asking for what you
25 recall telling people.

1 Grant Scott

2 Did you ever tell anybody at any time that
3 you were ready, willing and able to transfer and
4 assign the interests that are in this document other
5 than Mr. Patrick and your lawyers?

6 A. I am sorry. I misunderstood your question.
7 The answer is no.

8 Q. Did you ever think to try to assign these
9 interests for a profit?

10 A. Good grief, no.

11 (Reporter clarification.)

12 A. No.

13 Q. Did you -- was anybody, other than
14 Mr. Patrick, ever identified as a potential assignee
15 of the interests that are described in paragraph 1?

16 MR. KANE: Objection to form.

17 THE WITNESS: I was unaware of any.

18 BY MR. MORRIS:

19 Q. Okay. Did you make any effort to identify
20 anybody other than Mr. Patrick as a potential assignee
21 for the interests that are set forth in paragraph 1?

22 A. No, I did not.

23 Q. Did any -- did anybody acting on your
24 behalf, to the best of your knowledge, ever make any
25 efforts to identify any potential assignee other than

1 Grant Scott

2 Mr. Patrick for the interests set forth in paragraph
3 1?

4 MR. BRIDGES: Objection. Foundation.

5 THE WITNESS: I don't have that
6 knowledge. No.

7 MR. MORRIS: Can we go to the next
8 exhibit, please?

9 (Deposition Exhibit 14 was marked for
10 identification.)

11 BY MR. MORRIS:

12 Q. Okay. And do you see that these are
13 written resolutions dated the next day, March 25th?

14 A. Yes.

15 Q. And these resolutions provide for the
16 shared transfer described in the document?

17 A. It appears so, yes.

18 Q. And are these the management shares that
19 you were referring to earlier?

20 A. I believe so.

21 Q. Did you believe at the time that you owned
22 all of the management shares of charitable DAF HoldCo
23 Limited?

24 A. That was my understanding.

25 Q. How did you acquire those shares?

1 Grant Scott

2 A. I'm not sure the exact timing, but I
3 believe that was all established when I became
4 involved.

5 Q. Did you pay anything of value for the
6 shares at the time that you acquired them?

7 A. I am -- I don't believe so, no.

8 Q. Did you need to obtain anybody's approval
9 before you could transfer the shares?

10 A. No. I don't believe so.

11 Q. Did you make any effort to obtain anybody's
12 approval before you transferred the shares?

13 A. I did not.

14 Q. Did you have any reason to believe that
15 Mr. Dondero approved of the transfer of the management
16 shares to Mr. Patrick?

17 A. I -- I don't know that.

18 Q. Did you testify earlier, that you had
19 discussed with Mr. Dondero in January, Mark Patrick
20 succeeding you?

21 MR. BRIDGES: Objection. Misstates
22 prior testimony.

23 BY MR. MORRIS:

24 Q. You can answer, sir.

25 A. I believe it was prior to that.

1 Grant Scott

2 Q. Were you paid anything of value for your
3 services as the, either the managing member of the DAF
4 GP, or as a director of any of the other DAF or
5 CLO HoldCo Limited entities at any time?

6 A. For a majority of the years, yes, I
7 received a monthly statement.

8 Q. And is that -- how much was the monthly
9 statement?

10 A. I believe it was \$5,000.

11 Q. Did it ever increase to an amount more than
12 \$5,000?

13 A. No.

14 Q. Did you receive anything else of value for
15 your service to the DAF entities and CLO HoldCo
16 Limited other than the \$5,000 monthly stipend that you
17 just described?

18 A. I did not.

19 Q. Do you recall that after you resigned, you
20 got reappointed, and then subsequently replaced again
21 by Mr. Patrick?

22 MR. KANE: Objection to form.

23 (Reporter clarification.)

24 THE WITNESS: Can you repeat -- did
25 you say -- it went away, and then it came

1 Grant Scott

2 back. I don't understand the question. I
3 am sorry.

4 BY MR. MORRIS:

5 Q. That is okay. I just saw this in the
6 documents, and I thought it was odd. But let me put
7 the documents up and see if you can shed any light.

8 MR. MORRIS: Let's start with the
9 next exhibit, Patrick File 3, Document 9.

10 (Deposition Exhibit 15 was marked for
11 identification.)

12 BY MR. MORRIS:

13 Q. And do you see in the resolutions, if we
14 can go up just a bit, dated March 24th, and it was
15 resolved that you were removed as a director of the
16 company and Mr. Patrick was appointed as your
17 replacement, if that is a fair characterization?

18 Do you see that?

19 A. I see that.

20 MR. MORRIS: And now if we can put up
21 the next document.

22 (Deposition Exhibit 16 was marked for
23 identification.)

24 BY MR. MORRIS:

25 Q. So this is a week later. It's March 31st.

1 Grant Scott

2 MR. MORRIS: And if we can just
3 scroll down and see if it's signed.

4 BY MR. MORRIS:

5 Q. Do you see that Mr. Patrick was removed as
6 the director and you were reappointed?

7 A. Yes, I do see that.

8 Q. Do you have any understanding as to why
9 Mr. Patrick resigned and reappointed you as the
10 director a week later?

11 A. I don't have -- I don't -- I don't know.

12 Q. Did you even know this happened?

13 A. Is my signature on that agreement?

14 Q. No.

15 A. I'm not sure.

16 Q. Do you have any -- do you have any
17 recollection as -- as to whether or not you were ever
18 reappointed as the director of the company on or about
19 March 31st, 2021?

20 A. I don't know if I have received any
21 communication about this or not.

22 Q. Okay.

23 MR. MORRIS: Can we go to the next
24 document, please?

25 (Deposition Exhibit 17 was marked for

1 Grant Scott

2 identification.)

3 MR. KANE: Mr. Morris, can you help
4 me with the exhibit numbers? Was that 16,
5 or are we still on 15, additional portions
6 of it?

7 MS. CANTY: That was 16 but not going
8 to 17.

9 MR. KANE: Thank you. I apologize.

10 MR. MORRIS: That is okay, Jonathan.
11 We will get to everything and clear up any
12 confusion.

13 BY MR. MORRIS:

14 Q. So if you go to the bottom of that
15 document, can you see that it was signed?

16 All right. Do you see Mr. Patrick signed
17 this document?

18 A. Yes, I see that.

19 Q. Do you see that it's dated -- if we can go
20 back up to the top. It's April 2nd, and do you see
21 that you are -- pursuant to these resolutions, you
22 were removed as the director again and replaced by
23 Mr. Patrick?

24 A. Yes, I see that. And they seem to be
25 correcting an error of some sort.

1 Grant Scott

2 Q. Did anybody ever describe for you or
3 explain to you what error had been made?

4 A. I am sorry. I'm not familiar with these
5 documents.

6 Q. Okay. Is it fair to say that -- well, I
7 will just leave it at that.

8 So nobody ever informed you that there was
9 a mistake that had to be corrected; is that right?

10 MR. BRIDGES: Objection. Asked and
11 answered.

12 BY MR. MORRIS:

13 Q. You can answer.

14 A. I don't know that there was this -- this
15 may have -- I don't know that there was a mistake.

16 Q. You have no knowledge of --

17 A. I have no knowledge of this. I was in a
18 very complex process. I think there...

19 Q. And nobody ever asked -- nobody ever asked
20 your consent to be reappointed as the director of the
21 company, correct?

22 MR. BRIDGES: Objection. Asked and
23 answered.

24 THE WITNESS: I didn't receive any
25 communications about this.

1 Grant Scott

2 BY MR. MORRIS:

3 Q. And so you didn't provide your consent to
4 be reappointed as the director of the company,
5 correct?

6 MR. BRIDGES: Objection. Asked and
7 answered.

8 THE WITNESS: That's correct.

9 BY MR. MORRIS:

10 Q. Okay. Did you become aware that after you
11 resigned, that DAF and CLO HoldCo started a lawsuit
12 against the debtor and some other defendants related
13 to the HarbourVest settlement?

14 A. I did become aware of it, yes.

15 Q. And were you aware of the lawsuit -- were
16 you aware that DAF and CLO HoldCo were considering
17 filing the lawsuit before it was actually commenced?

18 A. No.

19 Q. Did you have any communications with
20 anybody at any time about the possibility that the DAF
21 and CLO HoldCo would commence a lawsuit against the
22 debtor and others relating to the HarbourVest
23 settlement prior to the time that the lawsuit was
24 commenced?

25 A. I did not.

1 Grant Scott

2 Q. So is it fair to say that you did not
3 provide any information to anybody at any time to
4 support the claim -- the complaint that was filed
5 against the debtor and the other defendants in the
6 lawsuit that was brought by the DAF and CLO HoldCo?

7 MR. BRIDGES: Objection. Foundation.

8 THE WITNESS: I didn't provide
9 anything with respect to the litigation
10 that was filed.

11 BY MR. MORRIS:

12 Q. And did anybody ever ask you for
13 information relating to potential claims against the
14 debtor and others?

15 A. No.

16 Q. Did you ever have any discussions with
17 anybody at any time as to whether Jim Seery should be
18 named as a defendant in the lawsuit that was bought by
19 the DAF and CLO HoldCo against the debtor and others?

20 A. No.

21 MR. MORRIS: I have no further
22 questions. Thank you, Mr. Scott.

23 MR. BRIDGES: I don't have any
24 questions.

25 MR. KANE: Can I -- I've got a couple

1 Grant Scott

2 just follow-up for clarification purposes.

3 EXAMINATION

4 BY MR. KANE:

5 Q. Grant, earlier you were testifying about
6 resigning and noted -- I believe your testimony was
7 one of the reasons was an issue of independence. Can
8 you clarify what you meant by issue of independence?

9 A. I came to believe that there was a
10 perception, and my friendship with Jim Dondero
11 precluded my -- my independence.

12 Q. Perception by whom?

13 A. The judge in the case.

14 (Reporter clarification.)

15 A. The judge in the bankruptcy case.

16 Q. Was there a specific reason or instance
17 that caused you to have that belief?

18 A. Yes. When I spoke with you about the --

19 Q. Well, I don't want to go into any
20 attorney-client communications.

21 A. I am sorry.

22 Q. So let me ask you a different question.
23 Were you provided a transcript of the Court's ruling
24 on the escrow hearing for the registry dispute?

25 A. I believe so.

1 Grant Scott

2 Q. And did you read that transcript?

3 A. I believe we discussed it. I'm not -- I'm
4 not sure.

5 Q. Did you have a recollection that Judge
6 Jernigan made a comment or comments about you and
7 Jim Dondero during her ruling?

8 A. Yes.

9 Q. Do you believe that Judge Jernigan's
10 comments were inaccurate?

11 MR. MORRIS: Objection to the form of
12 the question. No foundation. Leading.

13 BY MR. KANE:

14 Q. I will rephrase. I will rephrase.
15 I will ask it -- a different question.

16 Mr. Scott, do you believe that you acted
17 independently during the bankruptcy case?

18 A. Yes.

19 Q. Do you believe you acted in the best
20 interests of CLO HoldCo?

21 A. Yes, I do.

22 MR. KANE: I'm done.

23 MR. MORRIS: Just some follow-up
24 questions, Mr. Scott.

25

1 Grant Scott

2 EXAMINATION

3 BY MR. MORRIS:

4 Q. Did you ever testify before Judge Jernigan?

5 A. I have not.

6 Q. So is it fair to say that you had no reason
7 to believe that she could ever access your credibility
8 as a witness?

9 MR. BRIDGES: I'm going to object.

10 That calls for a legal conclusion.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. From -- from what I understand from the
14 transcript of that hearing, a number of comments were
15 made by the judge regarding my independence, that sort
16 of thing, that made me -- that made me think that
17 maybe I could just remove that as an issue in the case
18 by resigning. That is essentially, what my conclusion
19 was from that hearing.

20 Q. But you didn't resign at the time that the
21 judge made those statements, did you?

22 MR. BRIDGES: Objection.

23 Argumentative.

24 BY MR. MORRIS:

25 Q. You can answer.

1 Grant Scott

2 A. I did not at that time.

3 Q. In fact, you didn't resign for probably
4 seven months after, correct?

5 MR. BRIDGES: Objection. Asked and
6 answered. Really?

7 THE WITNESS: Yes.

8 BY MR. MORRIS:

9 Q. And you continued to actively participate
10 in the bankruptcy case, correct?

11 A. That is correct.

12 Q. And months later, you made the decision to
13 amend CLO HoldCo's proof of claim, correct?

14 A. Correct.

15 Q. And months later, you made the decision to
16 file an objection to the HarbourVest settlement,
17 correct?

18 A. Correct.

19 Q. And months after this hearing, you made the
20 decision to withdraw that objection, correct?

21 MR. BRIDGES: Objection to repeating
22 the same questions from the last two hours
23 over and over again. Are we going to keep
24 going all the way to the end.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. Only -- only if people keep opening the
3 door.

4 Can you please answer my question?

5 A. Yes, I removed the objection.

6 Q. And -- and you remained in the case, and
7 you remained active in the case, and you filed on
8 behalf of your -- withdrawn.

9 You stayed in the case even after
10 CLO HoldCo was sued by the debtor, correct?

11 A. Yes.

12 Q. And you stayed in the case long enough to
13 negotiate a settlement on behalf of CLO HoldCo with
14 the debtor, correct?

15 A. Correct.

16 Q. And you can't identify anything that the
17 judge said following the escrow hearing that had
18 anything to do with you personally, correct?

19 MR. KANE: Objection. Form.

20 MR. MORRIS: Withdrawn.

21 BY MR. MORRIS:

22 Q. Can you identify anything that the judge
23 said following the escrow hearing that had to do with
24 your independence?

25 A. I don't remember -- I'm -- what I'm telling

1 Grant Scott
2 you is -- let's just be clear here since I think the
3 point is -- is being missed. The issue of when I
4 wanted to resign or when I first thought about
5 resigning has been raised. It was raised during my
6 first deposition with you as well. And what I'm
7 saying is -- is that after I heard about the hearing,
8 and what was said, I don't remember the exact
9 language. My first reflection was, hey, maybe that
10 is -- maybe that is -- if I'm going to be in this
11 court having to make a claim, maybe it would be best
12 if it wasn't being made by me. That is all.

13 Q. And I appreciate that. And I am just
14 trying to test the credibility of that statement.
15 Okay?

16 MR. BRIDGES: Objection to the
17 sidebar.

18 BY MR. MORRIS:

19 Q. Did Judge Jernigan ever issue a ruling
20 against you personally?

21 MR. BRIDGES: Asked and answered.
22 Objection.

23 MR. MORRIS: It is not asked and
24 answered.

25 BY MR. MORRIS:

1 Grant Scott

2 Q. But go ahead, sir.

3 A. Not against me personally.

4 Q. Did Judge Jernigan ever issue a ruling
5 against CLO HoldCo Limited?

6 A. Well, to my --

7 MR. BRIDGES: Objection. Objection.

8 Calls for legal conclusion as to the
9 meaning of "against."

10 (Reporter clarification.)

11 THE WITNESS: The denial of the
12 escrow motion created a fairly big headache
13 for CLO HoldCo in the remainder of 2020.

14 So I believe that was a ruling
15 against CLO HoldCo, to answer your
16 question.

17 BY MR. MORRIS:

18 Q. Okay. Are you aware of any others?

19 MR. BRIDGES: Objection. Calls for a
20 legal conclusion as to the meaning of
21 "against."

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know that she's made any other
25 rulings except to approve the settlement.

1 Grant Scott

2 Q. Which settlement are you referring to?

3 A. The -- the TRO settlement.

4 Q. And were you on the -- did you listen in to
5 the hearing during that hearing when -- when the judge
6 approved the settlement?

7 A. I did not.

8 Q. Did you read the transcript?

9 A. I did not.

10 Q. Did anybody ever tell you that the judge
11 said anything during that hearing to question your
12 independence?

13 MR. KANE: Objection to the extent it
14 calls for attorney/client privileged
15 information.

16 THE WITNESS: No. No, I think you
17 misunderstand. I had one data point to go
18 on, and that's what made me start the
19 process of thinking of resigning. That's
20 all.

21 BY MR. MORRIS:

22 Q. I appreciate that.

23 A. The issue -- the issue has been raised
24 repeatedly, whether it was my idea or somebody else's
25 idea, that's all I'm saying. If you can, it was my

1 Grant Scott

2 idea.

3 Q. Okay. And I'm asking you if you have any
4 other data points after that hearing to support the
5 notion that Judge Jernigan questioned your
6 independence?

7 A. No.

8 MR. MORRIS: I have no further
9 questions.

10 MR. BRIDGES: Me either.

11 MR. KANE: I'm done. Thank you.

12 Mr. Scott.

13 (Deposition adjourned at 4:42 p.m.)

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1 Grant Scott

2 REPORTER'S CERTIFICATE

3 I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR,
4 Registered Professional Reporter, certify that the
5 foregoing proceedings were taken before me at the time
6 and place therein set forth, at which time the witness
7 was put under oath by me;

8 That the testimony of the witness, the questions
9 propounded, and all objections and statements made at
10 the time of the examination were recorded
11 stenographically by me and were thereafter
12 transcribed;

13 That the foregoing is a true and correct
14 transcript of my shorthand notes to taken.

15 I further certify that I am not a relative or employee
16 of any attorney or the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the laws
19 of North Carolina that the foregoing is true and
20 correct.

21 Dated this June 1, 2021.

22

23

Leshanda Byrd

24

LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

25

1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____

Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS ____ DAY OF _____, 2021.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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WITNESS SIGNATURE: _____

* * * * *

State of _____

County of _____

Subscribed and sworn to before me this _____ day of
_____, 2021.

Notary Public

My Commission expires _____

(Seal)

1 Grant Scott

2 J U R A T

3 I, _____, do hereby certify under penalty of
4 perjury that I have read the foregoing transcript of
5 my deposition taken on; _____ that I have made
6 such corrections as appear noted herein in ink,
7 initialed by me; that my testimony as contained
8 herein, as corrected, is true and correct.

9 Dated this ____ day of _____, 2021, at

10 _____,

11

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13 _____

14 SIGNATURE OF WITNESS

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 15, 2021


United States Bankruptcy Judge

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

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

**ORDER GRANTING UNOPPOSED EMERGENCY MOTION TO
CONTINUE HEARING ON MOTION FOR MODIFICATION OF
ORDER AUTHORIZING RETENTION OF JAMES P. SEERY, JR. DUE
TO LACK OF SUBJECT MATTER JURISDICTION**

Considering the Movants' Emergency Motion to Continue the Hearing on Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Doc. 2441] ("the Motion"), the Court finds that the Motion should be GRANTED, in accordance with the agreement of the parties set forth herein

IT IS THEREFORE ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that the hearing upon the Motion is continued to June 25, 2021, at 9:30 a.m., and that the hearing shall be conducted via WebEx and telephone, with the instructions as follows:

003271

For WebEx Video Participation/Attendance:

Link: <https://us-courts.webex.com/meet/jerniga>

For WebEx Telephonic Only Participation/Attendance:

Dial-In: 1.650.479.3207

Meeting ID: 479 393 582

IT IS FURTHER ORDERED that the following agreement is in place with regard to the

Motion:

1. All parties agree that there shall be no further filing of pleadings in connection with the Motion before the continued hearing; and
2. Other than responses to the Motion for an Order to Enforce the Order of Reference and the Motion to Dismiss, there will be no further filings by CLO Holdco, Ltd. and The Charitable DAF Fund, L.P. in the District Court action, pending completion of hearing on the Motion.

END OF ORDER

003272

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 15**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj1
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000001*

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*Vol. 2
000401*

000501

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

BTXN 208 (rev. 07/09)

Debtor's Motion For Entry of An Order (I) Authorizing Debtor to (A) Enter Into Exit Financing Agreement In Aid of Confirmed Chapter 11 Pla and (B) Incur and Pay Related Fee's and Expenses, and (II) Granting Related Relief Doc #2229; Debtor's Motion For entry Of an Order Authorizing Payment of a Restructuring Fee To James P. Seery, Jr., the Debtor's Chief Executive officer and Chief Restructuring Officer at doc. #2395; And Motion To Reconsider filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party the Charitable DAF Fund, L.P., at Doc #2248

IN RE: Highland Capital Management, L.P., & James P. Seery Jr.,

Case # 19-34054-sgj11

DEBTOR

TYPE OF HEARING

Highland Capital Management, L.P., & James P. Seery Jr.,

VS

Dugaboy Trust & The Interest Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.

PLAINTIFF / MOVANT

DEFENDANT / RESPONDENT

Jeffrey N. Pomerantz & John A. Morris

Douglas S. Draper & Jonathan Bridges

ATTORNEY

ATTORNEY

EXHIBITS

SEE EXHIBIT LIST

SEE EXHIBIT LIST

Exhibit's #1, #2 & #3 By Jeffrey N. Pomerantz / For Doc. #229

Exhibit's #1, #2, #3, #4, #5, #6, #7 & #8 / Douglas Draper

Exhibit's #1 through #17 By John Morris / For Doc #2395

Exhibit's #1 Through #44 NOTE* Exhibit's #2, #13, #17 & #29 Where Not Admitted As Part of the #44 Exhibit's by Jonathan Bridges

NOTE ALSO* Bridges #49 Is Admitted; The Same Exhibit As Debtor #1

003273

Michael Edmond
REPORTED BY

June 25, 2021
HEARING
DATE

Stacey G. Jernigan
JUDGE PRESIDING

Debtor exhibits

EXHIBIT 1

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 9, 2020
) 9:30 a.m. Docket
Debtor.)
) DEBTOR'S MOTION TO COMPROMISE
) CONTROVERSY WITH OFFICIAL
) COMMITTEE OF UNSECURED
) CREDITORS [281]
)

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

APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtors: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtors: Melissa S. Hayward
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: Dennis M. Twomey
4 SIDLEY AUSTIN, LLP
5 One South Dearborn Street
6 Chicago, IL 60603
7 (312) 853-7539

8 For the Official Committee Penny P. Reid
9 of Unsecured Creditors: SIDLEY AUSTIN, LLP
10 2021 McKinney Avenue, Suite 2000
11 Dallas, TX 75201
12 (214) 981-3413

13 For the Issuer Group: James T. Bentley
14 (Telephonic) SCHULTE ROTH & ZABEL, LLP
15 919 Third Avenue
16 New York, NY 10022
17 (212) 756-2000

18 For the Issuer Group: James E. Bain
19 (Telephonic) JONES WALKER, LLP
20 811 Main Street, Suite 2900
21 Houston, TX 77002
22 (713) 437-1820

23 For Acis Capital Rakhee V. Patel
24 Management GP, LLC: Annmarie Antoinette Chiarello
25 WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
Dallas, TX 75201
(214) 745-5250

For Redeemer Committee of Terri L. Mascherin
the Highland Crusader JENNER& BLOCK, LLP
Fund: 353 N. Clark Street
(Telephonic) Chicago, IL 60654-3456
(312) 923-2799

For Redeemer Committee of Mark B. Hankin
the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
(Telephonic) New York, NY 10022-3098
(212) 891-1600

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert
3 Meredyth A. Kippes
4 OFFICE OF THE UNITED STATES
5 TRUSTEE
6 1100 Commerce Street, Room 976
7 Dallas, TX 75242
8 (214) 767-8967

6 For Jefferies, LLC: Patrick C. Maxcy
7 (Telephonic) DENTONS US, LLP
8 233 South Wacker Drive, Suite 5900
9 Chicago, IL 60606-6361
10 (312) 876-8000

9 For Patrick Daugherty,
10 Pro Se: Patrick Daugherty

11 Recorded by: Hawaii S. Jeng
12 UNITED STATES BANKRUPTCY COURT
13 1100 Commerce Street, 12th Floor
14 Dallas, TX 75242
15 (214) 753-2006

14 Transcribed by: Kathy Rehling
15 311 Paradise Cove
16 Shady Shores, TX 76208
17 (972) 786-3063

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transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 9, 2020 - 9:56 A.M.

2 THE COURT: All right. Let's roll to Highland now.
3 Let's get appearances from lawyers in the courtroom, please.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz; Pachulski Stang Ziehl & Jones. Happy New Year,
6 Your Honor.

7 THE COURT: Happy New Year.

8 MR. POMERANTZ: Here on behalf of the Debtor.

9 THE COURT: Okay. Thank you.

10 MS. HAYWARD: Good morning, Your Honor. Melissa
11 Hayward and Zachery Annable on behalf of the Debtor.

12 THE COURT: Good morning.

13 MS. LAMBERT: Lisa Lambert, and I think Ms. Kippes
14 will be joining me, representing William Neary, the United
15 States Trustee.

16 THE COURT: Thank you.

17 MS. CHIARELLO: Good morning, Your Honor. Annmarie
18 Chiarello and Rakhee Patel here on behalf of Acis Capital
19 Management, LP and Acis Capital Management GP, LLC.

20 THE COURT: Thank you.

21 MR. CLEMENTE: Good morning, Your Honor. Matthew
22 Clemente from Sidley Austin on behalf of the Official
23 Committee of Unsecured Creditors. With me today are my
24 partners Dennis Twomey and Penny Reid.

25 THE COURT: Okay. Good morning. All right. Is that

1 all of the courtroom appearances?

2 All right. We have several people on the phone. I think
3 most of them are just listening in. If you're on the phone,
4 though, and you wish to appear, you may do so at this time.

5 MR. BENTLEY: Good morning, Your Honor. This is
6 James Bentley of Schulte Roth & Zabel. Also on the line is my
7 co-counsel, Joseph Bain of Jones Walker. We represent the
8 Issuers.

9 THE COURT: Okay. Good morning.

10 MS. MASCHERIN: Good morning, Your Honor. This is --

11 MR. MAXCY: Good morning. Patrick --

12 MS. MASCHERIN: Good morning, Your Honor. This is
13 Terri Mascherin of Jenner & Block. Also on the line with me
14 is my partner, Mark Hankin. We represent the Redeemer
15 Committee of the Highland Crusader Fund, which is one of the
16 members of the Unsecured Creditors' Committee.

17 THE COURT: Okay. Good morning.

18 MR. MAXCY: Good morning, Your Honor. This is
19 Patrick Maxcy from Dentons US, LLP on behalf of Jefferies,
20 LLC.

21 THE COURT: Okay. Thank you. All right. Well, I
22 guess that is it for the phone appearances.

23 Mr. Pomerantz, we're -- we have just one matter on the
24 calendar, the motion to compromise with the Committee. I saw
25 two limited objections, and then a U.S. Trustee's broader

1 objection. I'll start with, Do you have any of these
2 objections worked out?

3 MR. POMERANTZ: Yes, we do.

4 THE COURT: Okay.

5 MR. POMERANTZ: We believe we have the Jefferies
6 objection worked out, as well as the objection of the Issuers.
7 And I'll, during the course of my presentation, alert Your
8 Honor to how that's worked out.

9 THE COURT: Okay.

10 MR. POMERANTZ: And then we'll have a revised order
11 that basically addresses each of their concerns, or at least
12 Jefferies' concerns, but the statements on the record for the
13 Issuers' concerns.

14 THE COURT: Okay. Very good.

15 MR. POMERANTZ: Good morning again, Your Honor. Jeff
16 Pomerantz; Pachulski, Stang, Ziehl & Jones. I'm joined in the
17 courtroom by Ira Kharasch, Greg Demo, and John Morris from my
18 office. I would also like to introduce the Court to the
19 proposed new members of the board of directors of Strand
20 Advisors, which is the Debtor's general partner. They're all
21 sitting in the first row behind counsel's well. And that's
22 Mr. James Seery, --

23 THE COURT: Good morning.

24 MR. POMERANTZ: -- Mr. John Dubel, --

25 THE COURT: Good morning.

1 MR. POMERANTZ: -- and the Honorable Russell Nelms.

2 THE COURT: Yes. I've met him before.

3 MR. POMERANTZ: As have we. We thought you would
4 remember him.

5 The resumes of Mr. Seery and Mr. Dubel were attached to
6 the motion filed on December 27th, and those two resumes and
7 the resume of the Honorable Judge Nelms were attached to the
8 reply that was filed last evening. And while Mr. Seery and
9 Mr. Dubel may be new names to Your Honor, we know that you are
10 familiar with Judge Nelms, who sat with you in this district.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: Also in the courtroom, Your Honor, is
13 Brad Sharp, the Debtor's chief restructuring officer from DSI,
14 --

15 THE COURT: Good morning.

16 MR. POMERANTZ: -- and his colleague, Fred Caruso,
17 who spends most of his working hours at the Debtor's Dallas
18 headquarters.

19 THE COURT: Good morning.

20 MR. POMERANTZ: We have the declaration of Mr. Sharp
21 that we would move into evidence at this point in time.

22 THE COURT: All right. I've got a stack of paper.
23 If you have an extra copy for me to use, --

24 MS. HAYWARD: Your Honor, may I approach with the --

25 THE COURT: You may.

1 MS. HAYWARD: Your Honor, it was filed, the
2 declaration was filed. I'm not sure that we have a copy of --

3 MR. POMERANTZ: Your Honor, we will also at the
4 appropriate time during my presentation, I'll bring up to Your
5 -- ask to bring up to Your Honor revisions to the term sheet
6 that was attached to the motion.

7 THE COURT: Okay.

8 MR. POMERANTZ: Copies have been given to Ms. Lambert
9 as well as the Committee.

10 THE COURT: Okay. Very good. All right. Well, what
11 was handed to me was the preliminary term sheet as well as the
12 CVs for the proposed new board members. I don't see the
13 declaration --

14 MR. POMERANTZ: Your Honor, if I may approach, I have
15 a copy.

16 THE COURT: You may. All right. Very good.

17 MR. POMERANTZ: So we would move that declaration
18 into evidence.

19 THE COURT: All right. The Court will admit this.
20 It was filed on the docket at 327, but I will additionally
21 admit it as Exhibit 1 today.

22 (Debtor's Exhibit 1 is received into evidence.)

23 THE COURT: At some point in time, I want to give
24 parties the opportunity to cross-examine Mr. Sharp. Do you
25 want to do that now, or shall we hear an opening statement?

1 MR. POMERANTZ: However Your Honor prefers. I mean,
2 maybe it's helpful to hear argument first, and then, before
3 the Trustee --

4 THE COURT: I think I'd like to hear opening
5 statements and then we'll --

6 MR. POMERANTZ: Thank you.

7 THE COURT: -- make the opportunity available. Okay.

8 OPENING STATEMENT ON BEHALF OF THE DEBTOR

9 MR. POMERANTZ: Your Honor, by way of background, we
10 appeared before Your Honor on December 6th and December 19th.
11 And during each of those hearings, we described for the Court
12 negotiations that were underway between the Committee and the
13 Debtor which, if successful, would have -- would eliminate the
14 need for contested and uncertain and costly litigation
15 regarding the appointment of a Chapter 11 trustee and really
16 put this case in a position where the Debtor and the Committee
17 would be able to work together constructively towards
18 negotiation of a plan.

19 As a result of our hearing on December 19th, Your Honor
20 entered a scheduling order that set deadlines for either the
21 filing of a motion to approve a settlement, or alternatively,
22 the filing of one or more motions for the appointment of a
23 trustee.

24 As set forth and required by the scheduling order, we
25 filed our motion on December 27th, and in that motion we

1 sought approval of a term sheet and ancillary documents
2 between the Debtor and the Committee, which I'll describe
3 shortly.

4 While a couple of items had not yet been agreed to at the
5 time the motion was filed, I'm pleased to report that over the
6 last couple of days we've been able to reach closure with the
7 Committee with respect to those items, and there would also be
8 some modifications to the term sheet, which I'll go through in
9 a few moments.

10 The motion, Your Honor, seeks approval of the term sheet,
11 which accomplishes a variety of things that, again, will allow
12 the Debtor and the Committee to put the acrimony that has
13 existed in this case for the first three months behind us and
14 allow us to focus on productive matters. In the last 24
15 hours, as I mentioned, there have been a few changes to the
16 term sheet that I will describe. And I would like to hand up
17 Your Honor a redline and a clean copy of the revised term
18 sheet and exhibits. May I approach?

19 THE COURT: All right. You may. Do you have an
20 extra for the law clerk? Okay. Thank you.

21 (Pause.)

22 MR. POMERANTZ: Your Honor, the term sheet does a
23 number of things. Would you like me to give Your Honor some
24 time to look through the redlines?

25 THE COURT: No. You may proceed.

1 MR. POMERANTZ: Okay. The term sheet does a number
2 of things. The first thing the term sheet does is appointment
3 of an independent board at Strand Advisors. Strand Advisors
4 is the GP of the Debtor. The Debtor is an LP. The Debtor
5 previously had filed a motion to approve the retention of Brad
6 Sharp as the chief restructuring officer, and that initial
7 agreement and motion contain details regarding the scope of
8 Mr. Sharp's authority and the scope of what the Debtor could
9 do without Mr. Sharp's prior consent.

10 The Committee raised concerns that the structure was not
11 sufficient to ensure that decisions were being made for the
12 Debtor only in their best interests and without any
13 inappropriate influence from Mr. Dondero.

14 To address the Committee's concerns, a focal point of the
15 settlement was the Debtor's agreement to appoint an
16 independent board of directors at Strand who would be
17 responsible for managing the operations of the Debtor.

18 Over the last few weeks, a principal aspect of the
19 negotiations between the Committee and the Debtor have been
20 discussing who should the independent directors be.
21 Conceptually, the Debtor and the Committee both agreed that
22 the board should include, first, a person with significant
23 industry experience in which the Debtor operates -- hedge
24 funds, money management; second, a person with deep
25 restructuring experience from the financial advisor side; and

1 third, a person with some sort of judicial or governmental
2 experience.

3 The Debtor originally provided the Committee with three
4 proposed candidates. The Committee considered the Debtor's
5 request, but instead presented the Debtor with four different
6 candidates and asked the Debtor to choose from those four.
7 The Debtors interviewed each of those people and ultimately
8 agreed on Messrs. Dubel and Seery, who were each on the
9 original list.

10 As of the deadline to file the motion on December 27th,
11 the Committee and the Debtor had still not agreed on the
12 identity of the third board member, but the parties were
13 hopeful that an agreement could ultimately be reached and we
14 decided to go ahead and file the motion. As I'm sure Your
15 Honor saw in the motion, it was contingent upon everyone
16 agreeing on the third board member.

17 Ultimately, the Debtor and the Committee both agreed that
18 Mr. Dubel and Mr. Seery could identify the third board member
19 out of a pool of four people: Two of the people originally
20 requested by the Committee and two people identified by the
21 Debtor. This week and over the weekend, Mr. Seery and Mr.
22 Dubel interviewed each of the four candidates, and ultimately
23 decided on the appointment of Judge Nelms as the third
24 independent board member.

25 The board, as it will be constituted going forward, in the

1 Debtor's opinion, consists of three exceptional individuals
2 who are independent of the Debtor, have a sterling reputation
3 in the community, and bring to the Debtor a variety of the
4 skills that we believe, and believe the Committee agrees,
5 gives the Debtor the best opportunity to achieve a consensual
6 restructuring and otherwise manage the affairs of the Debtor
7 in the best interests of the stakeholders.

8 It is contemplated that the Debtor will continue to retain
9 the services of DSI as the chief restructuring officer, and
10 ultimately the board will determine if it's important to
11 retain a CEO going forward.

12 The second thing that the term sheet does, Your Honor, was
13 the removal of Mr. Dondero as an officer and director of
14 Strand and eliminate all of his control over decision-making
15 of the Debtor. The Debtor recognized early on in this case
16 that Mr. Dondero's continuing role with the Debtor in a
17 position of authority made the Committee extremely uneasy.
18 Accordingly, the term sheet provides for him removing himself
19 as an officer and director of Strand and that he would no
20 longer be in a position of control at the Debtor.

21 However, since the filing of the motion, over the last
22 several days, concerns have been raised about whether removing
23 Mr. Dondero from the business entirely would have unintended
24 consequences. I believe I may have mentioned at prior
25 hearings that, because of his involvement as a portfolio

1 manager under various contracts with third parties, that there
2 could be adverse economic consequences to the Debtor if he
3 didn't stay in some role.

4 As a result of discussions over the last 24 hours, the
5 Committee has agreed and the Debtor agreed to modify the term
6 sheet to allow the new board to decide whether to retain Mr.
7 Dondero in his capacity as a portfolio manager, provided,
8 however, that he will not receive any compensation and he will
9 agree to resign if requested by the board.

10 In any event, he will have no decision-making control at
11 all and he will report to the independent board.

12 The corporate governance documents that create the new
13 independent board of Strand also provide that Mr. Dondero, as
14 the owner of the equity in Strand, may not replace the board
15 without the Committee consent or court order.

16 The third major aspect of the term sheet, Your Honor, was
17 the agreement on operating protocols, and it really relates to
18 the ground rules for the Debtor's operations going forward and
19 when notice to the Committee is required of certain
20 transactions that would otherwise be in the ordinary course of
21 business.

22 Importantly, Your Honor, we are not trying to modify the
23 Bankruptcy Code in any way. Any transactions out of the
24 ordinary course of business would still be subject to Your
25 Honor's approval.

1 However, in this case, as we indicated in the initial
2 motion we filed when the case was in Delaware, whether or not
3 something is ordinary is not straightforward in a case such as
4 the Debtor's, given the nature of the Debtor's operations. So
5 we thought it was important to establish ground rules up
6 front, and establishing those ground rules was one of the
7 things we did initially in the case. We had opposition from
8 the Committee, and we've worked through the opposition and
9 ultimately arrived at the operating protocols that are
10 attached to the term sheet.

11 They have been slightly modified in nonmaterial ways in
12 the documents I handed up to Your Honor.

13 They were subject to substantial negotiations between the
14 Debtor and the Committee, and we also expect them to be the
15 subject of future discussions with the Committee and the
16 independent board after the independent board takes -- takes
17 place. Takes over.

18 Two parties in interest, Your Honor, Jefferies and a group
19 of Issuers, the CLOs, have filed comments to the term sheet,
20 which I'll describe in a few moments.

21 THE COURT: Okay.

22 MR. POMERANTZ: The next aspect, Your Honor, of the
23 term sheet was the provision of standing to the Creditors'
24 Committee to pursue certain insider claims.

25 During the negotiations, the Committee requested immediate

1 standing to investigate and potentially prosecute claims
2 against insiders to the extent those insiders were not
3 employed by the Debtor. Granting standing at this stage of
4 the case was a difficult give by the Debtor. However, the
5 Committee impressed upon the Debtor the importance of them
6 being able to control the filing of any actions against the
7 insiders, and the Debtor decided to accede to the Committee's
8 request.

9 It still remains the Debtor's hope that, with the creation
10 of the independent board, that the Debtor, the Committee, and
11 any insiders who might be subject to any such claims will be
12 able to come together and negotiate a consensual resolution of
13 this case. While all parties, I'm sure, can and know how to
14 litigate, hopefully they will agree that a negotiated outcome
15 is better than a litigated outcome.

16 The next aspect of the term sheet, Your Honor, was the
17 document preservation protocols, and it provides for certain
18 procedures to be put in place to address the Committee's
19 concerns about document preservation. They are contained in
20 an exhibit to the term sheet. Again, slight nonmaterial
21 modifications were made in what I handed up to Your Honor.
22 And essentially they provide also for the Committee's access
23 to privileged documents to aid in their investigation and
24 prosecution of claims to which they are granted standing, and
25 also sets forth a procedure to be followed to address concerns

1 if the information is subject to shared privileges by several
2 entities.

3 As I mentioned, Your Honor, three parties have filed
4 responses to the motion. The first is Jefferies. Jefferies
5 is a secured creditor of the Debtor with respect to its margin
6 account held at Jefferies, and also has a similar account held
7 by a non-debtor affiliate. They have asked for clarification
8 that, one, nothing in the protocols or the motion affects its
9 rights under the underlying agreements or the safe harbor
10 provisions of the Bankruptcy Code entitling them to enforce
11 their remedies; and two, that the Debtors will not trade in
12 the prime account without Jefferies' consent, and if that
13 consent is sought and not obtained, only subject to court
14 order.

15 The Debtor has agreed to include language in the order to
16 address Jefferies' concern, and at the conclusion of my
17 presentation I'll submit to Your Honor an order and a redline
18 containing that language.

19 THE COURT: Okay.

20 MR. POMERANTZ: The second objection -- or not
21 objection, Your Honor -- the second statement was filed by a
22 group of Issuers of CLO obligations.

23 THE COURT: Uh-huh.

24 MR. POMERANTZ: And they were concerned that certain
25 aspects of the operating protocols which require notice to the

1 Committee prior to the Debtor being able to take certain
2 actions could conflict with the provisions of the underlying
3 agreements which might require the Debtor to take action on a
4 more expedited basis.

5 Neither the Issuers or the Debtor are aware of any
6 potential transactions that will arise prior to the next
7 hearing before Your Honor on January 21st. We understand --
8 we were not party to these discussions between the Committee
9 and the Issuers yesterday, but we understand the way it's been
10 resolved is that the Issuers will withdraw their objection as
11 it relates to going forward today, subject to being able to
12 come back to the Court on the 21st and revisit the issue if
13 additional changes are not made acceptable to them to resolve
14 their issues and concerns.

15 THE COURT: Okay.

16 MR. POMERANTZ: But I think all parties acknowledge
17 that over the next 12 days this is a theoretical issue rather
18 than a practical issue.

19 THE COURT: Okay.

20 MR. POMERANTZ: This brings us, Your Honor, to the
21 United States Trustee's opposition, which is really the only
22 true objection to the motion that has been filed. No creditor
23 has filed an objection, no investor has filed an objection,
24 and no governmental agency -- which the U.S. Trustee in its
25 objection purports to be pursuing their interests -- has filed

1 an objection, either.

2 As Your Honor probably recalls, at the December 19th
3 hearing the Trustee indicated its intent to oppose any
4 agreement between the Debtor and the Committee that would
5 involve corporate governance and to file its own motion for
6 the appointment of the trustee. That motion is currently
7 scheduled for hearing on January 21st. We had asked the U.S.
8 Trustee to reserve judgment on the Committee's and Debtor's
9 agreement until after we had come to an agreement and after we
10 had presented it to the Trustee, in hopes that it would
11 address their concerns. However, as the Court told us -- as
12 the U.S. Trustee told us and Your Honor at the December 19th
13 hearing, there was nothing short of appointment of a trustee
14 that would satisfy the Trustee.

15 The comments really didn't make sense to us, and I believe
16 it perplexed Your Honor, but here we are.

17 At its core, Your Honor, the U.S. Trustee's objection is
18 really a request that the Court substitute its business
19 judgment for that of the Debtor and the Committee, the
20 Committee who represents the substantial majority of all
21 claims in this case, when both of them have decided that
22 agreeing to certain changes in corporate governance, among
23 other things, is preferable to the uncertain, costly, and
24 time-consuming litigation over a trustee, and also the
25 uncertainty, even if a trustee was appointed, on how the case

1 would be administered.

2 To the contrary, under the corporate governance proposal,
3 we have three highly-qualified individuals who are poised to
4 take over management of the Debtor, and each bring with them
5 various skills that one trustee would not have.

6 The Trustee has filed its motion for appointment of a
7 trustee, and I'm sure on the 21st will argue that the Code
8 requires it. However, that's not the issue before Your Honor
9 today. It's not whether a trustee is appropriate. It's
10 whether the motion and the term sheet is a sound exercise of
11 the Debtor's business judgment under Section 363, and,
12 importantly, a reasonable compromise of the pending disputes
13 between the Debtor and the Committee.

14 The Trustee's objection raises three general points, none
15 of which have any merit. First, the Trustee argues that there
16 is a lack of disclosure of significant matters. The first
17 aspect that the Trustee raises to, or points to, is the
18 absence of identification of the third board member and the
19 absence of disclosure of the compensation that the board
20 members will receive, which will be backstopped by the Debtor.

21 As I described before, Your Honor, the identity of the
22 third member of the board was a fluid process which was only
23 resolved earlier this week, and the Debtor did not believe
24 that it was appropriate to reach agreement on director
25 compensation until all board members could provide input.

1 Last night, we filed a reply to the Trustee's objection in
2 which we disclosed the identity of the third board member, and
3 we'll also disclose the proposed compensation to be provided
4 to them, which essentially is as follows. Each member of the
5 board will receive \$60,000 a month for the first three months
6 of the case, \$50,000 a month for the next three months of the
7 case, and the presumption thereafter would be \$30,000 a month.
8 However, people recognize that this case will look a lot
9 differently six months from now, and while the presumption is
10 \$30,000, the Debtor, the independent board members, and the
11 Committee will sit down, see how the case looks, and decide
12 whether any modifications are appropriate.

13 The amount of compensation, which at first blush may seem
14 significant, really reflects the significant amount of work
15 that the Debtor, the Committee, and the independent directors
16 anticipate will be required from them not only to get up to
17 speed about the case, but to effectively manage this complex
18 Debtor's business operations. The directors have heard from
19 the Debtor and the Committee of all the issues, of all the
20 concerns, and this is not an enviable task that they are
21 undertaking. The compensation they are being provided thus
22 far we believe is appropriate under the circumstances and
23 commensurate with the work that they are going to be expected
24 to complete.

25 If they are successful and they are able to achieve a

1 consensual restructuring here, the million and a half or so
2 that will be spent on them will be best million and a half
3 dollars I think spent in this case.

4 Your Honor, we also have updated corporate governance
5 documents which --

6 (Pause.)

7 MR. POMERANTZ: Your Honor, may I approach with the
8 updated corporate governance documents?

9 THE COURT: You may. Okay.

10 MR. POMERANTZ: As I will discuss in a moment, Your
11 Honor, there is really no need for the Court to approve the
12 corporate governance documents, as they have been executed by
13 Strand, which is not a debtor before this Court. However,
14 there are a couple of matters in those documents that I want
15 to bring to the Court's attention that do impact on the
16 Debtor.

17 THE COURT: Okay.

18 MR. POMERANTZ: First, as is typical for board
19 members, Strand has agreed to indemnify the independent
20 directors to the full extent permitted by law. The
21 independent directors have requested that the Debtors backstop
22 Strand's agreement, and the Debtor and the Committee agree,
23 and the documents so provide.

24 Strand has also committed to obtain directors and officers
25 coverage for the independent directors. It has been located,

1 it's in the process of being finalized and bound, and the
2 Debtor will pay the cost of that coverage.

3 The independent directors have also asked for language in
4 the order approving the settlement that requires a party
5 seeking to assert a claim against the independent directors
6 relating to their role as an independent director to
7 demonstrate to this Court that a claim is colorable before
8 filing the claim and providing the Court with jurisdiction
9 over any such claim. This is language that's similar in other
10 similar types of cases.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: That will be reflected in the order.

13 Next, the Trustee objects to the failure of the Debtor to
14 identify who the potential chief executive officer of the
15 Debtor will be. And essentially, she's arguing that you have
16 to identify that CEO now; it has to be subject to court
17 approval. However, there's no requirement that any company
18 retain a CEO. It's not a corporate law requirement. And the
19 fact that the board reserves the right to retain a CEO in the
20 future is consistent with corporate law and is not a basis to
21 deny the motion. And in any event, normally, the retention of
22 a CEO is not a subject that is brought to the Court's
23 attention for Court approval.

24 So the lack of any clarity over the identity of the CEO is
25 a reflection of the fact that this independent board does not

1 know if a CEO is required. They will come in, they are going
2 to interview all the employees, they're going to sit down with
3 the CRO, they're going to sit down with counsel, they're going
4 to sit down with the Committee, and ultimately they will
5 decide if a CEO is to be retained. And if a CEO is to be
6 retained, they will go through the process of identifying who
7 that CEO is. But again, it's not a reason to deny the motion.

8 The Trustee has also argued that because the Committee is
9 not granted standing to pursue claims against current
10 employees, as opposed to former employees, that there might be
11 some statute of limitations concerns with respect to claims
12 against those employees. The argument doesn't really make
13 sense to us. In the standard case, the Debtor retains causes
14 of action. And the Committee can investigate causes of
15 action. And at some point during the case, a Committee could
16 come in and could demand that the Debtor prosecute them, and
17 if the Debtor unreasonably refuses, could seek standing before
18 the Court.

19 In this case, the Debtors agreed up front that the
20 Committee has the standing to prosecute certain claims against
21 insiders that are not employees of the Debtor, which obviates
22 the need for standing. So we've gone one step more. But the
23 Trustee is arguing that that leaves a void for the claims that
24 are not subject to the agreement on standing.

25 However, the term sheet provides that the board is going

1 to make determinations on what employees should remain, what
2 employees should not remain. To the extent the board
3 terminates any employees and there are claims against them,
4 then basically the Committee will have the ability to bring
5 those claims.

6 To the extent that those people aren't terminated, we have
7 no doubt that the Committee, in the course of its
8 investigation, will determine whether claims should be brought
9 against those people, and at some point in time may ask the
10 Debtor to prosecute those claims or ultimately seek standing.

11 In any event, these things are not being swept under the
12 rug. There's no real legitimate concern that there's any
13 statute of limitations issue that will prevent those claims
14 from being prosecuted.

15 I am very much aware and have no doubt that the Committee
16 is going to be laser-focused on claims, and any concern that
17 statute of limitations is going to lapse I think is not well-
18 taken.

19 The Trustee next argues that the Court does not have the
20 jurisdiction to implement the corporate governance matters,
21 and for that reason the motion should be denied. They -- she
22 argues that because Strand is not a debtor, that the Court has
23 no authority to appoint --

24 MS. LAMBERT: Your Honor, I object. The United
25 States Trustee is a he. I am not the United States Trustee,

1 and the attacks *ad hominem* are inappropriate.

2 THE COURT: All right. Well, clarification, the U.S.
3 Trustee is the guy in Washington. But anyway, you may
4 proceed.

5 MR. POMERANTZ: I apologize to Ms. Lambert.

6 MS. LAMBERT: Actually, he's downstairs right now.
7 Bill Neary.

8 MR. POMERANTZ: I apologize to --

9 THE COURT: Oh, well, I thought you meant the big guy
10 in Washington. But anyway, you may proceed.

11 MR. POMERANTZ: I apologize to Ms. Lambert and no
12 offense was meant.

13 THE COURT: Okay.

14 MR. POMERANTZ: So, the U.S. Trustee argues that
15 because Strand is not a debtor that the Court has no authority
16 to appointment the independent directors and limit Mr.
17 Dondero's right to remove the independent directors. The
18 Debtor is not really seeking authority to appoint -- to have
19 court authority for the appointment of the directors at
20 Strand. Again, as I mentioned before, that authority exists
21 outside of bankruptcy. Strand is not a debtor. Strand could
22 appoint anyone it wants to carry out its responsibility as the
23 general partner of the Debtor, and it's exercising its
24 corporate authority to do so by installing a board at Strand.

25 Nor is the Debtor seeking court authority for Strand to

1 enter into the corporate governance documents. Other than the
2 couple of items I mentioned before, Your Honor, Strand can
3 enter into these documents without authority from this Court.
4 The only court authority that was required: Debtor to
5 backstop the indemnification obligations, Debtor to pay
6 compensation to the board members, and Debtor to pay for the
7 D&O policy.

8 With respect to the Court's right to limit Mr. Dondero's
9 ability to terminate the independent directors, the term sheet
10 contemplates the Court approving a stipulation which limits
11 Mr. Dondero's ability to terminate the independent directors,
12 and if he does in fact seek to terminate the appointment of
13 the independent directors, he would be in violation of court
14 order. But even more importantly, Your Honor, if he decided
15 to terminate the independent directors without the Committee's
16 consent and without the Debtor's consent, I wouldn't imagine
17 it would take anyone very long to come back before Your Honor
18 and ask Your Honor to very quickly appoint a trustee.

19 Accordingly, Your Honor, I think the argument of lack of
20 jurisdiction over Strand is a red herring and should be
21 denied.

22 Lastly, Your Honor, the Trustee makes a curious argument
23 that a trustee is needed to protect all investors and
24 governmental authorities. The Trustee argues that this case
25 demands transparency which can only be accomplished by a

1 Chapter 11 trustee.

2 One thing I think the Debtor and the Committee and the
3 U.S. Trustee will agree on, this case does demand
4 transparency. And we believe we've installed a corporate
5 governance structure, an operating protocol structure, a
6 document preservation structure, that does just that, provides
7 transparency that this Debtor has not been subject to and
8 which is quite different from the case that was before Your
9 Honor before.

10 So we believe that what the Debtor and the Committee have
11 done is not only in the interests of the Debtor, the
12 creditors, but investors and all governmental entities.

13 And no investor or governmental entity has had any
14 concerns or any problems with what is being done. They
15 haven't filed any objection. The U.S. Trustee apparently is
16 proceeding by proxy asserting those interests.

17 Second, nothing in the term sheet or any of the documents
18 limits the rights of investors or of governmental entities to
19 seek a trustee, to seek documents, or to do anything they
20 would -- that they would be entitled to do under the
21 Bankruptcy Code.

22 In any event, Your Honor, the fact that the Trustee
23 believes that a trustee is more appropriate, again, is an
24 argument that they can make at the January 21st hearing. It's
25 not a basis for denial of this motion.

1 In conclusion, Your Honor, the only economic stakeholders
2 in this case believe that proceeding with the transactions
3 contemplated by the term sheet is in the best interest of the
4 estate, will maximize their ability to achieve a consensual
5 restructuring, and move this case through the system as
6 quickly and efficiently as possible. The term sheet is a
7 valid exercise of the Debtor's business judgment under 363 and
8 an appropriate compromise of controversy, and the Trustee's
9 objections are really nothing more than a rehash of its
10 request for an appointment of a trustee.

11 For all these reasons, Your Honor, we request that the
12 Court overrule the U.S. Trustee's objection and approve the
13 motion.

14 THE COURT: All right. Well, before I hear from our
15 objectors, is there any friendly commentary? Mr. Clemente, I
16 figured you might want to address this.

17 MR. CLEMENTE: I do, Your Honor. And good morning.

18 THE COURT: Good morning.

19 OPENING STATEMENT ON BEHALF OF THE OFFICIAL COMMITTEE OF
20 UNSECURED CREDITORS

21 MR. CLEMENTE: For the record, Matthew Clemente from
22 Sidley Austin on behalf of the Official committee of Unsecured
23 Creditors. I do have some comments that I would like to make,
24 Your Honor, some, so please bear with me. I will try and be
25 brief.

1 THE COURT: Okay.

2 MR. CLEMENTE: I think as late as 1:00 o'clock in the
3 morning I wasn't sure that I would be in front of you with
4 this settlement fully in place in a manner that was
5 satisfactory to my Committee. As I mentioned to you in my
6 prior appearances in front of you, every provision was
7 important to the Committee, and they all work together. As
8 Your Honor can imagine, there was a lot of negotiation that
9 took place, including late in the day and early morning, to
10 come to that conclusion.

11 Some comments on our perspective as a committee, Your
12 Honor. As an initial matter, we were absolutely not okay with
13 the governance structure that was in place when the petition
14 was filed. As we detailed in our objections to the CRO motion
15 and the protocol motion back when the case was in Delaware,
16 the Committee has very real and identifiable concerns about
17 the Debtor's ability to dispatch its fiduciary duty. And the
18 Committee very seriously contemplated moving for a Chapter 11
19 trustee daily. That conversation is something that the
20 Committee continues to -- continued to engage in, Your Honor.
21 So it's something that they considered very, very carefully.

22 That was the lens through which the Committee was
23 approaching negotiations over the settlement agreement and the
24 independent director structure. That's how they viewed it.
25 That's the backdrop against which they came to it.

1 The Committee had two primary goals that it had sought to
2 achieve with the settlement agreement. The first was to
3 ensure that Mr. Dondero does not remain in a position of
4 management authority or control in any fashion with the
5 Debtor. Goal number two was to ensure that the value of the
6 Debtor's estate is preserved and maximized. Those two goals
7 needed to work together.

8 The Committee believes that the carefully-crafted
9 settlement agreement achieves these objectives in a manner
10 that is more beneficial to the estate than a potential Chapter
11 trustee and a related fight over its appointment at this
12 time.

13 The lynchpin of the settlement, Your Honor, is the
14 appointment of the three independent directors. And as Mr.
15 Pomerantz outlined for you, that was the subject of intense
16 discussion, negotiation, debate among the Committee and with
17 the Debtor. But we believe that Mr. Seery, Mr. Dubel, and
18 Judge Nelms are fully independent, highly qualified, and bring
19 relevant and complementary skillsets to this board. Mr.
20 Pomerantz referred to that, but we believe that the three
21 directors all bring unique talents and attributes that will
22 allow them to function effectively as a board and provide the
23 appropriate oversight and direction that we believe is
24 necessary here.

25 However, regardless of how independent or highly skilled

1 they may be, they would be of no use if they weren't bestowed
2 with the appropriate power. So that was another point that
3 was very important to the Committee, and we believe that the
4 settlement does this. The settlement makes clear that the
5 independent directors are granted exclusive control over the
6 Debtor, including over all employees. That's absolutely
7 critical to the Committee.

8 The settlement also provides that the CRO and the Debtor's
9 professionals shall report and serve at the direction of the
10 independent directors. That is also very important.

11 And let me be clear, Your Honor, because I think you may
12 have raised this at a prior hearing: This is not a board that
13 we expect to work at 50,000 feet, as demonstrated by the
14 compensation structure that Mr. Pomerantz outlined for you.
15 This will be a board that's hands-on, members of which will be
16 on the ground, at the Debtor, with a strong presence and a
17 clear message of who is in charge. That is critical for this
18 Committee.

19 Additionally, as Mr. Pomerantz mentioned, the new board,
20 in consultation with the Committee, is empowered to determine
21 whether a CEO should be retained. It's possible that one of
22 the independent directors could be that CEO, Your Honor. But
23 we wanted to make clear that that was an important part of the
24 structure, should the board determine that that was the way it
25 wanted to go.

1 So, in sum, Your Honor, we believe that the independent
2 board has the clear authority and the skillset that's
3 necessary to take control and will be actively and
4 aggressively doing so.

5 But let me be clear, rest assured, Your Honor, this is not
6 going to be a board that answers to the Committee in that
7 sense. I think that we will all be moving together
8 directionally, but it's very possible that I will be in front
9 of Your Honor arguing against a decision that this independent
10 board made. So I want to assure Your Honor that although the
11 Committee was very active and in fact picked Mr. Seery and Mr.
12 Dubel, and then Mr. Pomerantz detailed how the third director
13 was picked, we understand who their duty -- what their duty is
14 and we also understand that they're not a rubberstamp for the
15 Committee, Your Honor. And so I wanted to make that point to
16 you to assure Your Honor that that's not the structure that's
17 being set up here, nor are they the type of individuals that
18 would allow that to happen.

19 Additionally, Your Honor, the settlement grants the
20 Committee standing to pursue estate causes of action against
21 the related parties. That was very important to us, Your
22 Honor.

23 And in addition to that, the settlement provides the
24 Committee access to privileged documents and sets forth a
25 discovery protocol that will assist the Committee in its

1 investigation.

2 The Committee strongly believes that Mr. Dondero's
3 repeated past behavior, that there are many questionable
4 transactions that will need to be thoroughly investigated and
5 pursued. And so having those causes of action with the
6 economic party in interest related to those causes of action,
7 the Committee and its constituencies, we thought was very
8 important and very critical.

9 Granting standing, Your Honor, as I mentioned, avoids any
10 issues regarding who will be controlling those claims.

11 I'll touch on this in a moment, but Mr. Pomerantz talked
12 about Mr. Dondero remaining in name as an employee. Let me
13 assure Your Honor that that is not a backdoor around the
14 Committee's ability to investigate and immediately pursue
15 claims against him should that be the course that we choose to
16 take. So he's not part of that carve-out for current
17 employees. That's not at all happening. That would never be
18 something that my Committee would be comfortable with. So I
19 wanted to make clear to Your Honor that that's not something
20 that's happening with sort of this late edition of Mr.
21 Dondero's continuing on in name as an employee.

22 Your Honor, the settlement also lays out a very detailed
23 set of operating protocols which we do believe are appropriate
24 and provides the Committee with transparency, which I've been
25 expressing to Your Honor we've needed since this case has

1 started.

2 Finally, as we point out in our reply and as would always
3 be the case, should new facts develop or the situation demand
4 it, the Committee reserves the right to seek a Chapter 11
5 trustee, as does any other party in interest, to the extent it
6 may be appropriate at that time.

7 In short, Your Honor, the Committee very carefully and
8 diligently weighed the independent director option versus the
9 Chapter 11 trustee option. The Committee had very clear goals
10 in mind, as I expressed to you, and determined that those
11 goals could be achieved in a value-maximizing manner through
12 the independent director structure.

13 The negotiations were very intense, and it was only after
14 the Committee determined that each piece of the settlement was
15 to its satisfaction did it ultimately conclude that the
16 settlement maximizes value for all stakeholders while at the
17 same time protecting those stakeholders from exposure to
18 continuing insider dealing, breaches of duty, and
19 mismanagement.

20 Therefore, the Committee believes approving the settlement
21 is in the best interest of the estate, and therefore it
22 believes it should be approved.

23 I do want to offer a word about Mr. Dondero continuing as
24 an employee. As Your Honor was aware, the term sheet as
25 originally filed provided that Mr. Dondero would, among other

1 things, resign as an employee of the Debtor. Mid to late
2 afternoon yesterday, Mr. Ellington called me and said that the
3 Debtor was now of the view that Mr. Dondero should remain on
4 as an employee in that capacity for the benefit of the estate.
5 The Committee was, very appropriately, very skeptical of this,
6 as well as the sort of last-minute offer, last-minute, you
7 know, addition, however you want to view it -- some might
8 argue retrade -- that Mr. Dondero was to leave the Debtor,
9 period. That was our view. That was the way that the term
10 sheet was initially structured. And under no circumstances
11 was the Committee going to allow Mr. Dondero to have any
12 control over this Debtor.

13 Your Honor, the Committee doesn't know what, if any, the
14 consequences are of removing Mr. Dondero as an employee. And
15 we're not conceding at all that there are any value lost by
16 removing Mr. Dondero as an employee. Instead, what we're
17 doing is we're staying true to our structure with the
18 independent directors and we're empowering them to decide.
19 And so it's consistent with, you know, our goals of having the
20 independent director structure in place. And under the
21 settlement as now constructed, even with this late addition or
22 adjustment, Mr. Dondero would remain as an employee in name
23 only, subject in all respects to the direction, oversight, and
24 removal by the independent board. And importantly, should
25 they decide to do that, Mr. Dondero shall resign. And he

1 shall receive no compensation.

2 So he will not be in control of this Debtor. The
3 independent directors are. And he's not going to be empowered
4 to make decisions on behalf of the Debtor. Instead, we're
5 empowering our independent directors to make those decisions
6 and determinations on behalf of the Debtor.

7 I wanted -- I thought it was important that I provide that
8 perspective to Your Honor, as this is something that came in
9 at a very, very late hour.

10 Overall, Your Honor, for the reasons I have stated and the
11 reasons in our reply, the Committee, as a fiduciary of all
12 creditors in this case, believes that the settlement is in the
13 best interests of the creditors and should be approved. And
14 at this time, it's the better alternative than the cost,
15 delay, and uncertainty resulting from a Chapter 11 trustee
16 fight and the potential appointment of a Chapter 11 trustee.

17 It is time to put the governance issues behind us, Your
18 Honor, and to move forward to determine how to maximize value
19 for the creditors and how to get them paid.

20 Your Honor, just regarding the specific resolutions of
21 objections that Mr. Pomerantz put on the record, I agree with
22 how Mr. Pomerantz characterized those, and the Committee is
23 supportive of those resolutions as well.

24 Those are all my remarks, Your Honor, but I am happy to
25 answer any questions or address any concerns Your Honor may

1 have.

2 THE COURT: Okay. Two follow-up questions. First, I
3 know I asked you this at a previous hearing and you told me,
4 but your Committee, as I recall, is very well constituted.
5 Just remind me of the members.

6 MR. CLEMENTE: Yes.

7 THE COURT: You have a representative from the
8 Redeemer Committee, --

9 MR. CLEMENTE: Yes, Your Honor.

10 THE COURT: -- which is a \$140 million or so
11 arbitration award?

12 MR. CLEMENTE: Yes, Your Honor.

13 THE COURT: Okay. And who else is on the Committee?
14 Is an Acis representative?

15 MR. CLEMENTE: Acis is on the Committee, Your Honor.

16 THE COURT: Uh-huh.

17 MR. CLEMENTE: Meta-e Discovery, who is a trade
18 vendor of the Debtor, is on the Committee. And UBS
19 Securities, who is also --

20 THE COURT: Okay.

21 MR. CLEMENTE: -- a litigation claimant, is on the
22 Committee.

23 It was the U.S. Trustee in Delaware's parting gift to me
24 to name a four-member committee, Your Honor.

25 (Laughter.)

1 THE COURT: Okay. Makes it awkward at times. And
2 then back to the Dondero subject.

3 MR. CLEMENTE: Yes, Your Honor.

4 THE COURT: I mean, again, both Mr. Pomerantz and you
5 clarified that the proposal now is the new board will decide
6 if he stays on, Mr. Pomerantz said as a portfolio manager.

7 MR. CLEMENTE: That is correct, Your Honor.

8 THE COURT: Am I -- I mean, I'm hearing that
9 correctly?

10 MR. CLEMENTE: That is correct, Your Honor.

11 THE COURT: So, right now, whatever officer positions
12 he has, he's technically not resigning? Or --

13 MR. CLEMENTE: He is resigning as an officer of the
14 company, Your Honor.

15 THE COURT: Okay. He's resigning? So the board will
16 just decide, is he going to be a portfolio manager or some --
17 whatever the employee title is?

18 MR. CLEMENTE: Or they could decide that he's not
19 necessary.

20 THE COURT: Or not necessary? In any event, no
21 compensation?

22 MR. CLEMENTE: That is correct, Your Honor.

23 THE COURT: Okay.

24 MR. CLEMENTE: And as you can see, the term sheet
25 provides that Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor as well. That was
2 language that was added last night as well.

3 THE COURT: All right. So they're going to make the
4 decision, does he help preserve value by staying in some
5 capacity or not?

6 MR. CLEMENTE: That is correct, Your Honor.

7 THE COURT: Okay.

8 MR. CLEMENTE: That, cutting through it, that is the
9 way that ultimately the Committee views it.

10 THE COURT: Okay.

11 MR. CLEMENTE: And if there's an opportunity -- and
12 I'm not conceding that there is. I'm not conceding that he
13 preserves any value.

14 THE COURT: Uh-huh.

15 MR. CLEMENTE: But we wanted to give the option to
16 our independent directors to make that determination. Because
17 if there's an opportunity to preserve value, that's what we're
18 trying to achieve.

19 THE COURT: Okay. And I don't even know if you've
20 thought through this. Would there be some sort of notice
21 filed on record in the case if --

22 MR. CLEMENTE: If --

23 THE COURT: -- if the decision is made to --

24 MR. CLEMENTE: To -- to --

25 THE COURT: -- hire him or keep him as a portfolio

1 manager?

2 MR. CLEMENTE: So, I think the default under the term
3 sheet, as revised, is he stays in that capacity in terms of
4 name. The independent directors will -- they're subject to
5 his control and direction, and they could decide to remove
6 him.

7 THE COURT: Uh-huh.

8 MR. CLEMENTE: Perhaps if Your Honor --

9 THE COURT: Okay.

10 MR. CLEMENTE: We could provide notice if they make
11 the determination to remove him, but I think the default is
12 that, you know, he's in that -- he's remaining as that
13 employee name currently. So that's the current default.

14 THE COURT: Okay. All right. Thank you.

15 MR. CLEMENTE: Thank you very much, Your Honor.

16 THE COURT: Well, Ms. Patel, you're getting up so
17 I'll hear -- I don't know who all has been in the loop over
18 this overnight development.

19 OPENING STATEMENT ON BEHALF OF ACIS CAPITAL MANAGEMENT

20 MS. PATEL: Your Honor, Acis has been in the loop as
21 a member of the Committee. And I will be very brief with
22 respect to Acis's individual comments. And I just want to be
23 clear: Obviously, I'm here as counsel for Acis, and so this
24 is Acis's individual position. Mr. Clemente aptly and very
25 ably handled the Committee's overall position with respect to

1 this.

2 But Your Honor, I just want to, on behalf of Acis, make
3 sure that, because of these developments, that's really -- I
4 really had hoped to have zero role today, but I want to make
5 sure that we're -- Acis is on record with respect to our
6 position. And obviously, given Your Honor's knowledge and
7 oversight of the long history of Acis's bankruptcy case and
8 seeing some of the events that transpired there, I'm sure that
9 this will all, against that backdrop, make an awful lot of
10 sense.

11 But, you know, it's this continued role for Mr. Dondero
12 that is of concern. You know, this issue even being raised
13 within like the last 48 hours by Mr. Ellington, the timing of
14 it just creates an issue. I mean, did this -- how could this
15 possibly have come out of left field when this is such a huge
16 part of what the Debtor does in its ordinary course of
17 business, is serve as a portfolio manager, and these are
18 contracts that have been negotiated, generally speaking,
19 internally by Highland. So the fact that if Mr. Dondero were
20 to exit the structure and there would be some potential
21 ramifications to that, I've got to wonder how much of a
22 surprise could that really have been to Highland folks.

23 But I just wanted to highlight, in connection with the
24 term sheet -- this is the preliminary term sheet that was
25 handed up Your Honor, and I believe Your Honor has a redline

1 version of it as well --

2 THE COURT: Uh-huh.

3 MS. PATEL: -- on Page 2, with respect to the role of
4 Mr. James Dondero, there's various provisions in there. And I
5 guess I would be remiss, Your Honor, if I didn't say, at least
6 out of the gate, Acis obviously supports the implementation of
7 this independent board of directors. We believe all the
8 candidates are very capable and are -- we put our reliance
9 upon them.

10 Obviously, we don't concede any issues. We'll see what
11 we're going to do. But certainly, for the time being, we do
12 support the entry of this agreement of the settlement -- or,
13 I'm sorry, approval of the settlement agreement by the Court
14 that lets the independent board be put into place.

15 But what I'll focus the Court on, on Page 2 under the role
16 of Mr. James Dondero, it goes through various provisions as to
17 what he'll resign to -- positions he'll resign from and that
18 he will remain as an employee of the Debtor, including
19 maintaining his title as portfolio manager for all funds and
20 investment vehicles for which he currently holds that title.
21 And then it goes on to provide as to who he'll report to and
22 how he will be governed, which includes by the independent
23 board, he will receive no compensation, and that he will be
24 subject to at all times the supervision, direction, and
25 authority of the independent directors.

1 Again, we have faith that the independent directors will
2 oversee this and will govern his role accordingly. However,
3 given Acis's history with how transactions have transpired at
4 Highland, we remain highly cautious with respect to what
5 happens next.

6 And to that end, Your Honor, the very last sentence there
7 on Page 2, "Mr. Dondero shall not cause any related entity to
8 terminate any agreements with the Debtor," is a key provision
9 of this that keeps Acis, as a Committee member, on board with
10 this agreement. I wanted to highlight that and note that, in
11 the last less than 48 hours, in the last 12 hours, or maybe a
12 little bit more than that, call it 18 to be safe, that's where
13 -- that's a provision that's been -- that's where we've ended
14 up. It's all of these issues have been going at lightning
15 speed, but I did want to just, for the record and so everybody
16 is clear, that is an important piece of this agreement to --
17 for Acis.

18 And as Your Honor knows, this Debtor, Highland, is wont to
19 try to terminate agreements and to try -- in an attempt to try
20 and transfer valuable contracts away and valuable revenue
21 stream away from an entity to an alternate entity. And that's
22 really the heart of our concern, Your Honor.

23 So, with that, I just wanted to be clear and be on record
24 as to Acis's position. Thank you.

25 THE COURT: Thank you. All right.

1 MR. POMERANTZ: Your Honor, if I briefly may respond
2 to the issues with Mr. Dondero while they are fresh in Your
3 Honor's mind?

4 THE COURT: Okay. Okay.

5 MR. POMERANTZ: Your Honor, look, we appreciate the
6 timing of this coming to the attention of the Committee as
7 being less than optimal. As Your Honor can appreciate, this
8 case that's been filed three months ago, a lot of people are
9 looking very carefully at what's happening to the Debtor.
10 Investors are looking. There was a transfer of venue. There
11 have been a lot of reports about potential trustee motions.
12 And we believe a lot of parties are waiting to see the outcome
13 of this hearing and the trustee hearing to determine whether
14 they will determine to continue to do business with the
15 Debtor.

16 It's not only an issue of contractual rights. It's also
17 an issue of whether investors feel comfortable on who is
18 managing, who is managing their investments.

19 This issue of Mr. Dondero's continuing role has been
20 something that at the Debtor we've continued to grapple with
21 over the last several weeks. It's always been our thought
22 that we should do nothing that would unduly harm the company
23 from an economic standpoint. I think the Committee shares
24 that. That if it's determined by an independent board -- and
25 don't take current Debtor professionals, don't take current

1 Debtor employees' word for it -- but if they determine that
2 there's an economic benefit by keeping him on to preserve
3 material revenue stream, they should be able to make that
4 determination. I think that's really at the core here. And I
5 think the Committee got ultimately comfortable with it because
6 it will be an independent board, the majority of the members
7 identified and chosen by them and accepted by the Debtor.

8 So, again, we apologize to the parties and the Court for
9 bringing this on late. It wasn't my intent to come here and
10 present modified versions of the term sheet that hadn't been
11 filed. But that's where we are, and that's why it has come
12 up, and that's why it's an extremely important issue, because
13 preserving whatever revenue we can for the Debtor is
14 important.

15 Now, at the end of the day, the board may either decide
16 that he doesn't preserve the revenue, or the negatives from
17 keeping him involved with the company outweigh any benefits.
18 And that's a decision they will have to make, and it'll be
19 their province to make. So I just wanted to give Your Honor
20 that perspective.

21 THE COURT: Okay.

22 MR. DAUGHERTY: Your Honor, may I approach?

23 THE COURT: Mr. Daugherty? You may.

24 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

25 MR. DAUGHERTY: I apologize. I was not planning to

1 address the Court at all today. I would have had my attorney
2 here for it. But I just ask a little bit of indulgence to
3 represent myself *pro se* for this issue.

4 This is the first I've heard that Mr. Dondero would stay
5 with the company. I think it's an awful idea. There's a
6 litany of reasons for that.

7 By the way, I'm completely in support of this -- of this
8 board that's been chosen. I have every confidence that
9 they'll be able to make good decisions eventually. But
10 they're stepping into this thing new. Obviously, I've been
11 through this in your court with *Acis* and other matters, and I
12 have deep, deep concerns about Mr. Dondero continuing in that
13 role, simply because of the influence it has on the rest of
14 the organization and the message that it sends, both
15 internally and externally, of where the company goes from
16 here.

17 So I just wanted to let you know my thoughts. I wasn't
18 planning to make them. I haven't filed anything. But that's
19 where I stand.

20 THE COURT: All right. Thank you, Mr. Daugherty.

21 All right. Before we hear from the U.S. Trustee, who I
22 know is going to have a lot to say, let me just circle back
23 briefly to Jefferies counsel and the CLO Issuers' counsel.
24 You heard the representations of Mr. Pomerantz earlier about,
25 well, first, in the case of Jefferies, that the Debtor has

1 agreed to language to address your concerns. Do you want to
2 weigh in on that and confirm that you're content that you're
3 going to have language to work out your concerns?

4 OPENING STATEMENT ON BEHALF OF JEFFERIES, LLC

5 MR. MAXCY: Thank you, Your Honor. Patrick Maxcy for
6 Jefferies.

7 No, I don't have anything additional to add to what Mr.
8 Pomerantz said. The language that we have worked out will
9 speak for itself and will be included in the order.

10 THE COURT: All right. Thank you.

11 And counsel for the CLO and CDO Issuers, do you confirm
12 that you would be in agreement to basically withdraw your
13 objections for now, but perhaps come back and make argument on
14 the 21st if you have not worked out language with the
15 Committee that you think works?

16 OPENING STATEMENT ON BEHALF OF THE ISSUER GROUP

17 MR. BENTLEY: James Bentley from Schulte Roth for the
18 Issuers, Your Honor.

19 I believe the deal that Mr. Pomerantz and Mr. Clemente
20 and I have discussed was adjourning our objection to the 21st,
21 --

22 THE COURT: Okay.

23 MR. BENTLEY: -- rather than withdrawing it.

24 THE COURT: Okay.

25 MR. BENTLEY: We're -- we believe we will be able to

1 come up with language acceptable to the Issuers, but we would
2 like to reserve the right to come back to the Court on our
3 limited objection if we cannot, given that our issue is really
4 -- really only relates to the 25 Issuers we represent.

5 THE COURT: Okay. Thank you very much.

6 All right. Ms. Lambert?

7 OPENING STATEMENT ON BEHALF OF THE UNITED STATES TRUSTEE

8 MS. LAMBERT: May it please the Court. As the Debtor
9 acknowledges, the motion that they are settling, the issues
10 that they are settling, are the issues that the U.S. Trustee
11 has raised in his motion to appoint a Chapter 11 trustee. As
12 a matter of statutory construction, Section 1104 does not
13 contemplate settlement of these issues. 1112, in contrast,
14 has a provision that if the Court finds and determines that
15 there is cause to convert a case, there are unusual
16 circumstances and the Court can find a reasonable
17 justification for the wrongdoing or the error that occurred
18 that led to cause -- for example, administrative defects in
19 1112, not filing monthly operating reports -- and that can be
20 cured. The Court has to make a finding that those -- these
21 defects can be cured within a reasonable period of time.
22 Section 1104 contains no analog to his.

23 If the Court finds cause to direct the appointment of a
24 Chapter 11 trustee, then the Court is supposed to appoint a
25 Chapter 11 trustee. And *Trailer Ferry* and *AWECO* both stand

1 for the proposition that, on today's day, we're supposed to
2 have evidence about what the management issues are that led to
3 this agreement. There's been no evidence. There's been no
4 allegations in the motion for settlement. And so the U.S.
5 Trustee is prepared to put that evidence on.

6 And Your Honor, one aspect of this is that the arbitration
7 agreement has been sealed. And there are people on the phone.
8 I don't know who's on the phone. The U.S. Trustee has opposed
9 the sealing of the arbitration -- not arbitration agreement,
10 the arbitration judgment -- has opposed the sealing of that.
11 And then they referenced a confidentiality order as the basis
12 to seal it. The U.S. Trustee also opposed that
13 confidentiality motion, which was filed subsequently to the
14 motion to seal.

15 There is no confidentiality order. An interim order was
16 entered sealing the arbitration award, but -- and the U.S.
17 Trustee has honored that by redacting all of the pleadings
18 that we filed relating to that, but it's important today for
19 the U.S. Trustee to be able to discuss it in argument, and it
20 is here -- and we have it prepared to be admitted into an
21 exhibit.

22 So, to proceed with my argument, Your Honor, I need some
23 clarification about what I can say.

24 THE COURT: You want clarification from me on what
25 you can say?

1 MS. LAMBERT: Well, I mean, either that or we need to
2 clear the room.

3 THE COURT: I've read the arbitration award.

4 MS. LAMBERT: Right.

5 THE COURT: It's in my brain.

6 MS. LAMBERT: Right. Okay.

7 THE COURT: Uh-huh.

8 MS. LAMBERT: And so one of the arguments here today
9 is that the U.S. Trustee is representing the SEC and
10 representing other Government agencies and things. No.
11 Obviously, that is not the U.S. Trustee --

12 THE COURT: I didn't hear that.

13 MS. LAMBERT: Okay. The -- one of the positions has
14 been, in the papers, is, well, that we don't have standing to
15 raise their issues. And that's true.

16 THE COURT: Okay.

17 MS. LAMBERT: But the problem is that the U.S.
18 Trustee has been constrained from discussing those issues with
19 the SEC. The arbitration award is very relevant to the SEC's
20 oversight. I anticipate the evidence today will be that the
21 SEC, after the financial crisis of 2008, imposed restrictions
22 on this Debtor on breach of fiduciary duty issues. I
23 anticipate that the arbitration findings would be very
24 relevant to whether those issues are ongoing or not.

25 THE COURT: Okay. Let me weigh in. I view the legal

1 standard that this Court has to weigh today as being: Is the
2 Debtor proposing something that is reflective of sound
3 business judgment, reasonable business judgment? And to the
4 extent this is a compromise of controversies with the
5 Committee, is this fair and equitable and in the best interest
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this
8 maybe doesn't even need Court approval. But to the extent
9 there are aspects of this that are appropriate to seek Court
10 approval on, you know, this is my task. I have to look at
11 what's presented, and is this reflective of sound business
12 judgment? Is this fair and equitable? Is it in the best
13 interest?

14 So, assuming there are tons of bad facts here reflected in
15 the arbitration award, reflected in other evidence, bad facts
16 that might justify a trustee, a Chapter 11 trustee, is this
17 nevertheless, what's proposed today, a reasonable compromise
18 of, you know, the trustee arguments the Committee could make
19 or, you know, is this a reasonable framework for going
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you
22 know, do I need to look at the arbitration award? Do we need
23 to have evidence of all of that? I can assume that there are
24 terrible facts out there that might justify a trustee, but I'm
25 looking at what's proposed. Is this a fair and equitable way

1 to resolve the disputes? Is it sound business judgment?
2 Frankly, is it a pragmatic solution here to preserve value?
3 So that's the legal standard I have in my mind here.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. LAMBERT: The standard is whether it is fair and
7 equitable to resolve the issues in the Chapter 11 trustee
8 motion, and it is the U.S. Trustee's position that they are
9 not resolved by this. And how are they not resolved? Number
10 one, they're not resolved because the problems that led to the
11 breach of fiduciary duty issues and findings are more
12 pervasive, both based on this Court' finding in the *Acis* case
13 and in the arbitration court's finding in Mr. Dondero. Other
14 officers are implicated.

15 THE COURT: But how --

16 MS. LAMBERT: Other employees are implicated.

17 THE COURT: Okay. I feel like maybe we're talking at
18 each other, not getting each other. I've got a proposed
19 solution here to totally change the playing field, if you
20 will. Bring in incredibly qualified people to --

21 MS. LAMBERT: Those people --

22 THE COURT: -- to change out the, you know, the
23 person that you say breached fiduciary duties, the, you know,
24 mismanagement, whatever bad labels we have here, but bring in
25 a clean slate.

1 MS. LAMBERT: No, Your Honor, because employees
2 remain at the Debtor who are problematic. The board that is
3 appointed owes a fiduciary duty to whom? Strand. Dondero.
4 He's still the board -- he is the sole stockholder. Yes. In
5 addition, --

6 THE COURT: And they won't be taking directions from
7 him.

8 MS. LAMBERT: In addition, --

9 THE COURT: The term sheet is they won't be taking
10 directions from him.

11 MS. LAMBERT: Your Honor, there is no evidence before
12 the Court today that Mr. Dondero has entered a stipulation.
13 This is part of the problem. This continues --

14 THE COURT: Well, if he doesn't, in five minutes the
15 Committee is going to be filing their trustee motion, right?

16 MS. LAMBERT: Well, then we haven't saved any time or
17 any money. This is the whole issue. They have to put on
18 evidence that this is a resolution of issues. We're going to
19 have the motion to appoint a Chapter 11 trustee either way.

20 THE COURT: All right. Well, we did have the
21 evidence of Mr. Sharp. Would you like to cross-examine him at
22 this point?

23 MS. LAMBERT: Your Honor, I would like to put the
24 U.S. Trustee's exhibits into evidence and then cross-examine
25 him.

1 THE COURT: All right. Your exhibits?

2 MR. POMERANTZ: Your Honor, we would object to any
3 exhibits. The Trustee has not filed an exhibit list.

4 MS. LAMBERT: Your Honor, this matter was set on an
5 expedited basis and the Court does not require exhibit and
6 witnesses lists when a matter is filed on an expedited basis.
7 It's impossible, when a response is filed at 5:00 o'clock the
8 evening before and supplements are made in the morning of the
9 hearing, for the U.S. Trustee to put on a witness and exhibit
10 list.

11 MR. POMERANTZ: Your Honor, we were here on the 19th.
12 We set out a briefing schedule. And maybe it was a couple
13 days short of normal notice. Ms. Lambert agreed to issue
14 discovery by a certain date, and she at no point said that
15 because there was 13 days' notice as opposed to longer period
16 that she couldn't comply and provide a witness list.

17 We provided with a witness list. We provided an exhibit
18 list. The Trustee's effort and attempt to now submit exhibits
19 and rely on maybe there were some changes this morning, that
20 just doesn't cut it, and that's not fair and that's not due
21 process.

22 THE COURT: Okay. I sustain the objection. The
23 exhibits won't be admitted since there was no exhibit list.

24 MS. LAMBERT: Your Honor, I do not have an exhibit
25 list from them. And they --

1 THE COURT: Well, they haven't offered any.

2 MS. LAMBERT: They put on new exhibits this morning.
3 The exhibits that the U.S. Trustee has are all things that
4 they are familiar with.

5 THE COURT: Let me back up. They didn't introduce
6 any exhibits. They --

7 MS. LAMBERT: But they introduced the declaration,
8 they introduced the supplements to the agreement that were
9 drafted this morning, they've introduced the new corporate
10 resolutions, all of which they handed me this morning.

11 THE COURT: All right. Well, the declaration of Mr.
12 Sharp, it's two pages long. It is, I don't think, any kind of
13 surprise information.

14 MS. LAMBERT: Your Honor, --

15 THE COURT: I'll allow you to cross-examine him.

16 MS. LAMBERT: -- the U.S. Trustee's exhibits are no
17 surprise, either. The *Acis* opinion is no surprise to anybody
18 in this courtroom.

19 THE COURT: Okay. Well, what are your exhibits?

20 MS. LAMBERT: The --

21 THE COURT: I probably should have asked.

22 MS. LAMBERT: The exhibits are the *Acis* opinion, the
23 arbitration awards or the determinations, both the partial and
24 the final, and the SEC's original judgment. There are four
25 exhibits.

1 THE COURT: All right. Well, Mr. Pomerantz, what
2 would you like to say? One of them I have obviously seen,
3 since I wrote it.

4 MR. POMERANTZ: Yes, you've written it. You wrote
5 it.

6 (Laughter.)

7 MR. POMERANTZ: Your Honor, I think this is a tempest
8 in a teapot. The Committee's brief that it filed in
9 opposition to the CRO retention, the ordinary course
10 protocols, and the cash management motion had a litany of
11 description of the Redeemer litigation, of the SEC litigation.
12 There are plenty of bad facts out here. Okay? We have an
13 interim order to seal. There was no hearing set today for our
14 final hearing.

15 The Trustee has objected to that order, and I suspect that
16 will be heard on the 21st. We don't think it's appropriate to
17 introduce the Redeemer award. However, we have read the
18 redacted provisions or portion of the U.S. Trustee's brief,
19 and we have no problem if the U.S. Trustee limits its argument
20 to the redacted portion in presenting that to the Court.

21 In other words, we don't believe that the few sentences
22 that were redacted need to be redacted.

23 However, to the extent they intend to submit the
24 arbitration award, we don't think it's appropriate, we don't
25 think it's necessary, we think Your Honor hit it right, that

1 the issues today are not whether there's mismanagement at the
2 Debtor. Okay?

3 The U.S. Trustee's position is, notwithstanding this new
4 structure, it doesn't work. She has a trustee motion on. She
5 can argue on the 21st that it doesn't work. Nobody is
6 prejudicing her right to do so.

7 We think it's prejudicial, it's unfair, it's procedurally
8 improper to submit the Redeemer arbitration award and to allow
9 the Trustee to do anything other than describe exactly what
10 she has in her pleading.

11 THE COURT: Okay. I sustain the objection to those
12 exhibits. Again, I've read them. They're in my brain. I
13 wrote one of them. But I will allow you to cross-examine Mr.
14 Sharp. So, Mr. Sharp, would you please come to the witness
15 stand? Please raise your right hand.

16 BRADLEY SHARP, DEBTOR'S WITNESS, SWORN

17 THE COURT: All right. Please be seated.

18 MS. LAMBERT: To clarify, Your Honor, has the Court
19 considered the *Acis* opinion and the arbitration opinions based
20 on judicial notice?

21 THE COURT: And we're doing a lot of hair-splitting
22 here. I'm just letting you know I -- the facts are in my
23 brain. You can't extract them from my brain. Okay?

24 MS. LAMBERT: Okay.

25 THE COURT: I know there have been a lot of bad

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1 things, arguably bad things. But to me, the real issue here
2 today is whether this framework that has been heavily
3 negotiated with the Committee reflects reasonable business
4 judgment on the part of the Debtor, is a fair and equitable
5 resolution of the Committee's, you know, arguments in favor of
6 a trustee, and whether this makes, you know, sense going
7 forward to allow this Debtor to go forward without a trustee.
8 Okay?

9 So I really think that the evidence you want is not
10 terribly relevant. We technically aren't here on a trustee
11 motion today. We're here on whether a new board and the
12 terms, the protocols suggested, reflect reasonable business
13 judgment and reflect a fair compromise of arguments the
14 Committee has raised. All right? So I don't know how much
15 more clear I can make that. I guess the technical answer is
16 I'm not taking judicial notice of those things for purposes of
17 today.

18 All right. You may proceed.

19 CROSS-EXAMINATION

20 BY MS. LAMBERT:

21 Q Mr. Strand, can you state your name for --

22 A Sorry. Bradley Sharp, S-H-A-R-P.

23 Q Sharp. Mr. -- oh, sorry.

24 A No relation to Strand.

25 Q All right. Strand is the general partner of the Debtor,

003335

1 right?

2 A That is correct.

3 Q And there has been no change in the board of the Debtor
4 except Mr. Dondero's resignation; is that right?

5 A Well, it's a little different, because the -- Strand is
6 the general partner of the Debtor.

7 Q Yes.

8 A So the new board will be acting and in control of the
9 Debtor.

10 Q Yes. And there is -- Strand is a non-debtor, correct?

11 A That is correct.

12 Q And the stock of the non-debtor, Strand, is owned by
13 Dondero?

14 A Mr. Dondero owns Strand Advisors.

15 Q In its entirety?

16 A That is correct.

17 Q So the board will owe a fiduciary duty to Mr. -- to Mr.
18 Dondero?

19 A The board will have a fiduciary duty to the Debtor and to
20 Strand Advisors.

21 Q All right.

22 A Their duty is to the entity.

23 Q The -- Strand, as the general partner, as an entity, owes
24 a fiduciary duty to the Debtor, right?

25 MR. MORRIS: Objection to the extent it calls for a

1 legal conclusion.

2 THE COURT: Sustained.

3 BY MS. LAMBERT:

4 Q Do you know?

5 A As a lay person. I'm not an attorney.

6 Q Okay. So you don't know what the fiduciary roles of the
7 board will be; is that right?

8 A Well, the fiduciary board will be acting -- you know,
9 looking at it from my perspective as the chief restructuring
10 officer, the new board will be acting as the Debtor-in-
11 Possession. And, you know, they will be directing the Debtor-
12 in-Possession. You know, the Debtor-in-Possession has duties
13 to all parties in interest, and they will be directing the
14 Debtor. They will be directing me as CRO.

15 Q And, in addition, there may be a CEO, right?

16 A That is contemplated, correct.

17 Q It is contemplated? It --

18 A It is -- it is an option that the board has if they think
19 a CEO is necessary.

20 Q But you don't know whether a CEO is going to be appointed
21 or not?

22 A That's up to the board.

23 Q And you don't know what the compensation for that
24 individual might be, right?

25 A Again, that's up to the board.

1 Q Mr. Dondero is going to be an employee of the Debtor,
2 right?

3 A That's correct.

4 Q And Mr. Dondero started the Debtor, correct?

5 A I believe so.

6 Q And he also started Strand, right?

7 A I believe that's correct.

8 Q And he is also in control of a number of entities that the
9 Debtor does business with; is that right?

10 A That is correct.

11 Q Mr. Ellington is going to remain on with the Debtor?

12 A That -- Mr. Ellington is an employee. All employees are
13 now subject to the board.

14 Q Okay. And Mr. Ellington's role with the Debtor is what?

15 A He is general counsel with the Debtor.

16 Q And there are other in-house attorneys with the Debtor,
17 right?

18 A That's correct.

19 Q And who else is there currently?

20 A I don't have the list in front of me, you know, the
21 employee list. As of now, because obviously this is still --
22 hasn't been effected, so the board has not made any decisions
23 with respect to any employees going forward.

24 Q And the CFO remains the same?

25 A Yeah, that is, again, as of now. I don't know what the

1 board is going to do, if anything.

2 Q Do you have any anticipation of what you would recommend
3 to the board regarding the CFO?

4 A You know, I have many recommendations I have not made to
5 the board yet. I just met them this morning.

6 Q Are you aware that historically this Court has found that
7 the lawyers provided bad advice to the Debtor?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Sustained.

10 BY MS. LAMBERT:

11 Q Do you have any knowledge about whether there have been
12 findings that the law firm gave erroneous advice to the
13 Debtor? Or, I mean, the in-house counsel gave erroneous
14 advice.

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Sustained.

17 MS. LAMBERT: Your Honor, I'm asking for the
18 foundation.

19 THE COURT: Rephrase.

20 BY MS. LAMBERT:

21 Q Do you -- are you aware of any concerns about the in-house
22 counsel?

23 A Yes.

24 Q What is your knowledge?

25 A I have read the rulings from this Court.

1 Q And what is your understanding of those rulings?

2 A I don't recall specifically. I read that early on when I
3 was first employed. But there have been concerns with respect
4 to, you know, management of the Debtor.

5 Q As the CRO, have you made any recommendations to change
6 employees to date?

7 A As of now, I don't have a -- the board. You know, the
8 board has just been employed. We have not made
9 recommendations up to this point. We are still -- obviously,
10 have been evaluating our position and what needs to happen. I
11 think it's important for the Debtor at this time, a little
12 stability would be a good thing for -- until we develop the
13 direction going forward.

14 Q Are you familiar with the compensation terms for the
15 directors?

16 A Yes.

17 Q And the directors are employees of Strand but paid by the
18 Debtor; is that right?

19 A Oh, I'm not sure they're employees of Strand, but they are
20 paid by the Debtor, their compensation. That's correct.

21 Q And yet the compensation is technically through Strand,
22 right?

23 A They -- they are. They have to act through the general
24 partner of the Debtor because of the corporate structure.

25 Q One of the portions of the agreement is that the Committee

1 acquires litigation claims. Are you familiar with that?

2 A I am.

3 Q Have you parsed out which litigation claims those might be
4 at this point?

5 A I think the agreement says they have litigation claims
6 against insiders and related parties. So I don't know what
7 those individual claims are. I don't know what exists.

8 Q Are you aware that the Committee obtains the attorney-
9 client privilege and work product privilege?

10 A Yeah. Subject to the terms of those agreements, correct.

11 Q Have you gone through the documents and determined which
12 ones would fall on -- which attorney files would fall on which
13 side?

14 A Not as of yet.

15 Q Have you been taking direction from Mr. Dondero?

16 A We've had -- I've had limited interaction with Mr. Dondero
17 since my retention. You know, we have been complying with the
18 protocols that we had been negotiating with the Committee and
19 providing information to the Committee. We have been, as a
20 result of those protocols, instructing management of the
21 company on compliance with those protocols. So they have
22 brought to us transactions that they would like to do. We
23 have reviewed those transactions and compared it to the
24 proposed protocols and have been enforcing those. So if
25 management has asked to do a transaction that does not meet

1 within those protocols, we have been declining the
2 transaction. And that -- you know, the company has agreed
3 with that decision and accepted that decision.

4 Q When you say management, who are you -- to whom are you
5 referring?

6 A You know, the whole management team at the company. In-
7 house counsel. The CFO. You know, I've had limited
8 interaction with Mr. Dondero. One interaction was he did
9 question one of my decisions that I made. We discussed it and
10 he accepted my conclusion.

11 Q You're at the Debtor every day?

12 A My team is.

13 Q You are not?

14 A I have had some travel restrictions due to a medical
15 issue, but I have three of my team there every day.

16 Q Is Mr. Dondero there every day?

17 A I don't know. I don't think so. In the few days I'm
18 there, I've not seen him.

19 Q Is Mr. Ellington there every day?

20 A No.

21 Q Who on the management team is there every day?

22 A You know, our primary interaction is with Isaac Leventon,
23 Frank Waterhouse, the CFO. You know, primary interaction, you
24 know, with David Klos, who is the controller, in dealing with
25 the financial issues.

1 Obviously, we spend a lot -- my team spends a lot of time
2 with the head of compliance.

3 Q Were you surprised by this addition that Mr. Dondero would
4 remain as an employee?

5 A I can't say I was surprised. It is an issue that we
6 struggle with, given the nature of this company's business.
7 You know, I see the change in the language and, you know, as
8 CRO, I am comfortable with it.

9 Q So, as CRO, if Mr. Dondero is necessary now, you recognize
10 that he was necessary three weeks ago?

11 A I'm not saying that he's necessary. I'm saying that it is
12 important for the board to be able to make that decision.

13 Q And it wasn't important when the settlement was filed?

14 A It was the -- it was a struggle at the time. I was
15 concerned at the time it was filed the unintended consequences
16 of Mr. Dondero resigning completely and disappearing, because
17 there are a significant number of funds that the Debtor deals
18 with related parties that are controlled by Mr. Dondero, and I
19 was worried about the financial impact with it. I knew this
20 issue was important to the Committee. And if that's something
21 that the Debtor agreed to and the Committee agreed to, so be
22 it.

23 You know, I think the last-minute compromise is acceptable
24 and appropriate. I think the language as negotiated is going
25 to be very helpful to the Debtor. And I think, then, it's up

1 to the board to make the decision, with full knowledge on
2 what's the best avenue forward.

3 Q And the language as negotiated was added because, in the
4 past, there have been problems with Mr. Dondero changing or
5 terminating agreements with related entities, right?

6 A There was that -- I've seen that -- issues raised in the
7 *Acis* case.

8 MS. LAMBERT: No further questions.

9 THE COURT: All right. Any redirect?

10 MR. POMERANTZ: Not from the Debtor.

11 THE COURT: Anyone have examination? No? All right.
12 Thank you, Mr. Sharp. You're excused.

13 THE WITNESS: Thank you.

14 (The witness steps down.)

15 THE COURT: All right. Are we going to have any
16 other, I guess, witnesses, evidence?

17 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

18 MR. POMERANTZ: No, Your Honor. I just had a couple
19 points. One, Ms. Lambert mentioned that she hadn't seen a
20 copy of the stipulation referred to, which was prohibiting Mr.
21 Dondero from terminating the board. There's a good reason for
22 her not having seen it. I hadn't provided it to her. It just
23 came this morning, right before the hearing. I have one
24 signed copy. I have other copies that I could represent, even
25 though they're unsigned, are the same, so I would like to

1 provide Your Honor. I'll keep the signed copy but provide you
2 with an unsigned copy, but it's the same, and also give one to
3 the U.S. Trustee.

4 THE COURT: But you've got a signature of Mr. Dondero
5 on that?

6 MR. POMERANTZ: Yes, I do.

7 THE COURT: Okay.

8 MR. POMERANTZ: May I approach?

9 THE COURT: You may. Thank you.

10 MR. POMERANTZ: Your Honor, maybe for the record it
11 would be appropriate for me to show Your Honor the signature,
12 so you could say that you've seen it?

13 THE COURT: Yes. Yes.

14 MR. POMERANTZ: May I approach again?

15 THE COURT: You may. (Pause.) Okay. Thank you.

16 The record will reflect I've seen Mr. Dondero's signature.

17 MR. POMERANTZ: Your Honor, one of the threads that
18 Ms. Lambert said to Your Honor is that there were employees
19 still remaining at the Debtor and that those employees may
20 have been involved in some wrongdoing.

21 I submit, Your Honor, if Your Honor appointed a Chapter 11
22 trustee today, what would a Chapter 11 trustee do? A Chapter
23 11 trustee wouldn't terminate every employee at the Debtor. A
24 Chapter 11 trustee, if he or she was doing what they should
25 do, would go down to the company, would interview members of

1 the company, senior management, and decide who should stay on
2 and who should not stay on.

3 That, I submit, Your Honor, is exactly what this board
4 will do. So the concept of there being something different
5 done, if you have a board here or not, I don't think makes
6 sense.

7 And lastly, Your Honor, Ms. Lambert expressed the issue as
8 whether it's fair and equitable to resolve the U.S. Trustee
9 issues in this way. I don't think that's the standard. The
10 only fair and equitable I understand is in plan confirmation.
11 I think Your Honor said it straight, which is: Is this a
12 valid exercise of the Debtor's business judgment and is it an
13 appropriate compromise of controversy? That is the standard.
14 And, again, we have always acknowledged that, notwithstanding
15 how Your Honor rules today, the Trustee reserves the right to
16 come back to court and argue a trustee is appropriate on the
17 21st.

18 We believe, Your Honor, that many of the cases, in this
19 circuit and elsewhere, look to the continuing management of
20 the company and whether management issues have been addressed
21 as a significant factor in determining whether a trustee is
22 appointed. And it'll come as no surprise, of course, if Your
23 Honor grants our motion today, this will be a lynchpin of our
24 opposition to the trustee motion.

25 But, again, those issues are for another day, and we

1 believe that we have satisfied our standard, and we request
2 that Your Honor approve the motion.

3 THE COURT: All right. Other closing arguments?

4 CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES TRUSTEE

5 MS. LAMBERT: Yes, Your Honor. As the Debtor
6 acknowledges, the Court has no jurisdiction over Strand. This
7 is a complicated structure. A trustee avoids all of the
8 complications involved in the Court exercising jurisdiction
9 over an entity that it doesn't have jurisdiction over.

10 To enter a stock stipulation related to a non-debtor is
11 highly irregular, and Mr. Dondero is the person behind that.
12 It has happened in cases where people have been in these kinds
13 of structures, like that FSLIC used to put in these kinds of
14 structures -- there's published opinion, the *Goubert*
15 (phonetic) case -- where the person continued to exercise
16 control even though they had a stock trust.

17 The Court needs a person beholden to the Court. The
18 evidence is that, historically, this Debtor has entered into
19 things that breached its fiduciary duty and resulted in self-
20 dealing and liability for the Debtor. The evidence is that
21 these go beyond Mr. Dondero and the Court does not have
22 jurisdiction over his stock. The Court does not have
23 jurisdiction over Strand. The board members of Strand are not
24 employees of the Court, they're employees of Strand, a non-
25 debtor. These members have a fiduciary duty to Strand.

1 Yes, Strand is the general partner of this Debtor and has
2 a fiduciary duty, but all these fiduciary duties intermix in
3 ways that result in conflicts for this case. These conflicts
4 are unnecessary. The Court could just appoint a trustee who
5 only owes a fiduciary duty to the members and creditors of
6 this case, as well as the next (inaudible).

7 There is no evidence that this is cheaper. There is no
8 evidence that this is a total resolution, because issues are
9 left open, such as whether or not a CEO is going to be
10 appointed, how much that person is going to cost.

11 Finally, Your Honor, the sealing has constrained the
12 ability of some of the parties to understand what's going on
13 in this case. And that is material to the argument about who
14 is here, because we don't know who -- that all the people who
15 would have participated in this discussion had an opportunity
16 to participate in it.

17 Yes, the creditors have a fiduciary duty, and I believe
18 that they represented to the best of their ability, but they
19 are not charged with the issues that others are charged with,
20 such as the SEC.

21 There is no evidence that the officers are disinterested.
22 Rather, the new officers are going to be conflicted by the
23 nature of their position. There's no evidence that it's
24 cheaper. And a trustee, if appointed, could be appointed on
25 an hourly basis. This is a Chapter 11 trustee.

1 They argue that the trustee would not have the knowledge,
2 and yet they've been able to find three candidates to serve
3 for the board who are qualified. So there's no evidence that
4 it would not be better to have a trustee for that reason as
5 well.

6 The evidence is that, historically, the Redeemer Committee
7 was set up to prevent these kinds of transactions and have
8 oversight. Historically, the evidence is it did not work.
9 For this reason, the statute provides a solution, and the
10 Court should impose it. The Court should deny this motion as
11 not being in the interest of the estate, as not being a sound
12 exercise of discretion, because it's really the discretion of
13 Strand, not the Debtor, and it will remain the discretion of
14 Strand, not the Debtor.

15 Thank you.

16 THE COURT: All right. Anyone else have comments?

17 MR. POMERANTZ: Your Honor, just a couple of minor
18 points.

19 THE COURT: Okay.

20 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

21 MR. POMERANTZ: Ms. Lambert started by saying the
22 Court doesn't have jurisdiction over Strand. I know I just
23 handed her the stipulation, but the last paragraph of the
24 stipulation specifically says that the parties stipulate and
25 agree that the Court shall have exclusive jurisdiction over

1 all matters arising from or related to the interpretation and
2 implementation of this stipulation and the adjudication of any
3 parties breaching the stipulation.

4 So the Court does have jurisdiction now that the
5 stipulation has been signed, assuming that the Court enters
6 it, so I think that addresses that issue.

7 Your Honor, the evidence of the disinterestedness of the
8 members of the board, we've provided their *curriculum vitae*.
9 We've made representations that they have no connections with
10 the Debtor or any of the parties in interest. We don't think
11 that, just because they become appointed and become a director
12 of Strand, that that renders them disinterested [sic], and we
13 think that the Trustee's arguments that being at a different
14 level creates different duties is just not -- is not accurate.
15 I don't think that the Committee would have had any appetite
16 for this type of structure had they believed that each of
17 these board members wouldn't feel that their fiduciary duty
18 was to the Debtor's estate. And they all are seasoned
19 restructuring people from different aspects, all understand
20 their fiduciary duties well, and all are prepared to carry
21 them out.

22 Lastly, the Trustee points to the historic issues, and
23 specifically mentioned the Redeemer Committee and that
24 structure didn't work. Well, I think it speaks volumes, Your
25 Honor, that not only the Redeemer Committee, are they on the

1 Committee and the Committee has supported this motion, but the
2 Redeemer Committee hasn't come to Your Honor and said that,
3 notwithstanding that structure that may or may not have been
4 effective, this structure is ineffective.

5 And at the end, Your Honor, the Trustee is trying to
6 replace the business judgment of the Debtor. The Debtor is
7 entitled to deference of the judgment, again, focusing on the
8 correct standard. And, again, the Trustee will have her day
9 in -- his day in court in connection with the ultimate trustee
10 motion on the 21st.

11 Thank you, Your Honor.

12 THE COURT: Anyone else?

13 All right. Well, the Court is going to note a few things
14 as part of its ruling, obviously. The new proposed
15 independent board members for Strand, Strand obviously being
16 the general partner of the Debtor, Highland -- Mr. James
17 Seery, Mr. John Dubel, and retired Judge Russ Nelms -- are
18 highly-qualified individuals with respect to the industry.
19 Some of them with respect to restructuring. Certainly, in the
20 case of retired Judge Nelms, with regard to fiduciary duties
21 and the Bankruptcy Code requirements.

22 These three individuals were chosen by the Creditors'
23 Committee, whose constituency is broad, whose constituency is
24 owed well over \$100 million. And they were chosen by the
25 Committee after literally months of negotiation. Obviously,

1 this bankruptcy was filed in October, and it appears to this
2 Court, from the representations of counsel, that from the very
3 beginning of the case -- the Committee was, I guess, appointed
4 a week or two after the case was filed in October -- there's
5 been haggling over corporate governance of this Debtor.

6 So we have highly-qualified individuals. We have
7 individuals who were chosen by the well-constituted Creditors'
8 Committee. And what has been proposed to the Court is that it
9 is these independent directors that would have sole and
10 exclusive management and control of the Debtor.

11 An interesting jurisdictional argument has been made, and
12 it's one of those arguments that, frankly, you know, sounds
13 good when you first hear it, but when you really drill down
14 about the governance structure here, I mean, obviously, this
15 Debtor is a limited partnership and it acts through a general
16 partner. It's the general partner that controls the Debtor
17 entity. And while Strand Advisors, Inc., the general partner,
18 may not technically be in bankruptcy, it's the structure of
19 these entities such that it controls the Debtor. So the
20 jurisdictional argument, when you drill down, feels a little
21 off.

22 Moreover, we have language in the stipulation where Strand
23 is stipulating and consenting, if you will, to this Court's
24 exercise of jurisdiction over it.

25 There are many things about the compromise here that have

1 very compelling appeal. Among them, certainly, the Committee
2 that's negotiated this term sheet retains the right at any
3 time to move for a Chapter 11 trustee if it believes there are
4 grounds. The Committee is granted standing to pursue estate
5 claims, certain estate claims right off the bat, without
6 having to come back and ask the Court, without having to rely
7 on the Debtor to pursue that. There are document production
8 provisions, document preservation provisions, a shared
9 privilege negotiated, that are very powerful tools for the
10 Committee, and certainly operating protocols that have been
11 negotiated regarding the Debtor's operations that are very
12 powerful tools for the Committee.

13 I said many times during the *Acis* case -- those who were
14 here will remember -- that the company, *Acis*, was not a great
15 fit for Chapter 11. Lots of companies aren't great fits for
16 Chapter 11, I suppose, but the kind of business it was was
17 kind of tough to maneuver in Chapter 11. Human beings and
18 their expertise create value. And while we had a Chapter 11
19 trustee, a stranger come in and take control over *Acis*, you
20 know, there's great uncertainty whether that stranger is going
21 to be able to preserve value and have the smooth transition
22 into Chapter 11 that's really going to be the best fit.

23 Here, as I've said earlier, the legal standard I view as
24 controlling here is 363 and whether what has been proposed
25 reflects reasonable business judgment. Is there a sound

1 business justification for proposing the independent slate of
2 directors at the GP level for the Debtor, the protocols, the
3 negotiation with the Committee, the document sharing, the
4 standing given to them? Does all of this reflect reasonable
5 business judgment? And I find, quite clearly, it does. I
6 find it to be a pragmatic solution to the Committee's concerns
7 about existing management and control.

8 And I think I used the words "fair and equitable," not
9 just Ms. Lambert, because it is also presented to the Court as
10 a 9019 compromise of disputes with the Committee, and we
11 traditionally use a fair and equitable and best interest of
12 the estate analysis in this context. So, to the extent that
13 applies, I do find this a fair and equitable way of resolving
14 the disputes with the Committee, and I find this to be in the
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet
17 as it's been presented, the various terms therein, the
18 exhibits thereto. I'm specifically approving the new
19 independent directors, the document management and
20 preservation process, the standing to the Committee over
21 certain of the estate claims, the reporting requirements, the
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the
24 role of Mr. Dondero. When Ms. Patel got up and talked about
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of
2 the term sheet, the sentence reading, "Mr. Dondero shall not
3 cause any related entity to terminate any agreements with the
4 Debtor." Her statement that that was important, it really
5 resonated with me, because, you know, as I said earlier, I
6 can't extract what I learned during the *Acis* case, it's in my
7 brain, and we did have many moments during the *Acis* case where
8 the Chapter 11 trustee came in and credibly testified that,
9 whether it was Mr. Dondero personally or others at Highland,
10 they were surreptitiously liquidating funds, they were
11 changing agreements, assigning agreements to others. They
12 were doing things behind the scenes that were impacting the
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,
15 but I am going to require that language to be put in the
16 order. Okay? So we're not just going to have an order
17 approving the term sheet that has that language. I want
18 language specifically in the order. You know, you can figure
19 out where the appropriate place to stick it in the order is,
20 but I want specific language in here regarding Mr. Dondero's
21 role. I also -- the language in there that his role as an
22 employee of the Debtor will be subject at all times to the
23 supervision, direction, and authority of the Debtors, I want
24 that language in there as well. Let's go ahead and put the
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want
4 it crystal clear that if he violates these terms, he's
5 violated a federal court order, and contempt will be one of
6 the tools available to the Court. He needs to understand
7 that. Mr. Ellington needs to understand that. You know, if
8 there are any games behind the scene, not only do I expect the
9 Committee is going to come in and highlight that to the Court
10 and file a motion for a trustee or whatever, but we're going
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a
16 clean redline of the order, of course not including the
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload
20 and hope to get an order signed by Your Honor today, if you're
21 around. But to go over the other changes, the changes to
22 Jefferies, the other language changes I discussed before. I
23 gave a copy to Ms. Lambert and to the Committee. May I
24 approach with a --

25 THE COURT: You may.

1 MR. POMERANTZ: Thank you.

2 THE COURT: Okay. All right. (Pause.) All right.

3 The form of order looks fine to me. Obviously, you'll add the
4 Dondero-related language, and we may have further wording
5 tweaks negotiated with the CLO Issuers. But, again, I approve
6 all of this. I didn't say on the record the compensation, but
7 certainly I am approving that as reasonable. I expect these
8 three directors are going to be working very, very hard. And
9 so, as you said, not 50,000-foot level monitoring, actually
10 rolling up sleeves on-site, so I think the compensation is
11 reasonable.

12 MR. POMERANTZ: Thank you, Your Honor. We will
13 submit an order shortly that includes Your Honor's language
14 requested.

15 THE COURT: Okay.

16 MR. POMERANTZ: Are you around this afternoon?

17 THE COURT: I am around, --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- so just pick up the phone or send an
20 email to Traci, my courtroom deputy, --

21 MR. POMERANTZ: Yes.

22 THE COURT: -- so she can tell me, "It's in your
23 queue to sign."

24 MR. POMERANTZ: She has been extremely helpful and
25 responsive.

1 THE COURT: Good. I'm glad to hear that.

2 MR. POMERANTZ: Yes.

3 THE COURT: Now, as far as future scheduling, I did
4 have her sitting by, listening, in case we needed to discuss
5 anything. Obviously, we're going to have a kind of a
6 carryover placeholder on the 21st as part of the trustee
7 motion hearing for any remaining issues with the CLO Issuer.
8 And, you know, that's just a placeholder if necessary to hear
9 language controversies.

10 My courtroom deputy was concerned, because you have a lot
11 of pending motions that have just sort of sat there pending
12 because this was the big issue, right? She wants to make sure
13 she sets anything you need a setting on. And I don't know if
14 you want to discuss that today or go back as a group and --

15 MR. POMERANTZ: We're happy to -- I think, you know,
16 I think that's appropriate to do. We had the motion to
17 appoint the CRO.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: That was pending. That gets resolved
20 by this motion. We will submit an order --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- with the new agreement that was
23 attached to the term sheet.

24 We had the cash management order which Judge Sontchi had
25 issued an interim order. We will have a final order with

1 respect to that.

2 THE COURT: Okay.

3 MR. POMERANTZ: We will be withdrawing the motion to
4 approve ordinary course protocols which was originally on for
5 hearing.

6 THE COURT: Uh-huh.

7 MR. POMERANTZ: I think on the 21st we have currently
8 set a motion to approve the retention or Mercer, which is the
9 Debtor's compensation consultant, --

10 THE COURT: Uh-huh.

11 MR. POMERANTZ: -- and an analog motion that was
12 originally set for today with respect to insiders, non-
13 insiders, but is on for non-insiders and insiders on the 21st,
14 --

15 THE COURT: Uh-huh.

16 MR. POMERANTZ: -- which is the motion to approve
17 bonuses.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: Of course, the Debtor's new board is
20 going to be wanting to very carefully review that. And we are
21 going back and today having our first new board meeting with
22 the board to start bringing them up to speed. But we
23 presently intend, subject to, obviously, their direction, to
24 go forward on the 21st.

25 We also have the retention of Lynn Pinker and Foley

1 Gardere, which had been filed and was brought on for hearing
2 previously. It had been delayed, again, for the board to look
3 at the issues. We expect to have that on for the 21st. And I
4 believe, I believe that would be it.

5 MS. LAMBERT: No, Your Honor, the --

6 MR. POMERANTZ: No?

7 MS. LAMBERT: -- U.S. Trustee has objected to the
8 motion to seal, which was the second item on the Wilmington
9 Court's docket that got -- and it got transferred here. The
10 U.S. Trustee has also objected to the motion for protective
11 order. The issues overlap. We request that they be set as
12 quickly as possible.

13 MR. POMERANTZ: We're happy to set both of those for
14 the 21st as well.

15 THE COURT: All right. So I think what I'm going to
16 ask you to do is just get on the phone, one of you, with Traci
17 and just make sure she's clear on everything you need set on
18 the 21st, and then you can do a big notice of hearing, just
19 kind of listing all of these matters.

20 MR. POMERANTZ: Your Honor, with respect to the CRO
21 motion -- order and the cash management order, I was wondering
22 if it would be helpful for my colleague Mr. Demo to go over
23 the amendments to those orders -- we would like those to be
24 entered today -- to see if Your Honor has any questions.

25 THE COURT: All right. That would be good. Mr.

1 Clemente, did you have something first?

2 MR. CLEMENTE: Just very quickly, Your Honor. We had
3 filed our retention applications for the Committee
4 professionals and filed CNOs, and your office had indicated
5 you wanted to get through today, which I totally understand,
6 but I just wanted to make sure that Your Honor didn't lose
7 sight of those. I don't believe there were any objections to
8 those, but I think your intent was probably to deal with them
9 after today, but I just wanted to --

10 THE COURT: All right. Yes, it was to get through
11 today.

12 MR. CLEMENTE: Yes.

13 THE COURT: So, since you've had plenty of time run
14 on those, you can submit orders and I'll get them signed in
15 chambers.

16 MR. CLEMENTE: Thank you very much, Your Honor.
17 Appreciate it.

18 THE COURT: Okay. Thank you. Counsel?

19 MR. DEMO: Good afternoon, Your Honor. Greg Demo,
20 Pachulski Stang, on behalf of the Debtor. I'm happy to keep
21 this as brief as possible, but I think walking through the
22 cash management motion has the most changes.

23 THE COURT: Okay.

24 MR. DEMO: The biggest change there, and we had
25 discussed this with the United States Trustee in Delaware, is

1 that in our initial motion we disclosed that the Debtor had
2 bank accounts at BBVA and then also at NexBank. Those
3 accounts have been moved to East West Bank, --

4 THE COURT: Okay.

5 MR. DEMO: -- which is a party to a depository
6 agreement with the United Stated Trustee.

7 THE COURT: Okay.

8 MR. DEMO: The only exception to that is a
9 certificate of deposit that is at NexBank. It's a relatively
10 small amount of money. It's \$135,000. But it also is pledged
11 as collateral on a lease. So that has been -- proven
12 problematic to move. The Trustee for Delaware did say that
13 was okay. I would hope that the Trustee for Texas would agree
14 with that. We did disclose it in the initial debtor
15 interview.

16 But those are the bank accounts. The bank accounts at
17 BBVA and NexBank, with the exception of that CD, were all
18 closed as of yesterday.

19 THE COURT: Okay.

20 MR. DEMO: So now we are going to be using East West
21 Bank for all operating accounts, all cash, going forward.

22 The other two accounts are the account at Jefferies, which
23 is the prime brokerage account.

24 THE COURT: Uh-huh.

25 MR. DEMO: That account, we are keeping open.

1 Obviously, there have been conversations with Jefferies that
2 are going to be reflected in the proposed order on the
3 settlement, but we do propose to keep the Jefferies prime
4 brokerage account open as well.

5 And then we filed a supplement for another prime brokerage
6 account that we have at a prime broker called Maxim Group.
7 That account has \$30 million in securities in it, give or
8 take, and then literally like \$100 in cash. The Debtor
9 considers that account more an investment than actual
10 operating account, but we would like to keep that account open
11 as well, just so it can continue holding those securities.

12 Jefferies and Maxim, neither of them are on the depository
13 list, so we are requesting a waiver of 345(b) for those two
14 accounts, and then also requesting a waiver of 345(b) with
15 respect to the certificate of deposit at NexBank.

16 THE COURT: Okay.

17 MR. DEMO: That's where we're at at cash management.
18 And I guess, sorry, one more thing. In the original cash
19 management motion, we had a series of intercompany
20 transactions that we disclosed, and we had gotten interim
21 relief from the Delaware court to make those payments up to a
22 hundred -- or, \$1.7 million. We are below that account, and
23 on a go-forward basis, all of those intercompany transactions
24 are getting subsumed into the settlement motion and the
25 operating protocols and all of that. But we are asking for

1 final relief on the intercompany transactions that we made
2 under the interim order.

3 THE COURT: Okay. All right. Who wishes to be heard
4 on this? I don't know how much discussion we've had outside
5 the courtroom on this.

6 MS. LAMBERT: We haven't -- normally, a bond would be
7 appropriate for the Jefferies and the other small account.
8 The estate is at risk on the CD, but it's not that much money.
9 It's not worth bonding. It'll be more expensive to bond it.

10 NexBank, as you know, Your Honor, is a bank where Mr.
11 Dondero is the CEO. So that was part of the reason that
12 NexBank was carved out. But the -- so I would like them to
13 bid bonds on the Jefferies and the other account. And if we
14 -- let's carry it on those issues so that we can see how
15 expensive bonding it would be, and if it's cost-prohibitive,
16 maybe we reconsider. But in the past, the bonds haven't been
17 very expensive, relatively.

18 MR. DEMO: We're happy to discuss that with the U.S.
19 Trustee. I mean, just for the record, the Jefferies account,
20 you know, does support a margin loan. It's \$80 million in
21 securities. It's \$30 million at Maxim. They're SIPC. I
22 mean, it's Jefferies and, you know, another large prime
23 broker. Again, we're happy to discuss it with the Trustee. I
24 don't know that it's necessary, but we will discuss it.

25 THE COURT: Okay. Well, you all can discuss it, and

1 if you have an unopposed order, an agreed order, --

2 MR. DEMO: Uh-huh.

3 THE COURT: -- you can upload it and I'll sign it.

4 Otherwise, if you need hearing time on the 21st, --

5 MR. DEMO: Okay.

6 THE COURT: -- we'll get it all figured out then and

7 --

8 MR. DEMO: Okay. All right.

9 THE COURT: -- resolve it then.

10 MR. DEMO: Thank you, Your Honor. And then I guess
11 the other motion is the CRO retention. This one should
12 hopefully be pretty brief. We are just filing a new proposed
13 order that attaches the engagement letter, as has been
14 modified by all of the settlement discussions. I believe the
15 Committee is on board with that, and it's consistent. It was
16 one of the attachments that you approved this morning in
17 connection with the settlement.

18 THE COURT: All right. Comments on that?

19 A VOICE: None, Your Honor.

20 THE COURT: Committee, you're good?

21 MS. LAMBERT: The U.S. Trustee had also objected to
22 the CRO motion, but it's some of the same issues that the
23 Committee raised. And the CRO, my understanding, is now not
24 an employee of the board but totally overseen by the board,
25 and with that, we can withdraw our objection.

1 THE COURT: All right. Very good. I'll sign your
2 order on the CRO, then.

3 MR. DEMO: Okay. Thank you, Your Honor.

4 THE COURT: All right. Well, if there's nothing
5 else, I'll be on the lookout for your orders. And, again, if
6 you could coordinate with Traci to make sure she's clear on
7 everything you need set on the 21st.

8 MR. POMERANTZ: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTE: Thank you, Your Honor.

11 MR. DEMO: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 11:54 a.m.)

14 --oOo--

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CERTIFICATE

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22

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

23

/s/ Kathy Rehling

12/10/2020

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

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EXHIBIT 3

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, February 2, 2021
) 9:30 a.m. Docket
Debtor.)
) CONFIRMATION HEARING [1808]
) AGREED MOTION TO ASSUME [1624]
)

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

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Official Committee of Unsecured Creditors: Matthew A. Clemente
SIDLEY AUSTIN, LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

1 APPEARANCES, cont'd.:

2 For Redeemer Committee of Terri L. Mascherin
3 the Highland Crusader JENNER & BLOCK, LLP
4 Fund: 353 N. Clark Street
Chicago, IL 60654-3456
(312) 923-2799

5 For Acis Capital Rakhee V. Patel
6 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
7 Dallas, TX 75201
(214) 745-5250

8 For UBS Securities, LLC: Andrew Clubok
9 LATHAM & WATKINS, LLP
555 Eleventh Street, NW,
10 Suite 1000
Washington, DC 20004
11 (202) 637-2200

12 For Patrick Daugherty: Jason Patrick Kathman
13 PRONSKE & KATHMAN, P.C.
2701 Dallas Parkway, Suite 590
14 Plano, TX 75093
(214) 658-6500

15 For HarbourVest, et al.: Erica S. Weisgerber
16 DEBEVOISE & PLIMPTON, LLP
919 Third Avenue
17 New York, NY 10022
(212) 909-6000

18 For James Dondero: Clay M. Taylor
19 John Y. Bonds, III
D. Michael Lynn
20 Bryan C. Assink
BONDS ELLIS EPPICH SCHAFFER
21 JONES, LLP
420 Throckmorton Street,
22 Suite 1000
Fort Worth, TX 76102
(817) 405-6900

23 For Get Good Trust and Douglas S. Draper
24 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
650 Poydras Street, Suite 2500
25 New Orleans, LA 70130
(504) 299-3300

1 APPEARANCES, cont'd.:

2 For Certain Funds and
3 Advisors:

Davor Rukavina
Julian Vasek
MUNSCH, HARDT, KOPF & HARR
500 N. Akard Street, Suite 3800
Dallas, TX 75201-6659
(214) 855-7587

5 For Certain Funds and
6 Advisors:

A. Lee Hogewood, III
K&L GATES, LLP
4350 Lassiter at North Hills
Avenue, Suite 300
Raleigh, NC 27609
(919) 743-7306

8 For the NexPoint
9 Parties:

Lauren K. Drawhorn
WICK PHILLIPS
3131 McKinney Avenue, Suite 100
Dallas, TX 75204
(214) 692-6200

11 For Scott Ellington,
12 Isaac Leventon, Thomas
13 Surgent, and Frank
Waterhouse:

Frances A. Smith
ROSS & SMITH, P.C.
Plaza of the Americas
700 N. Pearl Street, Suite 1610
Dallas, TX 75201
(214) 593-4976

15 For Scott Ellington,
16 Isaac Leventon, Thomas
Surgent, and Frank
17 Waterhouse:

Debra A. Dandeneau
BAKER & MCKENZIE, LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4875

18 For CLO Holdco, Ltd.:

John J. Kane
KANE RUSSELL COLEMAN LOGAN, P.C.
901 Main Street, Suite 5200
Dallas, TX 75202
(214) 777-4261

21 For Davis Deadman, Todd
22 Travers, and Paul Kauffman:

Jason Patrick Kathman
PRONSKE & KATHMAN, P.C.
2701 Dallas Parkway, Suite 590
Plano, TX 75093
(214) 658-6500

25

1 APPEARANCES, cont'd.:

2 For the United States
3 of America (IRS):

David G. Adams
U.S. STATES DEPARTMENT OF JUSTICE,
TAX DIVISION
717 N. Harwood Street, Suite 400
Dallas, TX 75201
(214) 880-2432

4
5
6 For Highland CLO Funding,
7 Ltd.:

Rebecca Matsumura
KING & SPALDING, LLP
500 West 2nd Street, Suite 1800
Austin, TX 78701
(512) 457-2024

8
9 For Crescent TC
10 Investors:

Michael S. Held
JACKSON WALKER, LLP
2323 Ross Avenue, Suite 600
Dallas, TX 75201
(214) 953-5859

11
12 For the Issuer Group:

Amy K. Anderson
JONES WALKER, LLP
811 Main Street, Suite 2900
Houston, TX 77002
(713) 437-1866

13
14
15 Recorded by:

Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

16
17
18 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

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1 DALLAS, TEXAS - FEBRUARY 2, 2021 - 9:38 A.M.

2 THE COURT: Good morning. Please be seated. All
3 right. We are ready to get started now in Highland Capital.
4 We have a confirmation hearing as well as a motion to assume
5 the non-residential real property lease at the headquarters.
6 All right. This is Case No. 19-34054. I know we're going to
7 have a lot of appearances today. I think we're just down to a
8 handful of objections, but I'm nevertheless going to go ahead
9 and get formal appearances from our key parties that we've had
10 historically in this case.

11 First, for the Debtor team, do we have Mr. Pomerantz and
12 your crew?

13 MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff
14 Pomerantz, along with John Morris, Ira Kharasch, and Greg
15 Demo, on behalf of the Debtor-in-Possession, Highland Capital.

16 THE COURT: All right. Good morning. All right.
17 For the Unsecured Creditors' Committee team, do we have Mr.
18 Clemente and others?

19 MR. CLEMENTE: Yes. Good morning, Your Honor.
20 Matthew Clements; Sidley Austin; on behalf of the Official
21 Committee of Unsecured Creditors.

22 THE COURT: All right. I'm actually going to call a
23 roll call for the Committee members who have obviously been
24 very active during this case. For the Redeemer Committee and
25 Crusader Fund, do we have Ms. Mascherin and her team?

1 (Pause.) Okay. We're -- if -- you must be on mute.

2 MS. MASCHERIN: Your Honor, I apologize.

3 THE COURT: Okay. Go ahead.

4 MS. MASCHERIN: I apologize, Your Honor. I was on
5 mute and could not figure out how to unmute myself quickly.

6 Terri Mascherin; Jenner & Block; on behalf of the Redeemer
7 Committee.

8 THE COURT: All right. Good morning.

9 All right. What about Acis? Do we have Ms. Patel and
10 others for the Acis team?

11 MS. PATEL: Good morning, Your Honor. Rakhee Patel
12 on behalf of Acis Capital Management.

13 THE COURT: Good morning.

14 All right. Mr. Clubok, I see you there for the UBS team,
15 correct?

16 MR. CLUBOK: Yes. Good morning, Your Honor.

17 THE COURT: Good morning.

18 All right. For Patrick Daugherty, I think I see Mr.
19 Kathman out there, correct?

20 MR. KATHMAN: Good morning, Your Honor. Jason
21 Kathman on behalf of Patrick Daugherty.

22 THE COURT: All right. Good morning.

23 All right. What about HarbourVest? Anyone on the line
24 for HarbourVest?

25 MS. WEISGERBER: Good morning, Your Honor. Erica

1 Weisgerber for HarbourVest.

2 THE COURT: All right. Very good.

3 All right. Well, I'll now, I guess, turn to some of the
4 Objectors that I haven't hit yet. Who do we have appearing
5 for Mr. Dondero this morning?

6 MR. TAYLOR: Good morning, Your Honor. Clay Taylor
7 of the law firm of Bonds Ellis Eppich Schaefer & Jones
8 appearing on behalf of Mr. Dondero. I have with me, of
9 course, Mr. Dondero, who is in the room with me. Dennis
10 Michael Lynn, John Bonds, and Bryan Assink are also appearing
11 on behalf of Mr. Dondero.

12 THE COURT: All right. Thank you, Mr. Taylor.

13 All right. For the Dugaboy Trust and Get Good Trust, do
14 we have Mr. Draper and others?

15 MR. DRAPER: Yes, Your Honor. This is Douglas Draper
16 on the line.

17 THE COURT: All right. Good morning.

18 MR. DRAPER: Good morning, Your Honor.

19 THE COURT: All right. What about what I'll call
20 Highland Fund, the Highland Funds and Advisors? Do we have
21 Mr. Rukavina this morning, or who do we have?

22 MR. RUKAVINA: Your Honor, good morning. Davor
23 Rukavina and Julian Vasek for the Funds and Advisors. I can
24 make a full appearance, but it's the parties listed on Docket
25 1670.

1 THE COURT: All right. Thank you, Mr. Rukavina.

2 All right. What about --

3 MR. HOGWOOD: Your Honor?

4 THE COURT: Go ahead.

5 MR. HOGWOOD: Your Honor, Lee Hogewood. I'm sorry,
6 Your Honor. Lee Hogewood is also here on behalf of the same
7 parties.

8 THE COURT: All right. Thank you, sir.

9 All right. What about NexPoint Real Estate Partners, HCRE
10 Partners?

11 MS. DRAWHORN: Good morning, Your Honor. Lauren
12 Drawhorn with Wick Phillips on behalf of NexPoint Real Estate
13 Partners, LLC. I'm also here on behalf of the NexPoint Real
14 Estate entities which are listed on Docket 1677, and NexBank,
15 which is -- their objection is 1676.

16 THE COURT: All right. Thank you.

17 All right. Let's cover some of the employees. I think I
18 see Ms. Smith out there. Are you appearing for Mr. Ellington
19 and Mr. Leventon?

20 MS. SMITH: Yes, Your Honor. Frances Smith with Ross
21 & Smith, along with Debra Dandeneau of Baker McKenzie, on
22 behalf of Scott Ellington, Isaac Leventon, Thomas Surgent, and
23 Frank Waterhouse.

24 THE COURT: All right. Could you spell the last name
25 of your co-counsel from Baker McKenzie? I didn't clearly get

1 that.

2 MS. SMITH: Yes, Your Honor. It's Debra Dandeneau,
3 D-A-N-D-E-N-N-A-U [sic].

4 THE COURT: Okay. Thank you.

5 All right. CLO Holdco, do we have you appearing this
6 morning?

7 MR. KANE: Your Honor, John Kane on behalf of CLO
8 Holdco.

9 THE COURT: Thank you, Mr. Kane.

10 All right. I know we had a different group of current or
11 former employees -- Brad Borud, Jack Yang -- and some joining
12 parties: Kauffman, Travers, Deadman. Who do we have
13 appearing for those? (Pause.) Anyone? If you're appearing,
14 we're not hearing you. Go ahead.

15 MR. KATHMAN: Good morning, Your Honor. Jason
16 Kathman. I represent Mr. Deadman, Mr. Travers, and Mr.
17 Kauffman as well.

18 THE COURT: Okay. Thank you. And I can't remember
19 who represents Mr. Borud and Yang. Someone separately.

20 MR. KATHMAN: It's Mr. Winikka, Your Honor.

21 THE COURT: Oh, Mr. Winikka.

22 MR. KATHMAN: And I haven't scrolled through to see
23 whether he's with -- in the 120 people signed in this morning.
24 But I believe that objection has been resolved. I think Mr.
25 Pomerantz will probably address that later. So Mr. Winikka

1 may not be appearing.

2 THE COURT: Okay. All right. Well, anyone for the
3 IRS?

4 MR. ADAMS: Good morning, Your Honor. David Adams,
5 Department of Justice, on behalf of the United States and its
6 agency, the Internal Revenue Service.

7 THE COURT: Thank you, Mr. Adams.

8 For the U.S. Trustee, who do we have appearing this
9 morning? (No response.) I'm not hearing you. If you're
10 trying to appear, you must be on mute. (No response.) All
11 right. Well, I suspect at some point we'll hear from the U.S.
12 Trustee, even though I don't hear anyone now.

13 At this point, I will open it up to anyone else who wishes
14 to appear who I failed to call.

15 MS. MATSUMURA: Your Honor, this is Rebecca Matsumura
16 from King & Spalding representing Highland CLO Funding, Ltd.
17 Thank you.

18 THE COURT: All right. Thank you, Ms. Matsumura.
19 HCLOF.

20 Anyone else?

21 MR. HELD: Your Honor, this is Michael Held with the
22 law firm of Jackson Walker, LLP on behalf of the office
23 landlord, Crescent TC Investors, LP.

24 THE COURT: All right. Thank you, Mr. Held.

25 MR. HELD: Thank you, Your Honor.

1 THE COURT: Okay. Any other lawyer appearances?

2 All right. Well, again, if there's anyone out there who
3 did not get to appear, maybe we'll hear from you at some point
4 as the day goes on.

5 All right. Mr. Pomerantz, this is an important day,
6 obviously. How did you want to begin things?

7 MR. POMERANTZ: So, Your Honor, I have a brief
8 opening to talk about what I plan to do, and a little more
9 lengthy opening, and it'll be come clear. So if I may
10 proceed, Your Honor?

11 THE COURT: You may.

12 MR. POMERANTZ: Your Honor, we're here to request
13 that the Court confirm the Debtor's Fifth Amended Plan of
14 Reorganization, as modified. The operative documents before
15 Your Honor are the Fifth Amended Plan, as modified, that was
16 filed along with our pleadings in support of confirmation on
17 January 22nd and the minor amendments that we filed on
18 February 1st.

19 Here is my proposal on how we can proceed this morning. I
20 would intend to provide the Court with an opening statement
21 that would last approximately 20 minutes. And then after any
22 other party who desires to make an opening statement, I would
23 propose that the Debtor put on its evidence that it intends to
24 rely on in support of confirmation. The evidence consists of
25 the exhibits that the Debtor filed with its witness and

1 exhibit list on January 22nd and certain amendments that we
2 filed yesterday.

3 We would also put on the testimony of the following
4 witnesses: Jim Seery, the Debtor's chief executive officer,
5 who Your Honor is very familiar with, and also a member of
6 Strand's board of directors; John Dubel, a member of Strand's
7 board of directors; and Mark Tauber, a vice president with Aon
8 Financial Services, the Debtor's D&O broker.

9 We have also submitted the declaration of Patrick Leatham,
10 who is with KCC, the Debtor's balloting agent. And we don't
11 intend to put Mr. Leatham on the stand, but he is available on
12 the WebEx for cross-examination, to the extent necessary.

13 I propose that I would leave the bulk of my argument,
14 which includes going through the Section 1129 requirements for
15 plan confirmation, as well as responding to the remaining
16 outstanding objections, until my closing argument.

17 With that, Your Honor, I will pause and ask the Court if
18 Your Honor has any questions before I proceed.

19 THE COURT: I do not have questions, so your method
20 of going forward sounds appropriate. You may go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 OPENING STATEMENT ON BEHALF OF THE DEBTOR

23 MR. POMERANTZ: As I indicated, Your Honor, we stand
24 here side by side with the Creditors' Committee asking that
25 the Court confirm the Debtor's plan of reorganization.

1 As Your Honor is well aware, this case started in December
2 in -- October 2019, was transferred to Your Honor's court in
3 December 2019, and has been pending for approximately 15
4 months.

5 On January 9, 2020, I stood before Your Honor seeking the
6 approval of the independent board of directors of Strand, the
7 general partner of the Debtor, pursuant to a heavily-
8 negotiated agreement with the Committee. And as the Court has
9 remarked on occasions throughout the case, the economic
10 stakeholders in this case believed that the installation of a
11 new board consisting of highly-qualified restructuring
12 professionals and a bankruptcy judge, a former bankruptcy
13 judge, was far more attractive than the alternative, which was
14 appointment of a trustee. And upon approval of the
15 settlement, members of the board -- principally, Mr. Seery --
16 testified that one of the board's goals was to change the
17 culture of litigation that plagued Highland in the decade
18 before filing and threatened to embroil the Debtor in
19 continued litigation if changes were not made.

20 And as Your Honor is well aware, the last 14 months have
21 not been easy. The board took its role as an independent
22 fiduciary extremely seriously, much to the consternation of
23 the Committee at times, and more recently, to the
24 consternation of Mr. Dondero and his affiliated entities.

25 And what has the Debtor, under the leadership of the

1 board, been able to accomplish during this case? The answer
2 is a lot more than many parties believed when the board was
3 installed.

4 The Debtor reached a settlement with the Redeemer
5 Committee, resolving disputes that had been litigated for many
6 years, in many forums, and that resulted in an arbitration
7 award that was the catalyst for the bankruptcy filing.

8 Participating in a court-ordered mediation at the end of
9 August 2020 and September, the Debtor reached agreement with
10 Acis and Josh Terry. The Court is all too familiar with the
11 years of disputes between the Debtor and Acis and Josh Terry,
12 which spanned arbitration proceedings and an extremely
13 combative Chapter 11 that Your Honor presided over.

14 The Debtor next reached an agreement with HarbourVest
15 regarding their assertion of over \$300 million of claims
16 against the estate. The HarbourVest litigation stemmed from
17 its investment in the Acis CLOs and would have resulted in
18 complex, fact-intensive litigation which would have forced the
19 Court to revisit many of the issues addressed in the Acis
20 case.

21 And perhaps most significantly, Your Honor, the Debtor was
22 able to resolve disputes with UBS, disputes which took the
23 most time of any claim in this case, through a contested stay
24 relief motion, a hotly-contested summary judgment motion, and
25 a Rule 3018 motion.

1 While the Debtor and UBS hoped to file a 9019 motion prior
2 to the commencement of the hearing, they were not able to do
3 so. However, I am now in a position to disclose to the Court
4 the terms of the settlement, which is the subject of
5 documentation acceptable to the Debtor and UBS. The
6 settlement provides for, among other things, the following
7 terms:

8 UBS will receive a \$50 million Class 8 general unsecured
9 claim against the Debtor.

10 UBS will receive a \$25 million Class 9 subordinated
11 general unsecured claim against the Debtor.

12 UBS will receive a cash payment of \$18.5 million from
13 Multi-Strat, which was a defendant and the subject of
14 fraudulent transfer claims.

15 The Debtor will use reasonable efforts to assist UBS to
16 collect its Phase I judgment against CDL Fund and assets CDL
17 Fund may have.

18 The parties will also agree to mutual and general
19 releases, subject to agreed carve-outs.

20 And, of course, the parties will not be bound until the
21 Court approves the settlement pursuant to a 9019 motion we
22 would hope to get on file shortly.

23 I am also pleased to let the Court know -- breaking news
24 -- that this morning we reached an agreement to settle Patrick
25 Daugherty's claims. I would now like to, at the request of

1 Mr. Kathman, read into the record the Patrick Daugherty
2 settlement.

3 Under the Patrick Daugherty settlement, Mr. Daugherty will
4 receive a \$750,000 cash payment on the effective date. He
5 will receive an \$8.25 million general unsecured claim, and he
6 will receive a \$2.75 million Class 9 subordinated claim.

7 The settlement of all claims against the Debtor and its
8 affiliates -- and affiliates will be defined in the documents
9 -- with the exception of the tax claim against the Debtor, Mr.
10 Dondero, and Mr. Okada -- and for the avoidance of doubt,
11 except as I describe below, nothing in the settlement is
12 intended to affect any pending litigation Mr. Daugherty has
13 against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc
14 Katz, Michael Hurst, and Hunton Andrew Kurth.

15 Mr. Daugherty will release the Debtor and its affiliates
16 and current employees for all claims and causes of action,
17 except for the agreements I identify below, and dismiss all
18 current employees as to pending actions. We believe this only
19 applies to Thomas Surgent and no other employee is implicated.

20 Mr. Surgent and other employees, including but not limited
21 to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon,
22 and Matt Diorio, will receive releases similar to the covenant
23 in Paragraph 1D of the Acis settlement agreement, which
24 essentially provided the release would go away if they
25 assisted anyone in pursuing claims against Mr. Daugherty.

1 Highland and the above-mentioned parties will accept
2 service of any subpoenas and acknowledge the jurisdiction of
3 the Delaware Chancery Court for the purposes of accepting any
4 subpoenas. And for the avoidance of doubt, Highland will
5 accept service on behalf of the employees only in their
6 capacity as such.

7 Highland will also use material -- will use reasonable
8 efforts at no material cost to assist Daugherty in vacating a
9 Texas judgment that was issued against him. We've also looked
10 at a form of the motion and believe we have agreed on the form
11 of the motion.

12 Highland, its affiliates, and current employees will
13 covenant and agree they will not pursue or seek to enforce the
14 injunction and the Texas judgment against Daugherty.

15 And lastly, Daugherty will not be able to settle any
16 claims for negligence or other claims that might be subject to
17 indemnification by the Debtor or any successor.

18 Accordingly, Your Honor, other than the claims of Mr.
19 Dondero and his related entities, and the unliquidated claims
20 of certain employees, substantially all claims have been
21 resolved in this case, a truly remarkable achievement.

22 Separate and apart, Your Honor, from the work done
23 resolving the claims, the Debtor, under the direction of the
24 independent board, has worked extremely hard to develop a plan
25 of reorganization.

1 After the independent board got its bearings, it started
2 to work on various plan alternatives. And the board received
3 a lot of pressure from the Committee to go straight to a plan
4 seeking to monetize assets like the one before Your Honor
5 today. However, the board believed that before proceeding to
6 do so and go down an asset monetization path, it should
7 adequately diligence all alternatives, including a
8 continuation of the current business model, a reorganization
9 sponsored by Mr. Dondero and his affiliates, a sale of the
10 Debtor's assets, including a sale to Mr. Dondero.

11 In June 2020, plan negotiations proceeded in earnest, and
12 the Debtor started to negotiate an asset monetization plan
13 with the Committee, while still pursuing other alternatives.

14 Preparation of an asset monetization plan is not typically
15 a complicated process. However, creating the appropriate
16 structure for a business like the Debtor's was extremely
17 complicated, because of the contractual, regulatory, tax, and
18 governance issues that had to be carefully considered.

19 At the same time the Committee negotiations were
20 proceeding down that path, Mr. Seery continued to spend
21 substantial time trying to negotiate a grand bargain plan with
22 Mr. Dondero. It is not an exaggeration to say that over the
23 last several months Mr. Seery has dedicated hundreds of hours
24 towards a potential grand bargain plan.

25 And why did he do it? Because he has always believed that

1 a global restructuring among all parties was the best
2 opportunity to fully and finally resolve the acrimony that
3 continued to plague the Debtor.

4 Notwithstanding Mr. Seery's and the independent board's
5 best efforts, they were not able to reach consensus on a grand
6 bargain plan, and the Debtor filed the plan, the initial plan,
7 on August 12th, which ultimately evolved into the plan before
8 the Court today.

9 The Court conducted an initial hearing on the disclosure
10 statement on October 27th, and then ultimately approved -- the
11 Court approved the disclosure statement at a hearing on
12 November 23rd.

13 While the Debtor continued to work towards resolving
14 issues with the Committee with the filed plan, Mr. Dondero,
15 beginning to finally see that the train was leaving the
16 station, started to do whatever he could to get in the way of
17 plan confirmation.

18 He objected to the Acis settlement. When his objection
19 was overruled, he filed an appeal.

20 He objected to the HarbourVest settlement. When his
21 objection was overruled, he had Dugaboy file an appeal.

22 He started to interfere with the Debtor's management of
23 its CLOs, stopping trades, refusing to provide support, and
24 threatening Mr. Seery and the Debtor's employees.

25 He had his Advisors and Funds that he owned and controlled

1 file motions that Your Honor said was a waste of time.

2 He had those same Funds and Advisors threaten to terminate
3 the Debtor as a manager, in blatant violation of the Court's
4 January 9, 2020 order.

5 His conduct was so egregious that it warranted entry of a
6 temporary restraining order and preliminary injunction against
7 him. And of course, he has appealed that ruling as well.

8 But that was not all. He brazenly threw out his phone, in
9 what the Court has remarked was spoliation of evidence, and he
10 violated the TRO in other ways, actions for which he will
11 answer for at the contempt hearing scheduled later this week.

12 And, of course, he and his pack of related entities have
13 filed a series of objections. We have received 12 objections
14 to the plan, Your Honor, excluding three joinders. And as I
15 mentioned, we have been pleased to report that we've been able
16 to resolve six of them: those of the Senior Employees, those
17 of Patrick Daugherty, those of CLO Holdco, those of the IRS,
18 those of Texas Taxing Authorities, and those of Jack Young and
19 Brad Borud.

20 The CLO Holdco objection was withdrawn in connection with
21 the settlement reached with them in connection with the
22 preliminary injunction hearing that the Court heard -- started
23 to hear last week.

24 The Taxing Authorities' objections have been resolved by
25 the Debtor agreeing to make certain modifications to the plan

1 that were included in our filing yesterday and to include
2 certain provisions in the confirmation order to address other
3 concerns.

4 The group of employees who are referred to as the Senior
5 Employee are comprised of four individuals -- Frank
6 Waterhouse, Thomas Surgent, Scott Ellington, and Isaac
7 Leventon -- although Mr. Ellington and Mr. Leventon are no
8 longer employed by the Debtor.

9 On January 22nd, Your Honor, we filed executed
10 stipulations with Frank Waterhouse and Thomas Surgent. These
11 stipulations were essentially the Senior Employee stipulations
12 that were referred to in the plan and the disclosure
13 statement.

14 And as part of those stipulations, the Debtor, in
15 consultation with and agreement from the Committee, agreed to
16 certain modifications of the prior version of the Senior
17 Employee stipulation with both Mr. Waterhouse and Mr. Surgent
18 that effectively reduced the compensation they needed to
19 provide for the release from 40 percent to five percent of
20 their claims.

21 The Debtor and the Committee believed the resolution with
22 Mr. Surgent and with Mr. Waterhouse was fair, given the
23 importance of these two people to the transition effort and
24 the increased reliance upon them that the Debtor would have
25 with the departure of Mr. Ellington and Mr. Leventon. And as

1 a result of that agreement, Your Honor, on January 27th, Mr.
2 Waterhouse and Mr. Surgent withdrew from the Senior Employee
3 objection.

4 Subsequently, we reached agreement with Mr. Ellington and
5 Mr. Leventon to resolve the objections they raised with
6 confirmation. And at Ms. Dandeneau's request, I would like to
7 read into the record the agreement reached with both of them,
8 and I know she will correct me if I get anything wrong.

9 THE COURT: Okay.

10 MR. POMERANTZ: Among other things, Mr. Ellington and
11 Mr. Leventon asserted in their objection that they were
12 entitled to have their liquidated bonus claims treated as
13 Class 7 convenience claims under the plan, under their reading
14 of the plan, and their understanding of communications with
15 Mr. Seery. The Debtor disputed the entitlement to elect Class
16 7 based upon the terms of the plan, the disclosure statement,
17 and applicable law. But as I said, the parties have resolved
18 this dispute.

19 Mr. Ellington asserts liquidated bonus claims in the
20 aggregate amount of \$1,367,197, which, to receive convenience
21 class treatment under anybody's analysis, would have had to be
22 reduced to a million dollars.

23 Mr. Leventon asserts a liquidated bonus claim in the
24 amount of \$598,198.

25 If Mr. Ellington and Mr. Leventon were entitled to be

1 included in the convenience class, as they claimed, they would
2 be entitled to receive 85 percent of their claim as and when
3 the claims were allowed under the plan.

4 To settle the dispute regarding whether, in fact, they
5 would be entitled to the convenience class treatment, they
6 have agreed to reduce the percentage they would otherwise be
7 entitled to receive from 85 percent to 70.125 percent. And as
8 a result, Mr. Ellington's Class 7 convenience claim would be
9 entitled to receive \$701,250 if allowed, and Mr. Leventon's
10 Class 7 convenience claim would be entitled to receive
11 \$413,175.10 if allowed.

12 Mr. Ellington and Mr. Leventon would reserve the right to
13 assert that a hundred percent of their liquidated bonus claims
14 are entitled to administrative priority, and the Debtor, the
15 Committee, the estate and their successors, would reserve all
16 rights to object.

17 If anyone did object to the allowance of the liquidated
18 bonus claims and Mr. Ellington and/or Mr. Leventon prevailed
19 in such disputes, then the discount that was previously agreed
20 to -- 85 percent to 70.125 percent -- would go away and they
21 would be entitled to receive the full 85 percent payout as
22 essentially a penalty for litigating against them on their
23 allowed claims and losing.

24 As an alternative to the estate preserving the right to
25 object to the allowance of Mr. Ellington and Mr. Leventon's

1 liquidated bonus claims, the Debtor and the Committee have an
2 option to be exercised before the effective date to just agree
3 that both their claims will be allowed, and allowed as Class 7
4 convenience claims. And if that agreement was reached, then
5 the amount of such liquidated bonus claims, they would receive
6 a payment equal to 60 percent of their allowed convenience
7 class claim.

8 In exchange, Mr. Ellington and Mr. Leventon would waive
9 their right to assert payment of a hundred percent of their
10 liquidated bonus claims as an administrative expense.

11 So, under this circumstance, Mr. Ellington would receive
12 an allowed claim of \$600,000, which is 60 percent of a million
13 dollars, and Mr. Leventon will receive a payment on account of
14 his Class 7 claim of \$358,918.80.

15 Under both scenarios, Mr. Ellington and Mr. Leventon would
16 preserve their paid time off claims that are treated in Class
17 6, and they would preserve their other claims in Class 8,
18 largely unliquidated indemnification claims, subject to the
19 rights of any party in interest to object to those claims.

20 Mr. Ellington will change his vote in Class 8 from
21 rejecting the plan to accepting the plan, and Mr. Leventon
22 would change his votes in Class 8 and Class 7 from rejecting
23 the plan to accepting the plan. And Mr. Ellington and Mr.
24 Leventon would withdraw any remaining objections to
25 confirmation of the plan, and we intend to put this settlement

1 in the confirmation order.

2 Your Honor, six objections to the plan remain outstanding.
3 One objection was filed by the Office of the United States
4 Trustee, and the remaining five objections are from Mr.
5 Dondero and his related entities. And I would like to put up
6 a demonstrative on the screen which shows how all of these
7 objections lead back to Jim Dondero.

8 THE COURT: All right.

9 MR. POMERANTZ: You see on the top left, Your Honor,
10 there's a box in white that says A through E, which are the
11 five remaining objections. And you can see how they relate.
12 But all of it goes back to that orange box in the middle, Jim
13 Dondero.

14 These objections, which I will address in my closing
15 argument in detail, are not really focused on concerns that
16 creditors are being treated unfairly, and that's because Mr.
17 Dondero and his entities don't really have any valid claims.
18 Mr. Dondero owns no equity in the Debtor. He owns the
19 Debtor's general partner, Strand, which in turn owns a quarter
20 percent of the total equity in the Debtor. Mr. Dondero's only
21 other claim is a claim for indemnification. And as Your Honor
22 would expect, the Debtor intends to fight that claim
23 vigorously.

24 Dugaboy and Get Good have asserted frivolous
25 administrative and unsecured claims, which I will discuss in

1 more detail later.

2 Dugaboy does have an equity interest in the Debtor, but it
3 represents eighteen-hundredths of a percent of the Debtor's
4 total equity.

5 And Mr. Rukavina's clients similarly have no general
6 unsecured claims against the Debtor. Either his clients did
7 not file proofs of claim or filed claims and then agreed to
8 have them expunged. The only claims that his clients assert
9 is a disputed administrative claim filed by NexPoint Advisors.

10 And the objections aren't legitimately concerned about the
11 post-confirmation operations of the estate, to preserve equity
12 value, how much people are getting, whether Mr. Seery is
13 really the right person to run these estates. That's because
14 Mr. Dondero has repeatedly told the Court that he believes his
15 offer, which doesn't come close to satisfying claims in full
16 in this case, is for fair value and that creditors, who are
17 owed more than \$280 million, will not receive anywhere close
18 to the amount of their claims.

19 Rather, Mr. Dondero and his entities are concerned with
20 one thing and one thing only: how to preserve their rights to
21 continue their frivolous litigation after confirmation against
22 the independent directors, the Claimant Trustee, the
23 Litigation Trustee, the employees, the Claimant Trust
24 Oversight Board, and anyone who will stand in their way. For
25 Mr. Dondero, the decision is binary: Either give him what he

1 wants, or as he has told Mr. Seery, he will burn down the
2 place.

3 Your Honor will hear a lot of argument today about how the
4 -- and tomorrow, in closing -- about how the injunction, the
5 gatekeeper, and the exculpation provisions of the plan are not
6 appropriate under applicable law. The Debtor, of course,
7 disagrees with these arguments, and I will address them in
8 detail in my closing argument.

9 But I do think it's important to focus the Court at the
10 outset on the January 9, 2020 order that the Court entered
11 which addressed some of these issues. This order, which has
12 not been appealed, which was actually agreed to by Mr.
13 Dondero, has no expiration by its terms and will continue
14 post-confirmation, did some things that the Objectors just
15 refuse to recognize and accept.

16 It approved an exculpation for negligence for the
17 independent directors and their agents. It provided that the
18 Court would be the gatekeeper to determine whether any claims
19 asserted for them -- against them for gross negligence and
20 willful misconduct could be pursued, and if so, provided that
21 this Court would have exclusive jurisdiction to adjudicate
22 those claims. And it prevented Mr. Dondero and his related
23 entities from causing any related entity to terminate any
24 agreements with the Debtor.

25 I also note, Your Honor, that the Court's July 16, 2020

1 order approving Mr. Seery as chief executive officer and chief
2 restructuring officer included the same exculpation and
3 gatekeeping provision as contained in the January 29th --
4 January 9th order.

5 Your Honor, we have all come too far to allow Mr. Dondero
6 to make good on his promise to Mr. Seery to burn down the
7 place if he didn't get what he wanted. The Debtor deserves
8 better, the creditors deserve better, and this Court deserves
9 better.

10 That concludes my opening argument, Your Honor.

11 THE COURT: All right. Thank you. I had one follow-
12 up question about the Daugherty settlement. You did not
13 mention, is it going to be reflected in the confirmation
14 order, is it going to be the subject of a 9019 motion, or
15 something else?

16 MR. POMERANTZ: It'll be subject to a -- it'll be
17 subject to a 9019 motion, Your Honor.

18 THE COURT: All right.

19 MR. POMERANTZ: I apologize for leaving that out.

20 THE COURT: All right. Thank you. Well, --

21 MR. KATHMAN: Your --

22 THE COURT: -- I appreciate that you stuck closely to
23 your 20-minute time estimate.

24 As far as other opening statements today, I'm going to
25 start with the objections that were resolved. Mr. Kathman, I

1 see you there. Who will speak on behalf of Patrick Daugherty
2 and the announced settlement?

3 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

4 MR. KATHMAN: Good morning, Your Honor. Jason
5 Kathman on behalf of Mr. Daugherty.

6 Mr. Pomerantz correctly recited the bullet points of the
7 settlement that we agreed to in principle this morning. There
8 was one that he did leave off that I do want to make sure that
9 I mention and that it's read into the record. And he read at
10 the top end that Mr. Daugherty does maintain his ability to
11 pursue his 2008 tax refund bonus claim, or tax refund
12 compensation claim. If the Court will recall, there's a
13 contingent liability out there based on how compensation was
14 paid back in 2008 that's the subject of an IRS audit. And so
15 the settlement expressly contemplates that those -- that that
16 claim will be preserved and Mr. Daugherty may pursue that
17 claim. Should the IRS have an adverse ruling and we have to
18 pay money back, we get to preserve that claim.

19 And so the one thing that is preserved, Your Honor -- and
20 the same way that Mr. Pomerantz read verbatim the words, I'm
21 going to read verbatim the words that we've agreed to:
22 Daugherty maintains and may pursue the 2008 tax refund
23 compensation portion of his claim that is currently a disputed
24 contingent liability. The Debtor and all successors reserve
25 the right to assert any and all defenses to this portion of

1 the Daugherty claim. The litigation of this claim shall be
2 stayed until the IRS makes a final determination, provided,
3 however, Daugherty may file a motion with the Bankruptcy Court
4 seeking to have the amount of his tax claim determined for
5 reservation purposes as a "disputed claim" under the Debtor's
6 plan. The Debtor and all successors reserve the right to
7 assert any and all defenses to any such motion.

8 So the Debtor's plan says that they can make estimations
9 for disputed claims. There is not currently something
10 reserving this particular claim, so we wanted to make sure we
11 reserve our rights to be able to have that amount reserved
12 under the Debtor's plan. And the Debtor obviously preserves
13 their ability to object to that.

14 With that, Your Honor, it is going to be papered up in a
15 9019, and we'll have some further things to say at the 9019
16 hearing, but didn't want to derail the Debtor's confirmation
17 hearing this morning.

18 THE COURT: All right. And --

19 MR. POMERANTZ: And Mr. Kathman is -- Mr. Kathman is
20 correct. I neglected to mention that provision, but he is --
21 he read it, and that's agreed to.

22 THE COURT: All right. And I did not hear anything
23 about Mr. Daugherty's vote on the plan. Is there an agreement
24 to change or a motion to change the vote from no to yes?

25 MR. KATHMAN: Your Honor, that wasn't, I think,

1 directly -- and Mr. Pomerantz can correct me if I'm wrong, or
2 Mr. Morris, actually, probably more could -- that wasn't
3 directly addressed, but I think the answer to that is probably
4 they don't need our vote.

5 THE COURT: Okay.

6 MR. KATHMAN: I think they have enough votes in that
7 class to carry.

8 THE COURT: Okay.

9 MR. KATHMAN: But the answer directly is that that
10 wasn't specifically addressed one way or the other.

11 THE COURT: All right.

12 MR. POMERANTZ: That is correct, Your Honor. We
13 would, of course, not oppose Mr. Daugherty changing his vote,
14 but as Your Honor saw in the ballot summary, we are way over
15 the amount in dollar amounts of claims. But if they wanted to
16 change their vote, we wouldn't oppose.

17 THE COURT: All right. Well, --

18 MR. KATHMAN: Your Honor, I have -- I have the
19 benefit of Mr. Daugherty. He is on -- I should note, Mr.
20 Daugherty is on the hearing this morning. He just let me know
21 that he is willing to change his vote. If the Debtor were to
22 so make a motion, we're fine changing our vote to in favor of
23 the plan.

24 THE COURT: All right. All right. Well, we'll get
25 the ballot agent declaration or testimony later. At one time

1 when I had checked, there was a numerosity problem but not a
2 dollar amount problem. And it sounds like that is no longer
3 an issue, perhaps because of the employee votes, or I don't
4 know.

5 But, all right. Well, thank you.

6 MR. POMERANTZ: Your Honor, there is still a
7 numerosity problem.

8 THE COURT: Okay.

9 MR. POMERANTZ: There's not a dollar amount problem.

10 THE COURT: Okay.

11 MR. POMERANTZ: But we'll address that and cram-down
12 in closing.

13 THE COURT: All right. Very good.

14 All right. Well, I want to hear from the -- what we've
15 called the Senior Employee group. Is Ms. Dandeneau going to
16 confirm the announcement of Mr. Pomerantz?

17 MS. DANDENEAU: Yes, Your Honor. I confirm that Mr.
18 Pomerantz's recitation of the terms to which we've agreed is
19 accurate.

20 THE COURT: All right. Very good.

21 All right. I suppose I should circle back to UBS. We've,
22 of course, heard in prior hearings the past few weeks that
23 there was a settlement with UBS, but Mr. Clubok, could I get
24 you to confirm what Mr. Pomerantz announced earlier about the
25 UBS settlement?

1 MR. CLUBOK: Yes. Good morning again, Your Honor.

2 Yes, we have reached a settlement, and it's just -- and
3 it's been approved internally at UBS and obviously by the
4 Debtor. It's just subject to the final documentation. And we
5 are working very closely with the Debtor to try to do that as
6 quickly as possible.

7 THE COURT: All right. Thank you.

8 All right. Well, let me go, then, to other opening
9 statements. Is there anyone else who at this time wishes to
10 make an opening statement? And, you know, for the pending
11 objectors, please, no more than 20 minutes.

12 MR. CLEMENTE: Your Honor? Your Honor, if I may,
13 it's Matt Clemente on behalf of the Committee.

14 THE COURT: Okay.

15 MR. CLEMENTE: I'd be very brief, but I would like to
16 make some remarks to Your Honor. It'll be less than five
17 minutes.

18 THE COURT: All right. Go ahead.

19 MR. CLEMENTE: Thank you, Your Honor.

20 OPENING STATEMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

21 MR. CLEMENTE: Again, for the record, Matt Clemente;
22 Sidley Austin; on behalf of the Official Committee of
23 Unsecured Creditors.

24 Your Honor, to be clear, the Committee fully supports
25 confirmation of the Debtor's plan and believes the plan is

1 confirmable and should be confirmed.

2 Although it has taken us quite some time to get to this
3 point, Your Honor, and as Mr. Pomerantz referred, the Debtor's
4 business is somewhat complex, the plan is remarkably
5 straightforward, Your Honor, and has only been made
6 complicated by the various objections filed by Mr. Dondero's
7 tentacles.

8 At bottom, Your Honor, the plan is designed to recognize
9 the reality of the situation that the Committee has
10 continually been expressing to Your Honor, and that is the
11 overwhelming amount of creditors in terms of dollars are
12 litigation creditors, creditors who are here entirely because
13 of the fraudulent and other conduct of Mr. Dondero and his
14 tentacles.

15 The other third-party creditors, Your Honor, by and large
16 are those collateral to these litigation claims in terms of
17 true trade creditors and service providers.

18 Recognizing this fact, Your Honor, the plan contains an
19 appropriate convenience class, which, in the Committee's view,
20 provides a fair way to capture a large number of claims and
21 appropriately recognizes the distinction between those claims
22 and the large litigation claims. And the holders of these
23 large litigation claims, including now Mr. Daugherty, have
24 voted in favor of allowing this convenience class treatment.

25 Your Honor, after distributions are made to the

1 administrative creditors, the priority creditors, the secured
2 creditors, and the convenience creditors, the remainder goes
3 to general unsecured creditors who will control how this value
4 is realized. These are the large litigation creditors.

5 Additionally, Your Honor, recognizing the possibility of
6 recovery in excess of general unsecured claims plus interest,
7 and to thwart, from the Committee's perspective, what would
8 have undoubtedly been an argument by one of the Dondero
9 tentacles that the general unsecured creditors could be paid
10 more than they are owed, the plan provides for a contingent
11 interest to kick in after payment in full for interests of all
12 prior claims.

13 Your Honor, this is the sum and substance of the plan. At
14 bottom, fairly straightforward. And the true creditors, Your
15 Honor, have voted overwhelmingly in favor of the plan. Class
16 8 has voted to support the plan. Class 7 has voted to accept
17 the plan. And now I believe, with Mr. Daugherty's settlement,
18 one hundred percent in amount of Class 8, non-insider, non-
19 Dondero-controlled or (audio gap) have voted in favor of the
20 plan.

21 To be clear, as Your Honor pointed out and as Mr.
22 Pomerantz referenced, there is not numerosity in Class 8, Your
23 Honor, but that is driven, as Your Honor will see, from
24 approximately 30 no-votes of current employees who the
25 Committee believes are not owed any amounts and therefore they

1 will not be receiving payments under the plan, yet they voted
2 against the plan. So although we have a technical cram-down
3 plan from the Class 8 perspective, Your Honor, the plan voting
4 reflects the reality that the economic parties in interest
5 overwhelmingly support the plan.

6 So, Your Honor, cutting through the machinations of the
7 Dondero tentacles, we do have a fairly straightforward plan
8 and a plan that the Committee believes is confirmable and
9 should be confirmed.

10 Your Honor, since I've been in front of you for over a
11 year now, I've referred to the goals of the Committee in this
12 case, and the goals are straightforward in terms of expressing
13 them but can be difficult in reality to implement them. The
14 Committee's goals have been two-fold: to maximize the value
15 of the estate and therefore the recoveries for its
16 constituency, and to disentangle from the Dondero (audio gap).

17 As with all things Highland, although these goals are
18 straightforward, they're remarkably difficult to achieve,
19 given the Dondero tentacles. However, the Committee strongly
20 believes the plan achieves these two goals.

21 First, the plan provides a credible path to maximize
22 recovery with Mr. Seery, who has gotten to know the assets and
23 who has performed skillfully and credibly throughout this very
24 difficult process. It is a difficult set of assets and
25 complex set of assets, as Your Honor knows very well.

1 To be sure, there is uncertainty associated with the
2 Debtor's projections, but that is inherent in the nature of
3 the assets of the Debtor, and frankly, is inherent in the
4 nature of projections themselves. And Mr. Dondero and his
5 tentacles will point to the downside, potentially, in those
6 projections, but the Court will be reminded that there is also
7 potential upside in those projections, an upside that would
8 inure to the benefit of the general unsecured claims.

9 Second, Your Honor, although it is seemingly impossible to
10 free yourself from the Dondero web until every single one of
11 the 2,000 barbed tentacles is painfully removed, if that's
12 even possible, Your Honor, the Reorganized Debtor, the
13 Claimant Trust, the Claimant Trustee, the Litigation Sub-
14 Trust, the Litigation Trustee, and the Oversight Board
15 construct and mechanisms is a structure that the Committee
16 believes provides the creditors with the best possibility to
17 do so, and that is to deal with what will undoubtedly be a
18 flurry of attacks from Mr. Dondero and his tentacles.

19 This is a virtual certainty, Your Honor. The creditors
20 have seen this movie before and Your Honor has seen this movie
21 before. They have seen Mr. Dondero make and break promises.
22 They have seen Mr. Dondero attempt to bludgeon adversaries
23 into submission in order to accept his offerings, and they
24 have heard Mr. Dondero say that which he has said in this
25 court during the preliminary injunction hearing --

1 specifically, that the Debtor's plan "is going to end up in a
2 myriad of litigation."

3 The creditors are steeled in their will to be rid of Mr.
4 Dondero, and they're confident in this structure to do so.

5 To be clear, Your Honor, what is before the Court today
6 for confirmation is the Debtor's plan, not some other plan
7 that no one supports other than Mr. Dondero and his tentacles.
8 The question isn't whether Mr. Dondero has a better proposal
9 -- and footnote, Your Honor, the answer is he does not, both
10 from a qualitative and quantitative perspective -- but whether
11 the plan before the Court is in the best interest of creditors
12 and should be confirmed. The Committee strongly believes it
13 is, and should, and all the Committee members support
14 confirmation of the Debtor's plan.

15 Recognizing Mr. Dondero's behavior, Your Honor, and
16 threats regarding how he will behave in the future, there are
17 certain provisions in the plan that are of critical importance
18 to the creditors. Of course, all provisions in the plan are
19 extremely important, Your Honor, but as Mr. Pomerantz
20 referenced, the creditors need the gatekeeper, exculpation,
21 and injunction provisions.

22 The reason is obvious, and is emphasized by the
23 supplemental objection filed just yesterday by some of Mr.
24 Dondero's tentacles -- namely, the Dugaboy and the Get Good
25 Trusts. And I quote, Your Honor: "It is virtually certain

1 that, under the Debtor's plan, there will be years of
2 litigation in multiple adversary proceedings, appeals, and
3 collection activities, all adding substantial uncertainty and
4 delay."

5 Additionally, Your Honor has seen from the proceedings in
6 this case and has expressed frustration at numerous times at
7 the myriad and at times baseless and borderline frivolous and
8 out of touch with reality suits and objections and proceedings
9 that the Dondero tentacles bring. The creditors need the
10 gatekeeper, exculpation, and injunction provisions to preserve
11 and protect value. And the record, I think, to this point is
12 clear, and will be further made clear through the confirmation
13 proceedings, that the protections are appropriate and entirely
14 within this Court's authority to grant.

15 In sum, Your Honor, the Committee fully supports
16 confirmation of the plan. The Committee believes it is
17 confirmable and should be confirmed, and two classes of
18 creditors and the overwhelming amount of creditors in terms of
19 dollars agree.

20 That's it, Your Honor. Unless you have questions for me,
21 I have nothing further at this time.

22 THE COURT: All right. Thank you, Mr. Clemente.

23 MR. CLEMENTE: Thank you, Your Honor.

24 THE COURT: All right. Who else wishes to be heard?

25 MR. DRAPER: Your Honor, this is Douglas Draper. I'd

1 like to be heard. I have a few -- I'll take five minutes, at
2 most --

3 THE COURT: All right. Go ahead.

4 MR. DRAPER: -- and just focus on a few things.

5 OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY
6 INVESTMENT TRUST

7 MR. DRAPER: I'm going to focus my opening remarks on
8 the releases, the exculpations, and channeling injunctions in
9 the plan. I'm not waiving my other objections, but, rather,
10 trying not to subject the Court to hearing the same argument
11 from multiple lawyers.

12 The good thing about the law is that it's absolute in
13 certain respects. It does not matter who is asserting a legal
14 protection, the law applies it. For example, a serial killer
15 is entitled to a *Miranda* warning and a protection against
16 unlawful search and seizure. The law does not allow tainted
17 evidence or an unlawful admission into evidence,
18 notwithstanding the fact that the lack of admission of that
19 evidence may lead to the freeing of that serial killer.

20 Today, you must make an independent evaluation as to
21 whether the plan complies with 1129 and applicable law. The
22 decision must be made notwithstanding the fact that it is
23 being made by a Dondero entity. It's not being -- it must be
24 applied notwithstanding the fact that it's being made by me.

25 We contend that the plan does not meet the hurdle and

1 confirmation should be denied, notwithstanding the fact that
2 the infirmity with the plan is asserted by me and
3 notwithstanding the fact that Mr. Pomerantz and the unsecured
4 creditors have overwhelming support.

5 We all know 1141, the Barton Doctrine, and 544 -- 524
6 provide injunctions and protections for certain parties
7 associated with the Debtor. Had the plan merely referenced
8 these sections and stated that the injunction, et cetera,
9 shall not exceed those allowed pursuant to *Pacific Lumber*, I
10 would not be making this argument.

11 Instead, we see a plan that has a definition of Exculpated
12 Parties, Released Parties, Related Parties, that exceed the
13 protections afforded by the Bankruptcy Code, the Barton
14 Doctrine, and 524.

15 We have a grant of jurisdiction and oversight that exceeds
16 that allowed under *Craig's Store*, the *Craig's Store* line of
17 cases.

18 We have releases of claims against non-debtor parties,
19 such as Strand, who is, under the Bankruptcy Code, under 723,
20 liable for the debts of the Debtor.

21 The plan, with its expansive releases, released parties,
22 grant of injunctions, exculpations and channeling injunctions,
23 are impermissible under Fifth Circuit case law. And I would
24 ask the Court to look closely at those definitions, who is --
25 who the law allows to be exculpated and released and who the

1 law specifically prohibits being exculpated and released, and,
2 in fact, apply the *Pacific Lumber* line of -- case, as well as
3 524 and the Bankruptcy Code when you look at these issues.

4 Notwithstanding the overwhelming so-called support by the
5 creditors at issue, the law must be applied, and it must be
6 applied pursuant to what the Fifth Circuit requires.

7 THE COURT: All right. Thank you, Mr. Draper.

8 Other Objectors with opening statements?

9 MR. RUKAVINA: Your Honor, Davor Rukavina. Briefly?

10 THE COURT: Okay.

11 OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

12 MR. RUKAVINA: Your Honor, I represent various funds,
13 including three of which have independent boards. The Debtor
14 manages more than \$140 million of those funds, and the Debtor
15 manages around a billion dollars in CLOs.

16 Whether I am a tentacle of Mr. Dondero or not -- I'm not,
17 since there's an independent board -- the fact remains that
18 the Debtor wants to manage these assets and my clients' money
19 post-assumption and post-confirmation with effective judicial
20 immunity. So our fundamental problem with this plan is the
21 assumption of those contracts under 365(c) and (b). I think
22 we'll have to wait for the evidence to see what the Debtor
23 proposes and has, and I will reserve, I guess, the balance of
24 my arguments on that to closing, depending on what the
25 evidence is.

1 But I don't want the Court to lose sight of the fact that
2 what the Debtor wants to do is, in contravention of our
3 desires, continue managing our assets post-confirmation, even
4 as it liquidates, just to make a buck. It's our money, Your
5 Honor, and whether we're Dondero or not, we're a couple
6 hundred million, probably, or more, of third-party investment
7 professionals, pension funds, et cetera, and we should not be
8 all tainted without evidence as a tentacle of someone whom,
9 I'll remind everyone here, built a multi-billion dollar
10 company and made a lot of money for people.

11 The second objection, Your Honor, goes to the Class 8
12 rejection. It sounds like there's still a problem with the
13 number of creditors, even though certain creditors have
14 switched their votes. That raises now the fair and equitable
15 standard, together with the undue discrimination and the
16 absolute priority rule. I think we'll have to let the
17 evidence play out, and I'll reserve the balance of my closing
18 or the balance of my remarks to closing on that issue.

19 The third issue, Your Honor, is the same exculpation and
20 release and injunction provisions that Mr. Draper raised.
21 Those are legal matters that I'll discuss at closing, but I do
22 note that the Debtor purports to prevent my clients from
23 exercising post-assumption post-confirmation rights, period.
24 And that's just inappropriate, because if the Debtor wants the
25 benefits of these agreements, well, then of course it has to

1 comply with the burdens. And to say *a priori* that anything
2 that my clients might do post-confirmation would be the result
3 of a bad-faith Mr. Dondero strategy, there's no basis for that
4 and that's not the basis on which my clients' rights in the
5 future, when there is no bankruptcy estate and there is no
6 bankruptcy jurisdiction, can be enjoined.

7 And the final point, Your Honor, entails this channeling
8 injunction. I'll talk about it during closing. It is
9 inappropriate under 28 U.S.C. 959. This is not a Barton
10 Doctrine trustee issue, this is a debtor-in-possession, and a
11 channeling injunction, the Court will have no jurisdiction
12 post-confirmation.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank you.

15 Does Mr. Dondero's counsel have an opening statement?

16 MR. TAYLOR: I do, Your Honor. I'll keep it brief.
17 This is Clay Taylor on behalf of Mr. Dondero.

18 THE COURT: Okay.

19 OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

20 MR. TAYLOR: Your Honor, the plan is clear in some
21 respects, and I'm not going to belabor these points, as other
22 objecting counsel have already addressed this. But the plan
23 does provide for non-debtor releases, and it provides for non-
24 debtor releases for parties beyond that which is allowed by
25 *Pacific Lumber* and under the Code.

1 It also provides for exculpations of non-debtor parties in
2 excess of that which is allowed under the Code and applicable
3 case law.

4 Finally -- or, not finally, but third, it requires this
5 Court to keep a broad retention of post-confirmation
6 jurisdiction that could go on for years, and that is improper.

7 Finally, it requires the parties to submit to the
8 jurisdiction of this Court via a channeling injunction, which
9 we believe is beyond that which is allowed under applicable
10 Fifth Circuit precedent.

11 What is clear, what the evidence will show -- and I
12 thought it was interesting that none of the proponents of plan
13 confirmation ever talk about what the evidence is going to
14 show. They testified a lot before Your Honor, but they didn't
15 ever talk about what the evidence would show. What the
16 evidence will show is this plan was solicited via a disclosure
17 statement that told all the unsecured creditors, we project
18 that you're going to receive 87 cents on the dollar on your
19 claim.

20 About two months later, and this was Friday of this past
21 week, they changed those projections, and those projections
22 then showed unsecured creditors, under a plan analysis, that
23 they were going to receive 62 cents on the dollar. That is in
24 contrast to the liquidation analysis that had been prepared
25 just two months prior showing that, under a hypothetical

1 Chapter 7 liquidation analysis, that the unsecured creditors
2 would receive 65 cents on the dollar. Obviously, 62 cents is
3 less than 65 percent.

4 Realizing they had a problem, I guess, over the weekend,
5 they changed last night, the night before confirmation, and
6 sent us some new projections that now show that the unsecured
7 creditors under a plan would receive 71 cents on the dollar.

8 Your Honor, what the evidence will show, and it is
9 Highland's burden to show this, is that -- that they meet the
10 best interests of the creditors. And part of that is that
11 they will do better under a plan rather than under a
12 hypothetical Chapter 7.

13 Quite simply, they don't have the evidence, nor have they
14 done the analysis to be able to prove that to this Court.

15 What the evidence will also show is clear is that Mr.
16 Seery, under the plan analysis, is scheduled to receive at
17 least \$3.6 million over just the first two years of this plan
18 if it doesn't go any further. And that's just for monthly
19 payouts of \$150,000 per month. That's not including a to-be-
20 agreed-upon success fee structure, which hasn't been
21 negotiated yet. And if it hasn't been negotiated yet, it
22 can't be analyzed yet to see if those costs would exceed their
23 benefits and therefore drive the return down such that a
24 hypothetical Chapter 7 trustee could do better.

25 There is also going to be additional costs for the

1 Litigation Trustee and the fees that they are going to charge.
2 There's going to be an Oversight Committee, and those fees are
3 also to be negotiated. There's also U.S. Trustee fees, which
4 Mr. Seery tells us that he has calculated within the
5 liquidation and plan analysis numbers, albeit both myself and
6 Mr. Draper, as the evidence will show, have asked for the
7 rollups that come behind the liquidation and plan analysis in
8 each instance of the three iterations that have been done in
9 two months, and we have been denied that information. That
10 evidence is not going to come in before this Court, and
11 without that rollup information, this Court can't make an
12 independent verification that this meets the best interests of
13 the creditor and better than a hypothetical Chapter 7 trustee.

14 What the evidence will also show, make an assumption that,
15 under a plan analysis, that Mr. Seery will be able to generate
16 higher returns on the sale of the assets of the Highland
17 debtor and its subsidiaries, to the neighborhood of \$60
18 million higher. There is no independent verification of this.
19 There has been no due diligence done. It was merely an
20 assumption done by Mr. Seery and his advisors, and we submit
21 that they will not have the evidence to show that they can
22 beat a Chapter 7 trustee.

23 This Court does have an alternative before it. There is
24 an alternative plan that has been filed under seal. The Court
25 is aware of it. And it guarantees that creditors will receive

1 at least 65 cents on the dollar. Moreover, those claims are
2 guaranteed -- and they're going to be secured that they will
3 be paid that money.

4 MR. POMERANTZ: Your Honor, this is under -- this is
5 under seal. And I never interrupt somebody's argument, but
6 this plan is under seal for a reason, Your Honor, and I object
7 to any description of the terms of a plan that's not before
8 Your Honor and is under seal.

9 THE COURT: Okay. I sustain that objection.

10 MR. TAYLOR: Your Honor has a means to cut the
11 Gordian knot of the litigation and appeals before it and to
12 ensure that there is certainty for creditors. It would
13 massively reduce the administrative fee burn that is
14 contemplated under the proposed plan before the Court. As
15 I've mentioned, it's at least \$3.6 million just in monthly
16 fees for Mr. Seery alone. All of the rest of the fees are yet
17 to be determined and to be negotiated. I don't see how any
18 analysis could have been done regarding the administrative fee
19 burn that is going to happen over the two years and
20 potentially much further as this case draws on.

21 For those reasons alone, Your Honor, we believe that the
22 plan confirmation should be denied and this Court should look
23 at the alternatives before it.

24 MR. KATHMAN: Can I say something before --

25 MR. TAYLOR: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 All right. Have I missed any Objectors?

3 MR. KATHMAN: Your Honor?

4 MS. DRAWHORN: Yes, Your Honor.

5 THE COURT: Okay. Ms. --

6 MR. KATHMAN: Your Honor, if I could spend just one
7 minute, and I -- we -- I -- we filed a joinder on behalf of
8 Mr. -- or, Jason Kathman on behalf of Davis Deadman, Todd
9 Travers, and Paul Kauffman.

10 THE COURT: Uh-huh.

11 OPENING STATEMENT ON BEHALF OF DAVIS DEADMAN, TODD TRAVERS,
12 AND PAUL KAUFFMAN

13 MR. KATHMAN: Mr. Pomerantz had noted, I think, at
14 the front end that the Debtor amended their plan that resolved
15 those objections. I just want to say for the record that
16 those had been resolved.

17 And with that, Your Honor, may I be dismissed?

18 THE COURT: Yes, you may. Thank you.

19 MR. KATHMAN: Thank you, Your Honor.

20 THE COURT: All right. Was Ms. Drawhorn speaking up
21 to make an opening statement?

22 MS. DRAWHORN: Yes.

23 THE COURT: Go ahead.

24 MS. DRAWHORN: Yes, Your Honor.

25 THE COURT: Go ahead.

1 OPENING STATEMENT ON BEHALF OF THE NEXPOINT PARTIES

2 MS. DRAWHORN: Just very briefly, Lauren Drawhorn on
3 behalf of NexPoint Real Estate Partners, the NexPoint Real
4 Estate entities, and NexBank.

5 Just a very brief opening. Just wanted to note that it
6 seems that the Debtor's and the Committee's position seems to
7 be if there's some way, any way, to connect an entity to Mr.
8 Dondero, then they don't need to perform any true evaluation
9 of potential claims or that party's rights or their concerns,
10 and that results in ignoring not only the merits of many
11 claims but also the basic requirements of due process and the
12 statutes, the Bankruptcy Code, and the case law.

13 We filed objections that were focused largely on the
14 injunctions and the releases, and then also the proposed
15 subordination provisions.

16 Two of my clients, one of them has a proof of claim, and
17 while it is being disputed, that claim is out there and should
18 get -- be entitled to be pursued and defended, and many of the
19 injunctions appear to prevent my client from doing so.

20 Similarly, it was mentioned that NexBank, in the
21 demonstrative, had a terminated service agreement, but there's
22 periods of time for which no services were provided but
23 payment was made, and that's a potential admin claim that has
24 been raised. And the injunction, again, appears to prevent my
25 clients from pursuing these claims.

1 So I think, despite the general response to any connection
2 to Dondero means there's no merit, that's not what we're here
3 for today. We need to really look at the merits of all
4 potential claims and all -- the rights of all parties and the
5 -- how the injunction and release provisions prevent that and
6 how they don't comply with the required law.

7 And, of course, we join in with many of the other
8 objections, but that's my main point for the opening today.

9 THE COURT: All right. Thank you.

10 All right. I think I have covered all of the at least
11 pending objections except the U.S. Trustee. I'll check again
12 to see if someone is out there for the U.S. Trustee. (No
13 response.) All right. If you're there, we're not hearing
14 you. You're on mute.

15 Okay. Any other attorneys out there who wish to make an
16 opening statement?

17 All right. Well, I'll turn back to Mr. Pomerantz. You
18 may call your first witness.

19 MR. POMERANTZ: Okay. I will turn the virtual podium
20 over to my partner, John Morris, who will be putting on our
21 witnesses.

22 THE COURT: All right. Mr. Morris, you may call your
23 first witness.

24 MR. MORRIS: Good morning, Your Honor. John Morris
25 from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

1 Can you hear me okay?

2 THE COURT: I can.

3 MR. MORRIS: Okay. Thank you very much.

4 The Debtor calls James Seery as its first witness.

5 THE COURT: All right. Mr. Seery, if you could say,
6 "Testing, one, two," please.

7 MR. SEERY: Testing, one, two.

8 THE COURT: All right. Hmm, I've not picked up your
9 video yet. Let's try it again.

10 MR. SEERY: Testing, one, two. Testing.

11 MR. MORRIS: We have the audio.

12 THE COURT: We have the audio.

13 MR. SEERY: Oh.

14 MR. MORRIS: There we go.

15 THE COURT: There you are.

16 MR. SEERY: The video should be working.

17 THE COURT: All right.

18 MR. POMERANTZ: Yeah. Actually, one -- Your Honor,
19 one thing before we start. We have Patrick Leatham from KCC.
20 He is prepared to sit on the line for the whole day until his
21 time comes. I would just like to know if anyone intends to
22 cross-examine him or object to his declaration. Because if
23 they don't, we could excuse Mr. Leatham.

24 THE COURT: All right. What about that? Anyone
25 want to cross-examine the balloting agent?

1 MR. RUKAVINA: Your Honor, Davor Rukavina. I do not.
2 If the Debtor would just state, with the change of votes in
3 Class 8, what the final tally is, I see no reason to dispute
4 that, and then we can dismiss this gentleman. But I do think
5 that we should all know, with the change of votes, what it now
6 is.

7 THE COURT: All right.

8 MR. POMERANTZ: We will -- we will work on that, Your
9 Honor, with the changes as a result of the settlements today,
10 and including Mr. Daugherty's client. We can get that
11 information sometime today.

12 THE COURT: All right. So, Mr. Rukavina, do you
13 agree that he can be excused with that representation, or do
14 you want --

15 MR. RUKAVINA: Yes, Your Honor.

16 THE COURT: Okay. All right. So, it's Mr. Leatham?
17 You are excused if you want to drop off this video.

18 All right. Mr. Seery, please raise your right hand.

19 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

20 THE COURT: All right. Thank you. Mr. Morris, go
21 ahead.

22 MR. MORRIS: Thank you, Your Honor.

23 If I may, I'd like to just begin by moving my exhibits
24 into evidence so that it'll make this all go a little bit
25 smoother.

1 THE COURT: All right.

2 MR. MORRIS: And if you'll indulge me just a little
3 patience, please, because the Debtor's exhibits are found in
4 three separate places.

5 THE COURT: Uh-huh.

6 MR. MORRIS: And I would just take them one at a
7 time.

8 First, at Docket No. 1822, the Court will find Debtor's
9 Exhibits A through what I'm referring to as 6Z. Six Zs. So
10 the Debtor respectfully moves into evidence Exhibits A through
11 6Z on Docket No. 1822.

12 THE COURT: All right. Are there any objections?

13 MR. RUKAVINA: Your Honor, I have a number of
14 targeted objections to all of the exhibits. Did I hear Mr.
15 Morris say 6Z?

16 THE COURT: Yes.

17 MR. MORRIS: Yes.

18 MR. RUKAVINA: Or six -- then, Your Honor, I can go
19 through my limited objections, if that pleases the Court.

20 THE COURT: All right. Go ahead.

21 MR. RUKAVINA: Your Honor, Exhibit B, a transcript, B
22 as in boy. Exhibit D, an email, D as in dog. Exhibit E as in
23 Edward. Moving on, Your Honor, 4D as in dog. 4E as in
24 Edward.

25 MR. MORRIS: Slow down, please.

1 THE COURT: Okay.

2 MR. RUKAVINA: I'm sorry.

3 THE COURT: You said 4D as in dog, correct?

4 MR. RUKAVINA: Then -- yes, Your Honor. Then 4E as
5 in Edward.

6 THE COURT: Okay.

7 MR. RUKAVINA: 4G as in George. Your Honor, one,
8 two, three, four, five T. 5T as in Tom. And then, Your
9 Honor, one, two -- 6R. 6S. 6T as in Tom. And 6U as in
10 under. That's it.

11 THE COURT: All right. Well, Mr. Morris, do you want
12 to carve those out for now and just offer them the old-
13 fashioned way and I can rule on the objections then?

14 MR. MORRIS: Why don't we do that? I may just deal
15 with it at the end of the case. But subject to those
16 objections, the Debtor then moves into evidence the balance of
17 the exhibits on Docket 1822.

18 THE COURT: All right. So, for the record, the Court
19 will admit all exhibits at Docket No. 1822 at this time except
20 B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U.

21 (Debtor's Docket 1822 exhibits, exclusive of Exhibits B,
22 D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U, are received into
23 evidence.)

24 THE COURT: All right. Mr. Morris, continue.

25 MR. MORRIS: Thank you, Your Honor.

1 Next, at Docket 1866, you'll find Debtor's Exhibits 7A
2 through 7E, and the Debtor respectfully moves those dockets --
3 documents into evidence.

4 THE COURT: All right. Any objection? (No
5 response.) Are there any objections?

6 MR. RUKAVINA: Your Honor, not from -- not from me.

7 THE COURT: All right. Hearing no objections, the
8 Court will admit all Debtor exhibits appearing at Docket Entry
9 No. 1866.

10 MR. MORRIS: Thank you, Your Honor.

11 (Debtor's Docket 1866 exhibits are received into
12 evidence.)

13 MR. MORRIS: And finally, at Docket 1877, the Court
14 will find Debtor's Exhibits 7F through 7Q, and the Debtor
15 respectfully moves for the admission of those documents into
16 evidence.

17 THE COURT: All right. Any objection?

18 MR. RUKAVINA: Your Honor, I might have to talk about
19 this with Mr. Morris, but I have 7F as any document entered in
20 the case, 7G as any document to be filed, et cetera. Mr.
21 Morris, am I wrong about that?

22 MR. MORRIS: I don't have that list in front of me.
23 So I'll reserve on those documents and we can talk about them
24 at a break, Your Honor.

25 THE COURT: All right.

1 MR. DRAPER: Your Honor, this is Douglas Draper. I
2 object, and I don't have the number in front of me, it's the
3 liquidation analysis and the plan summary. It's a summary
4 exhibit, and we've not been given the underlying documentation
5 with respect to them. I'd ask Mr. Morris to deal with that
6 separately also.

7 MR. MORRIS: All right. Well, we're certainly going
8 to be moving that into evidence, so we can deal with that at
9 the time, Your Honor.

10 THE COURT: Okay. Which documents are they? Which
11 exhibits are those?

12 MR. DRAPER: I don't have the number in front -- Mr.
13 Morris, do you have the number for that exhibit?

14 MR. MORRIS: I do, but why don't we just deal with it
15 when I -- when I get into --

16 THE COURT: Okay.

17 MR. MORRIS: -- into the testimony?

18 THE COURT: I just wanted the record clear what I am
19 admitting at this time at Docket Entry No. 1877. Or do you
20 want to just --

21 MR. MORRIS: Okay.

22 THE COURT: -- hold all those --

23 MR. MORRIS: Mr. Rukavina, other than F and G, which
24 you noted, is there any objection to any of the other
25 documents on that witness and exhibit list?

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1 MR. RUKAVINA: Well, I also have H as impeachment/
2 rebuttal, I as any document offered by any other party. So I
3 would suggest, Mr. Morris, that I have my associate confirm
4 that I have the right -- the right stuff here, and we can take
5 it up maybe during a break. But I have F, G, H, I as so-
6 called catchalls, not any discrete exhibits.

7 MR. MORRIS: All right. All right, Your Honor.
8 Let's, let's just proceed. We've got -- we took care of
9 Docket No. 1822 and 1866, and the balance we'll deal with at a
10 break, --

11 THE COURT: All right.

12 MR. MORRIS: -- unless they come up through
13 testimony.

14 THE COURT: All right. That sounds good.

15 MR. MORRIS: Okay. Thank you very much. May I
16 proceed?

17 THE COURT: You may.

18 MR. MORRIS: Okay.

19 DIRECT EXAMINATION

20 BY MR. MORRIS:

21 Q Good morning, Mr. Seery.

22 A (no response)

23 Q Can you hear me?

24 A Apologies. I went on mute. Can you hear me now? I
25 apologize.

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1 Q Yes. Good morning.

2 MR. MORRIS: So, let's begin, Your Honor, with just a
3 little bit of background of Mr. Seery and how he got involved
4 in the case.

5 BY MR. MORRIS:

6 Q Mr. Seery, what's your current position with the Debtor?

7 A I am the CEO, the CRO -- the chief restructuring officer
8 -- as well as an independent director on the Strand Advisors
9 board of directors.

10 Q Okay.

11 MR. MORRIS: Your Honor, I'm going to ask Mr. Seery
12 to describe a bit for his background. For the record, you'll
13 find that Exhibits 6X, 6Y, and 6Z, on the Debtor's exhibit
14 list at Docket 1822, the resumes and C.V.s of the three
15 independent members of the board. If Your Honor has any
16 question about their qualifications and their experience, that
17 evidence is already in the record.

18 THE COURT: Okay.

19 BY MR. MORRIS:

20 Q But Mr. Seery, without going into the detail of everything
21 that's on your C.V., can you just describe for the Court
22 generally your professional background, starting, well, with
23 your time as a lawyer?

24 A I've been involved in the restructuring, finance,
25 investing and managing of assets and banking-type assets for

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1 over 30 years.

2 I began in restructuring in real estate. Became a lawyer,
3 and was a lawyer in private practice dealing with
4 restructuring and finance for approximately ten years, in
5 addition to time before that on the real estate side.

6 I joined Lehman Brothers on the business side in 1999,
7 where I immediately began working on the -- with a distress
8 team as a team member investing off the balance sheet, Lehman
9 Brothers assets in various types of distressed financing
10 investments. Bonds, loans, equities. In addition, then I
11 became the head of Lehman's loan business globally. I ran
12 that business for the number of years. Was one of the key
13 players in selling Lehman Brothers to Barclays in a very
14 difficult situation and structure.

15 After that, joined some of my partners, we formed a hedge
16 fund called RiverBirch Capital, about a billion and a half
17 dollar hedge fund in -- operating in -- globally, but mostly
18 U.S. stressed/distressed assets that we invested in.
19 Oftentimes, though, we would run from high-grade assets all
20 the way down to equities, different types of investors,
21 different types of investments.

22 Thereafter, I left -- was -- joined Guggenheim. I left
23 Guggenheim, and shortly thereafter became a director at
24 Strand.

25 Q Prior to acceptance of the positions that you described

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1 earlier, were you at all familiar with Highland or Mr.
2 Dondero?

3 A Yeah. I was, yes.

4 Q Can you just describe for the Court how you became
5 familiar with Highland and Mr. Dondero?

6 A Highland was a customer of Lehman Brothers, and it was --
7 particularly in the loan business. And the CLO businesses.
8 Highland was run by Mr. Dondero, and I knew of that business
9 through that --

10 (Interruption.)

11 MR. MORRIS: Can somebody please put their device on
12 mute?

13 A VOICE: That's Mr. Taylor.

14 THE COURT: Mr. Taylor, you were off mute,
15 apparently, for a moment. Make sure you're staying on mute.
16 Thank you.

17 MR. TAYLOR: Yes. Sorry, Your Honor. I thought we
18 might have a hearsay objection. I wasn't sure what the answer
19 was going to be, so I wanted to be prepared to object.

20 THE COURT: All right. Thank you.

21 BY MR. MORRIS:

22 Q Did you know or meet Mr. Dondero in the course of what you
23 just described?

24 A Yes, I did. I believe we met once or twice over the
25 years. There was a senior team member who handled the

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1 Highland relationship. He was quite good, quite experienced,
2 and he handled most of the Highland relationship issues. But
3 Highland, we came across a number of times, whether it be in
4 -- I came across a number of times, whether it be in specific
5 investments we had where they would be either a competing
6 party or holding a similar interest, whether they were a
7 customer purchasing loans or securities, whether they were a
8 potential CLO customer where we were structuring some assets
9 for them.

10 Q Okay. And who are the two other members of the
11 independent board at Strand?

12 A John Dubel and Russel Nelms.

13 Q And had you had any personal experience with either of
14 those gentleman prior to this case?

15 A I knew of Mr. Nelms and his experience as a bankruptcy
16 judge in the Northern District of Texas, and I had worked on
17 one matter with Mr. Dubel, but very, very briefly, while he
18 was the CEO of FGIC, which is a large insurer in the financial
19 insurance space that he was responsible for reorganizing and
20 ultimately winding down.

21 Q Okay. How did you learn about this particular case? How
22 did you learn about the opportunity or the possibility of
23 becoming an independent director?

24 A Initially, I was contacted by some of the creditors and
25 asked whether I was interested, and I indicated that I was.

1 Subsequently, I received a call from the Debtor's
2 representatives as well meeting the counsel as well as the
3 financial advisor as well as specific members of the Debtor's
4 senior management.

5 Q Do you know how long in advance of the January 9th
6 settlement you were first contacted?

7 A Probably four, four or five days at the most, but started
8 working immediately at that time because it was a pretty
9 complicated matter and the interview process would be quick
10 because of the hearing date that was coming up.

11 Q Do you recall the names of any of the creditors who
12 reached out to you?

13 A I spoke to counsel for UBS. Certainly, Committee counsel.
14 I don't recall if I spoke to anybody from Jenner Block in the
15 initial interview. And then I spoke to representatives from
16 your firm as well as Mr. Leventon and ultimately Mr.
17 Ellington.

18 Q Did you do any due diligence before accepting the
19 appointment?

20 A I did, yes.

21 Q Can you describe for the Court the due diligence you did
22 before accepting your appointment as independent director?

23 A Well, I got the petition, I read the petition, as well as
24 the first day, as well as the venue-changing motion. In
25 addition, I went through the schedules. Ultimately, I took a

1 look at and examined the limited partnership agreement of the
2 Debtor, with particular focus on the indemnity provisions. I
3 then sat down with the Committee to get their views as part of
4 the interview process, as well as the Debtor's counsel and
5 Debtor's representatives.

6 Q Did you -- in the course of your diligence, did you come
7 to an understanding or did you form a view as to why an
8 independent board was being sought at that time?

9 A Yes, I did.

10 Q And what view or understanding did you come to?

11 A There was extreme antipathy from the creditors, as
12 evidenced by the venue motion and the documents around that
13 venue motion.

14 In addition, in the first day order, or affidavit, you
15 could see the issues related to Redeemer and the length of
16 time that litigation has been gone on, going on.

17 The creditors became extremely concern with Mr. Dondero
18 having any control over the operations of the Debtor and
19 wanted to make sure that either he was removed from that or
20 that -- and someone else was brought in, or that the case was
21 somehow taken over by a trustee.

22 Q Did you form any views as to the causes of the Debtor's
23 bankruptcy filing?

24 A The initial cause was the entry or the soon-to-be-entered
25 order related to the arbitration with Redeemer, but it was

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1 pretty clear from looking at the first day that there was a
2 number of litigations. The bulk of the creditor body was made
3 up of -- on the liquidated side was made up of litigation
4 creditors. And then the other creditors, the Committee
5 members, other than Meta-e, were significant litigation
6 creditors.

7 MR. MORRIS: Your Honor, I think Mr. Seery was sworn
8 in, but unless -- unless you -- if you think there's a need,
9 I'm happy to have you swear Mr. Seery in again just to make
10 sure his testimony is under oath.

11 THE WITNESS: I was sworn in.

12 THE COURT: Yes, I swore him in.

13 MR. MORRIS: That's what I thought. That's what I
14 thought. Somebody had made the suggestion to me, so I was
15 just trying to make sure, because I didn't want any unsworn
16 testimony here today.

17 THE COURT: We did.

18 MR. MORRIS: Okay.

19 THE COURT: We did.

20 MR. MORRIS: Thank you. Thank you.

21 BY MR. MORRIS:

22 Q Ultimately, sir, just to move this along a little bit, do
23 you recall that an agreement was reached with the UCC and Mr.
24 Dondero and the Debtor concerning governance issues?

25 A Yes, I do.

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1 Q And did you accept your position as an independent
2 director at Strand as part of that corporate governance
3 settlement?

4 A That, that was part of the appointment. We -- the
5 independent directors were brought in to take -- really, to
6 take control of the company as independent fiduciaries. And
7 the idea, I think, was that there was a Chapter 7 motion that
8 was about to be filed by the Committee, or at least that was
9 the representation, and the Debtor had a choice, they could
10 either accept the independent directors or they could face the
11 motion.

12 What actually happened was a little bit more complicated.
13 The creditors and the Debtor agreed on the selection of Mr.
14 Dubel and myself. And then because they couldn't agree on the
15 third member of the independent board, they left it to Mr.
16 Dubel and myself to actually come up with a process, interview
17 candidates, and make that selection, which we did, which
18 ultimately became Mr. Nelms.

19 Q And did all of this take place during that four- or five-
20 day period prior to January 9th?

21 A It did, yes.

22 Q Okay. And let's talk about the makeup of the board.
23 You've identified the other individuals. How would you
24 characterize the skillset and the capability of the
25 individual?

1 A Well, on paper, I think it's a pretty uniquely-constructed
2 board for this type of asset management business with the
3 diversity of these types of assets and the diversity of issues
4 that we had.

5 So, former Judge Nelms, obviously skilled in bankruptcy
6 and the law around bankruptcy, but also very skilled in
7 mediation, conflict resolution, and in particular his
8 prepetition or maybe pre-judicial experience in litigation and
9 litigation involving fiduciary duties we thought could be
10 very, very important because of the myriad of interrelated
11 issues that we could see that might arise.

12 John Dubel is an extremely well-known and respected
13 restructuring professional. He has been dealing these kinds
14 of assignments as an independent fiduciary for, gosh, as long
15 as I can recall, but at least going back 15 to 20 years. He
16 had experience in accounting, but he's also been the leader of
17 these kinds of organizations going through restructuring in
18 many operational type roles, and so he was a perfect fit.

19 And my experience in both restructuring as well as asset
20 management and investment I think dovetailed nicely with the
21 experience that Mr. Nelms and Mr. Dubel have.

22 Q Okay. Let's talk for just a moment at a high level of the
23 agreement that was reached. Do you remember that there were
24 several documents that embodied the terms of the agreement?

25 A Yes, I do.

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1 Q And do you remember one of them was an order that the
2 Court entered on January 9th?

3 A Yes.

4 MR. MORRIS: All right. Your Honor, just for the
5 record, and we'll be looking at this, but that would be
6 document Exhibit 5Q as in queen, and that's at Docket No.
7 1822.

8 BY MR. MORRIS:

9 Q Do you remember there was a separate term sheet, Mr.
10 Seery, that was also part of the agreement among the
11 constituents?

12 A Yes. There were -- I think there were a couple of term
13 sheets and stipulations, but I do recall that there was some
14 very specific term sheets with the terms.

15 MR. MORRIS: All right. And we'll look at that one
16 as well, Your Honor, but that can be found at Exhibit 50 as in
17 Oscar.

18 BY MR. MORRIS:

19 Q And then, finally, do you recall that Mr. Dondero signed a
20 stipulation that was also part of the agreement?

21 A Yes. That was absolutely key to the agreement for the
22 creditors and perhaps the Court. But it was really -- it
23 needed to be clear that he was signed on to this transaction.

24 MR. MORRIS: Okay. And we'll look at that as well.
25 That's Exhibit 7Q. And remind me, we'll move that one into

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1 evidence.

2 BY MR. MORRIS:

3 Q Did you and the other prospective independent directors
4 actually participate in the negotiation of any aspect of this
5 agreement that you've generally described?

6 A Absolutely. Although we hadn't been appointed yet, these
7 agreements were going to be the structure with which -- or
8 under which we would come in as independent fiduciaries. They
9 would govern a lot of our relationships. They would provide
10 for the protections that we required and that I required. So
11 they were exceedingly important to me.

12 Q Can you describe for the Court at a general level your
13 understanding of the overall structure of the corporate
14 governance settlement?

15 A From a very high level, the settlement was -- Highland
16 Capital Partners is a limited partnership. It's managed by
17 its general partner, Strand Advisors. Although Strand is the
18 GP, its effective interest in Highland is minimal, about .25
19 percent of the effective partnership interest. But it is the
20 general partner. So it does govern the -- the partnership.

21 We came in as an independent board that would oversee and
22 control Strand Advisors and thereby, through the general
23 partner position, oversee and control HCMLP, the Debtor.

24 In addition, the Committee then overlaid what we could do
25 with respect to how we operated the business in the ordinary

1 course in Chapter 11 with a specific set of protocols that
2 governed certain transactions that we would have to get
3 permission from either the Committee or the Court to engage
4 in.

5 And in addition, Mr. Dondero, notwithstanding the
6 insertion of the independent board at Strand, also had a set
7 of restrictions around him, because, of course, not only was
8 he the former control entity at Highland and Strand, he also
9 had a hundred percent of the ownership -- indirectly, of
10 course -- of Strand and could have removed the board. So
11 there were restrictions around what he could do with respect
12 to the board. There were also restrictions around what he
13 could do through various entities to terminate contracts and
14 --

15 Q All right. We'll look at some of those in detail. Did,
16 to the best of your recollection, did Mr. Dondero give up his
17 position as president or CEO of the Debtor?

18 A He did, yes.

19 Q And did he nevertheless stay on as an employee of the
20 Debtor and retain a position as portfolio manager?

21 A He did. At the last second, I believe it was the night
22 before, when we were actually in Dallas preparing for the
23 hearing, but Mr. Ellington raised the concern that if Dondero
24 was removed from not only the presidency but also the
25 portfolio management position, potentially there would be some

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1 agreements that might or might not be subject to Court
2 approval that could be terminated and value would be lost. So
3 this was a very last-second provision. Obviously, the -- as
4 new estate fiduciaries, we didn't want value to be lost
5 instantly for key man or some other reason. And the Committee
6 ultimately, or I guess you'd say reluctantly, agreed to that
7 because we just didn't have time to look at any of -- any such
8 agreements.

9 MR. MORRIS: All right. Let's -- can we put up on
10 the screen, Ms. Canty, Debtor's Exhibit 5Q?

11 And this is in evidence, Your Honor. This is the January
12 9th order.

13 And can we please go to Paragraph 8?

14 BY MR. MORRIS:

15 Q Mr. Seery, you had mentioned just a few minutes ago that
16 there were certain restrictions that were placed on Mr.
17 Dondero. Does Paragraph 8, to the best of your recollection,
18 provide for the substance of at least some of those
19 restrictions?

20 A It does, yes.

21 Q And can you just describe for the Court your understanding
22 of the restrictions that were imposed on Mr. Dondero pursuant
23 to Paragraph 8?

24 A Well, as I recall, when Mr. Ellington came in with the
25 last-minute request, the Committee was extremely upset about

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1 it. We talked about it. Obviously, we, as an independent
2 board that was going to come in, didn't know the underlying
3 contracts and couldn't really render any judgment as to
4 whether there would be value lost. So, the Committee agreed,
5 but they wanted to make sure that Mr. Dondero still reported
6 to -- directly to the board, and if the board asked Mr.
7 Dondero to leave, he would do so.

8 Q Okay. Just looking at this paragraph, is it your
9 understanding that the scope and responsibilities of Mr.
10 Dondero would be determined by the board?

11 A Yes.

12 Q And was it your understanding that Mr. Dondero would serve
13 without compensation?

14 A Yes.

15 MR. DRAPER: Objection. Leading, Your Honor.

16 THE COURT: Overruled.

17 BY MR. MORRIS:

18 Q Was it your understanding that Mr. Dondero's role would be
19 subject to the direct supervision, direction, and authority of
20 the board?

21 A That's, you know, that's what the order says and that's
22 what the agreement was. In practice, that was really going to
23 have to evolve because we were coming in very cold and
24 obviously he'd been there for --

25 (Interruption.)

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1 THE COURT: All right. Someone needs to put their
2 phone on mute. I don't know who it is.

3 BY MR. MORRIS:

4 Q Was it also part of the agreement that Mr. Dondero would
5 (garbled) upon the board's request?

6 A I think I got you, but yes, that's contained in this
7 paragraph, and Mr. Dondero agreed to that.

8 THE COURT: All right. Whoever LC is, your phone
9 needs to be put on mute. Okay. Please be sensitive to
10 keeping your device on mute except for Mr. Morris and Mr.
11 Seery.

12 All right. Go ahead.

13 BY MR. MORRIS:

14 Q Do you recall, Mr. Seery, whether there were any
15 restrictions placed on Mr. Dondero's ability to terminate
16 agreements with the Debtor?

17 A Yes. That was a very specific provision as well.

18 Q Can we take a look at Paragraph 9 below? Is that the
19 provision that you're referring to?

20 A That's the provision in the order. I believe there were
21 other agreements -- certainly, discussion around it -- because
22 it was an important provision because it had been borne out of
23 some experience that Acis and Mr. Terry had had in particular.
24 So it was supposed to be broad and prevent both direct and
25 indirect termination of agreements.

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1 Q Okay. And do you know, do you recall that the definition
2 of related entity is contained within the term sheet that you
3 referred to earlier?

4 A It's a pretty extensive -- I recall the definition not
5 specifically, but it's a pretty extensive definition. It
6 includes any of the entities that he owns, that Mr. Dondero
7 owns, that Mr. Dondero controls, that Mr. Dondero manages,
8 that Mr. Dondero owns indirectly, that Mr. Dondero manages
9 indirectly, and it really covers a wide swath of those
10 entities in which he has interests and control.

11 MR. MORRIS: All right. Let's see if we could just
12 look at the definition specifically at Exhibit 50 as in Oscar.
13 And if we could just scroll down to the next page.

14 Now, this was -- this is part of the term sheet that was
15 filed at Docket 354.

16 BY MR. MORRIS:

17 Q At Definition I(d), is that the definition of related
18 entity that you were referring to?

19 A That's correct.

20 Q Okay. In addition to what you've described, I think you
21 also mentioned that there was a separate stipulation that Mr.
22 Dondero entered into as part of the corporate governance
23 settlement. Do I have that right?

24 A That's my recollection, yes. And I believe he signed it,
25 and that was a key gating issue to the hearing that we had on

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1 January 9th.

2 Q And what do you recall about that document as being a key
3 gating issue?

4 A The key gating issue that I recall is that it had to be
5 signed. And I don't believe it was signed until that very
6 morning.

7 MR. MORRIS: All right. Can we call up Exhibit 7Q as
8 in queen?

9 BY MR. MORRIS:

10 Q All right. Is this the stipulation that you were
11 referring to? We can scroll down to any portion you want.

12 A I believe that is, yes.

13 MR. MORRIS: Okay. Can we just scroll down to see
14 Mr. Dondero's signature? Yeah. That's -- okay.

15 So, that's dated January 9th. This was filed at Docket
16 338. It's on the Debtor's exhibit list as Exhibit 7Q. And
17 the Debtor would respectfully move Exhibit 7Q into evidence.

18 THE COURT: Any objection? All right. 7Q is
19 admitted.

20 (Debtor's Exhibit 7Q is received into evidence.)

21 MR. MORRIS: Okay. And if we could just scroll up a
22 page or two to the four bullet points. Yeah, right there. A
23 little more.

24 BY MR. MORRIS:

25 Q Okay. So, do you see Paragraph 10 contains the

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1 stipulation?

2 A Yes.

3 Q And as you recall, Mr. Seery, in the events leading up to
4 the entry of the order approving the settlement, was this one
5 of the documents that was being negotiated among -- among the
6 parties?

7 A Yes, it was.

8 Q Okay. You mentioned that there were certain provisions of
9 the January 9th order that were important to you and the other
10 independent directors. Do I have that right?

11 A Yes.

12 MR. MORRIS: Let's see if we can back to Exhibit 5Q,
13 please, Paragraph 4.

14 BY MR. MORRIS:

15 Q Okay. Paragraph 4, can you tell me what Paragraph -- what
16 Paragraph 4 is and why it was important to you?

17 A Well, there really were four key, I guess I'll use the
18 term gating items again, for my involvement, and ultimately in
19 discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their
20 involvement in the matter.

21 Because of the litigious nature of the Highland operations
22 and the expectations we had for more litigation after taking a
23 look at the Acis case, we wanted to make sure that, as
24 independents coming into a situation with really no stake in
25 the particular outcome, other than trying to achieve a

1 successful reorganization, that we were protected. So, number
2 one, I looked at the limited partnership agreement. I wanted
3 to make sure that the LPA contained broad and at least
4 standard indemnification provisions and that they would apply
5 to the board.

6 Number two, because -- that then requires you to look at
7 the indemnification provisions at Strand, because you're a
8 director of Strand, the GP. So then we looked at those. I
9 took a close examination of those. They looked okay, except
10 Strand didn't have any assets other than its equity interest
11 in Highland, and if that equity interest turned out to be
12 zero, that indemnity wouldn't be very valuable.

13 So I wanted to make sure that Highland, the Debtor,
14 guaranteed the indemnity (garbled) on a postpetition basis, so
15 that if there were a failure of D&O, which I'll get to in a
16 second, or it wasn't enough, that we would have a senior claim
17 in the case, an admin claim in the case.

18 I then, of course, wanted to make sure that we had D&O
19 insurance. This was very difficult to get, because, frankly,
20 there's a Dondero exclusion in some of the markets, we've been
21 told by our insurance brokers, and so getting the right policy
22 that would cover the independent board was difficult. We did
23 get that.

24 And then ultimately there'll be another provision in the
25 agreement here -- I don't see it off the top of my head -- but

1 a gatekeeper provision. And that provision --

2 Q Hold on one second, Mr. Seery, because we'd want to
3 scroll. So Paragraph 4 and Paragraph 5, were those, were
4 those provisions put in there at the insistence of the
5 prospective independent directors?

6 A Yes. And remember, so the Paragraph 4, as I said, is the
7 guarantee of Strand's obligations for its indemnity. Again,
8 Strand didn't have any money, so the Debtor had to be the one
9 purchasing the D&O for the directors and for Strand. So those
10 are the two provisions that really worked to address my
11 concerns about the indemnities and then the D&O.

12 MR. MORRIS: Okay. Can we go to Paragraph 10,
13 please? There you go.

14 BY MR. MORRIS:

15 Q Is this the other provision that you were referring to?

16 A This is. It's come to be known as the gatekeeper
17 provision, but it's a provision that I actually got from other
18 cases. Again, another very litigious case that I thought it
19 was appropriate to bring in to this case.

20 And the concept here is that when you're dealing with
21 parties that seem to be willing to engage in decade-long
22 litigation in multiple forums, not only domestically but even
23 throughout the world, it seemed important and prudent for me
24 and a requirement that I set out that somebody would have to
25 come to this Court, the court with jurisdiction over these

1 matters, to determine whether there was a colorable claim.
2 And that colorable claim would have to show gross negligence
3 and willful misconduct, *i.e.*, something that would not
4 otherwise be indemnified.

5 So it basically sets an exculpation standard for
6 negligence. It exculpates the directors from negligence. And
7 if somebody wants to bring a cause against the directors, they
8 have to come to this Court first and get a finding that
9 there's a colorable claim for gross negligence or willful
10 misconduct.

11 Q Would you have accepted the engagement as an independent
12 director without the Paragraphs 4, 5, and 10 that we just
13 looked at?

14 A No. These were very specific requests. The language here
15 has been 'smithed, to be sure, but I provided the original
16 language for 10 and insisted on the guaranty provision above
17 to assure that the indemnity would have some support.

18 Q And ultimately, did the Committee and the Debtor agree to
19 provide all of the protection afforded by Paragraphs 4, 5, and
20 10?

21 A Yes.

22 Q Okay.

23 MR. MORRIS: Your Honor, we're going to move on now
24 to good faith, Section 1129(e)(3), just to give you a little
25 bit of a roadmap of where we're going.

1 BY MR. MORRIS:

2 Q Let's talk about the process that led to the plan that the
3 Debtor is asking the Court to confirm today. Real basic stuff
4 at the beginning. Can you tell me your understanding of the
5 makeup of the UCC, of the Creditors' Committee?

6 A The Creditors' Committee in this case has four members.
7 It's UBS, the Redeemer Committee, which are former holders of
8 interests in a fund called the Crusader Fund, which was a
9 Highland fund, who had redeemed and then had a dispute with
10 Highland.

11 And the next creditor is Mr. Terry and Acis. We generally
12 group them as one, but the creditor is Acis.

13 And the fourth creditor is an entity called Meta-e, and
14 they provide litigation support and technical support and
15 discovery support in litigations for the Debtor, including in
16 this case now.

17 Q All right. Just focusing really on the early period, the
18 first few months, can you describe the early stages of the
19 negotiations with the UCC as best as you can recall?

20 A Well, I think the early stage of the case wasn't directly
21 a negotiation; it was really trying to understand as best we
22 could the myriad of assets that we had here, the various
23 businesses that the Debtor either owned, controlled, or
24 managed, as well as the claims.

25 We went through a process of trying to understand each of

1 the claims that the Debtor -- or against the Debtor that were
2 represented by the Committee, as well as some other claims
3 that were not on the Committee.

4 Q Was the Debtor -- I mean, was the Committee initially
5 pushing the independent board to go to a monetization plan, an
6 asset monetization plan?

7 A Very quickly and early on, the Debtor -- the Committee
8 took a pretty aggressive approach with the Debtor and the
9 independent board. I think the Committee's perspective, as
10 articulated to me, and where -- at least how we took it, was
11 that they'd been litigating for years and they sort of knew
12 the situation and the value of their claims, that the Debtor
13 was insolvent, in their view, and that we should be operating
14 the estate in essence for the benefit of the creditors.

15 Q And what was the board's view in reaction to that?

16 A We disputed it. And the reason we disputed it was very
17 straightforward. Save for the Redeemer claim, which at least
18 had an arbitration award, Acis and Mr. Terry didn't have any
19 specific awards, notwithstanding the results of the Acis
20 bankruptcy, and UBS, while it had a judgment, that judgment
21 was not against the Debtor.

22 So our view was, until we have our hands around these
23 claims and we determine what the validity is in our estate,
24 that we would treat the Debtor as if it were solvent. We also
25 wanted to assess the value of the assets. So, looking at the

1 assets not just from a book value but what they might be
2 really worth in the market.

3 Q And did the board in the early portion of the case
4 consider all strategic alternatives?

5 A I don't know if we considered every strategic alternative,
6 but we certainly considered a lot of alternatives.

7 Q Can you describe for the Court the alternatives that were
8 considered by the board before settling on the asset
9 monetization plan?

10 A Well, early on, you know, we looked at each of the -- what
11 we would think of the large category types of ways to resolve
12 a case. Number one, could we go through a very traditional
13 reorganization with either stretching out claims to creditors
14 after settlement or converting some of those to equity,
15 getting new equity infusions? We considered those
16 alternatives.

17 Number two, we considered whether we should simply sell
18 the assets. That's one of the things that the Committee was
19 pushing for. They could be sold to third parties. They could
20 be sold individually. Mr. Dondero potentially could buy some
21 of the assets. That'd be a reasonable reorganization in this
22 case.

23 We also considered whether that, you know, we would just
24 do a straight liquidation. Is there some value to doing --
25 converting the case to a 7 and doing a straight liquidation?

1 We also considered a grand bargain plan, and this was
2 something that I worked on quite a bit. The phrase is mine,
3 although no pride of authorship, certainly, since it didn't
4 work out. But that perhaps we could come to an agreement with
5 the major creditors and with Mr. Dondero and then shift some
6 of the expenses in the case out further to litigate some of
7 the other claims while reorganizing around the base business.

8 And then, finally, we considered the asset monetization
9 plan, and ultimately that evolved into what we have today.

10 Q Were there guiding principles or factors that the board
11 was focused on as it assessed these different options?

12 A Well, the number one guiding principle was overall
13 fairness and equitable treatment of the various stakeholders.
14 So, again, at that point, we didn't know exactly what, if
15 anything, we would owe to claimants like UBS or HarbourVest or
16 even Mr. Terry and Acis. We had a good sense of where we
17 would end up with Redeemer, I think, but we still had some
18 options and wanted to negotiate the issues related to
19 potential appeal rights that we had. So I think that was the
20 number one overall concern.

21 But that did evolve over time. Costs of the case were
22 exceptionally high. And the reason they're so high is that
23 Highland was run for a long time, at least from what we can
24 tell, at an operating deficit. Typically, what it would do is
25 run at a deficit and then sell assets to cover the shortfall,

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1 and it would defer a whole bunch of employee -- potential
2 employee compensation. And because of the way the environment
3 was going, particularly in the first half of the year, it
4 didn't look to us like there was going to be any great asset
5 increase that would somehow save us from the hole that was
6 being dug, the considerable amount of expenses to run the
7 case.

8 Q Did changing the culture of litigation factor into the
9 path that the board considered?

10 A Well, we certainly looked at the way the company had run
11 and why it got to where it is in terms of litigating. And not
12 just litigating valid claims, but litigating any claim to the
13 *nth* degree. And stories are legion, I won't talk about them,
14 but of Highland taking outrageous positions and then pursuing
15 them, hoping that the other side caves.

16 We determined that this estate couldn't bear that kind of
17 expense, and it wasn't fair and equitable to do that anyway.
18 So we wanted to attack the claims that we could -- and I say
19 attack; try to resolve them as swiftly as we could --
20 protecting the Debtor's interests but trying to find an
21 equitable resolution.

22 I'm not averse to litigating. And I think when there are
23 claims that are legitimate, the Debtor should pursue them.
24 There's always -- a good settlement is always better than a
25 bad litigation. But if there (indecipherable) to resolve

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1 them, we should -- we should pursue those. And if we have
2 defenses, we should pursue those, and not just be held up
3 because someone else is willing to, you know, take a more
4 difficult position than we are.

5 But in this case, it really did cry out for some sort of
6 resolution on many of these cases because they were far beyond
7 -- far beyond the facts and far beyond the dollars. There was
8 personal antipathy involved in virtually every one of the
9 unlitigated or unliquidated Committee cases.

10 Q Did the board, as it was assessing the various strategic
11 alternatives, consider maximization of the value?

12 A Always number one was, can we maximize value? But that
13 has to be done within the context of the risk you're taking
14 and the time it takes. So, not all wine ages well in a cave
15 and not all investments get to be more valuable over time. We
16 wanted to look at each individual asset that the Debtor had,
17 each claim that the Debtor had, each defense that the Debtor
18 had, and consider the time and the costs and then try to find
19 the best way to maximize value with those multiple
20 considerations.

21 Q How about the role and support of the UCC, how did that
22 factor into the decision-making, the Debtor's decision-making
23 as to what plan to pursue?

24 A Well, you know, the decision-making with the UCC was
25 cumbersome and oftentimes difficult. Sometimes our relations

1 were very contentious, and sometimes they continue to be. But
2 the Committee had significant oversight because of the
3 protocols that had been agreed to. Some of the disputes we
4 had with the Committee found their way into the court. Those
5 time and that cost, some of which we won, some of which we
6 lost, but those factored into our analysis.

7 But eventually we knew that we were going to need to get,
8 you know, some significant portion of the Committee to agree,
9 because, at minimum, Meta-e had a liquidated claim, and
10 Redeemer was very close to fully liquidated, so we were going
11 to need support from the Committee with whatever we tried to
12 push through. And so that's how we negotiated with the
13 Committee from that perspective.

14 Q Is it fair to say that the Debtor and the Committee's
15 interests became aligned upon approval of the disclosure
16 statement back at the end of November?

17 A I don't think they became perfectly aligned, because we
18 still have, you know, some disputes around, you know,
19 implementation and things like the employee releases, which
20 were very important to me. But I think we're largely aligned
21 and that the Committee is supportive, as Mr. Clemente said at
22 the start of this hearing, of the plan. We negotiated at
23 arm's length with them about most of the provisions. I would
24 say virtually everything was a relatively significant
25 negotiation, or at least there was a good faith exchange of

1 views on each side and assessment of legal and financial
2 risks. And I think at this point they're largely in support
3 of the plan.

4 Q All right. Let's -- you mentioned the grand bargain, and
5 I just want to spend a few minutes talking about that, how
6 that evolved. Focusing your attention in the kind of late
7 spring/early summer, can you tell me what efforts you and the
8 board made in trying to achieve a grand bargain in that early
9 part of the case?

10 A Well, we had -- at that point, we had reached agreement,
11 at least in principle, with Redeemer. And the thought was --
12 my thought was that we could construct a plan, understanding
13 what the cash flows looked like and what we thought the base
14 value of the asset looked like -- and those are not just the
15 assets that are tangible assets, but the notes that are
16 collectible by the Debtor as well -- and then engage with UBS
17 in particular. Redeemer. To some degree, Mr. Terry. We had
18 not yet reached any agreement with him. But UBS, we thought
19 of as a slightly -- I don't mean this to be disparaging -- but
20 a slightly more commercial player than Acis because of the
21 history that Acis had to deal with and endure.

22 And we were hoping that we could get some sort of
23 coalescence around an agreed distribution that would require
24 those creditors to take a lot less than they might have
25 otherwise agreed, Mr. Dondero to put in more than he otherwise

1 thought he could put in or would be willing to put in, and
2 then we would get out to Acis and the other creditors with a
3 plan.

4 And so I built, with the team at DSI, a detailed model on
5 how the distributions could work and what the potential timing
6 could be, trying to, each time, move in a multidimensional way
7 with UBS, Redeemer, Mr. Dondero, and to some degree Acis,
8 around the respective issues for their claims.

9 Again, UBS and Acis had not been resolved and weren't
10 close, but the thought was if we could get dollar agreements
11 for distribution, perhaps we could then figure out how to
12 construct settlements of their claims.

13 Q During this time period, did you work directly with Mr.
14 Dondero in the formulation of a potential grand bargain?

15 A I did, yes.

16 Q And the model that you described, did that go through a
17 number of iterations?

18 A It went through multiple iterations. I don't believe I
19 ever shared the model with anybody. One of the reasons for
20 that is I didn't want -- I felt I had -- if I was going to
21 share it with Mr. Dondero, for example, I'd have to share it
22 with UBS and I'd have to share it with Redeemer. And I wanted
23 it to be -- I wanted it to be a working model with the team at
24 DSI. In particular, we would make, you know, adjustments on
25 an almost-daily basis.

1 Mr. Dondero had -- remember, he was still portfolio
2 manager at that time. He also had a related-party interest,
3 as people have seen from some of the litigation around the
4 sales of securities. He had access and was receiving emails
5 from the team as well as from the finance team. So he had
6 access to the information at that point and had a view around
7 the value. And this was more trying to adjust what those
8 distributions would look like depending on the amounts that he
9 would be willing to contribute.

10 Q Moving on in time, did there come a time when the Debtor
11 participated in a mediation with certain of the major
12 constituents in the case?

13 A Yes. That was towards the end of the summer.

14 Q And during that mediation, did the concept of a grand
15 bargain, was that put on the table? Without discussing any
16 particulars about it, just as a matter of process, was the
17 grand bargain subject to the mediation discussions?

18 A Well, the mediation had multiple components, so the answer
19 to the question in short is yes, but I'll go longer because I
20 tend to. The grand bargain plan stayed in place, and that was
21 going to be an overall settlement. The mediation was
22 initially, I think, as a main course, focused on Acis, UBS,
23 and then the third piece being the grand bargain. And if you
24 could settle one of those claims, perhaps -- obviously, if you
25 could settle both of them, you could get to then focusing on

1 the grand bargain.

2 But even before we got to mediation, the idea of the
3 monetization plan had also been put forth. Notwithstanding
4 that it wasn't my idea, I actually thought that it was a good
5 idea, ultimately. Didn't initially. And the reason for that
6 is that it set a marker for what a base expectation could be
7 for the creditors and just for Mr. Dondero. And knowing that
8 that was out there, at least with them, that could hopefully
9 be a catalyst in the mediation for folks to say, let's see if
10 we can get our claims done and get a grand bargain done,
11 because if we don't we have this Debtor monetization plan.
12 And by that -- at that point, I don't think we had much
13 agreement with the Committee on anything, and certainly with
14 Mr. Dondero, on -- on a monetization plan.

15 Q All right. And let's just bring it forward from the fall,
16 post-mediation, to the present. Has -- has -- have you and
17 the board continued discussing with Mr. Dondero the
18 possibility of a grand bargain?

19 A Well, it's shifted. So, the grand bargain discussions
20 really -- you had multiple phases. So, you had pre-mediation.
21 There was the grand bargain discussions that I just described
22 previously that also involved UBS and Redeemer, and to some
23 degree Acis and Mr. Terry. Then you have the mediation, which
24 is much more focused on the claims and whether they can fit
25 into the grand bargain with Mr. Dondero.

1 And the way that was conducted was a little bit more
2 separated, meaning the parties would talk to the mediator, the
3 mediator would then go and talk to other parties and try to
4 work a settlement on each of those components.

5 Subsequent to the mediation where we reached the agreement
6 with Acis and Mr. Terry, and we ultimately in that timeframe
7 banged out the final terms of our agreement with Redeemer, we
8 engaged with Mr. Dondero around -- I wouldn't call it the
9 grand bargain, but a different plan. By that point, the
10 monetization plan had started to gain some traction with the
11 creditor group, and Mr. Dondero and his counsel, I believe,
12 focused on the potential of what was referred to as a pot
13 plan. And while it has the -- it could have the ability of
14 being a resolution plan, it wasn't the grand bargain plan that
15 I had initially envisioned. And pot plan was really a
16 misnomer, because it didn't have a whole pot, so -- so it's a
17 little bit of a hybrid.

18 Q Did the board spend time during its meetings discussing
19 various pot plan proposals that had been put forth by Mr.
20 Dondero?

21 A Oh, absolutely. And not only the board. I mean, we did
22 our own work as an independent board and then brought in our
23 professional advisors, both your firm and the DSI folks, to go
24 through analytics around the pot plan, and even before that,
25 the other plan alternatives, but we had direct discussions

1 with Mr. Dondero and his counsel.

2 Q And in the last couple of months, has the board listened
3 to presentations that were made by Mr. Dondero and his counsel
4 concerning various forms of the pot plan?

5 A Yes. At least two or three.

6 Q And during this time, has the board and the Debtor
7 communicated with the Committee concerning different
8 iterations of the proposed pot plan?

9 A Yes. We've had continual discussions with the Committee
10 regarding the various iterations of the potential grand
11 bargain all the way through the pot plan.

12 Q And during this process, did the Debtor provide Mr.
13 Dondero and his counsel with certain financial information
14 that had been requested?

15 A Yes. As I said, up 'til the point where he resigned and
16 was then ultimately, at the end of the year, removed from the
17 office, he had access to financial information related to the
18 Debtor and even got the information from the financial group.
19 Subsequent to that, we've provided him with requests -- with
20 financial information that was requested by his counsel.

21 Q Okay. Were your efforts at the grand bargain or the
22 pursuit of the pot plan successful?

23 A No, they were not.

24 Q Do you have an understanding as to -- just, again, without
25 going into -- into details about any particular proposal, do

1 you have an understanding as to what the barrier was to
2 success?

3 A The grand bargain, we just never got the traction that we
4 needed to get that going and the sides were just far -- too
5 far apart. And the pot plan, similarly. Our discussions with
6 Mr. Dondero and the Committee, they're -- they're very far
7 apart.

8 Q And is it fair to say that the Committee's lack of support
9 in either the grand bargain or the pot plan is the principal
10 cause as to why we're not talking about that today?

11 A Well, it's -- it -- right now, we've got the plan that's
12 on file, the monetization plan. The monetization plan has
13 gone out for creditor vote and has received support. It
14 distributes, we think, equitably, as well as a significant
15 amount of distributions to unsecured creditors. And there
16 really isn't an alternative that we see, based upon the
17 numbers I've seen, that competes with it or has any traction
18 with the largest creditors.

19 Q All right. So, now we've talked about various proposals
20 or alternatives that were considered by the board, including
21 the grand bargain and the pot plan. Let's spend some time
22 talking about the plan that is before the Court today and how
23 we got here. And I'd like to take you really back to the
24 beginning, if I may.

25 Tell us, tell the Court just what the board was doing in

1 the early months after getting appointed, because I think
2 context is important here. What were you all doing the first
3 few months of the case?

4 A Well, the first few months, we really were drinking from
5 the proverbial fire hose, trying to get an understanding of
6 the business, how it had been managed previously, what the
7 issues related to the different parts of the business were.
8 And then an understanding of each of the employees that were
9 working under us, what their roles were, how they performed
10 them, who sat where with respect to each of the assets, what
11 the contracts looked like, whether they be shared service or
12 management agreements. And then we started looking at the
13 individual assets in terms of value.

14 At the same time, we were trying to get up to speed on the
15 complex nature of the claims that were in the case. The
16 liquidated claims were relatively easy, but there had been a
17 significant amount of transfers in and out of the Debtor, and
18 then there's a myriad of relationships involving related
19 entities that we had to understand, both with respect to the
20 claims as well as with respect to the assets.

21 And so that -- those were the main things we were doing
22 for those first few months in the case.

23 Q Just a couple months into the case, the COVID pandemic
24 reared its head. Do you recall that?

25 A Yes. We had been in Dallas every day working up 'til the

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1 time of the COVID and some of the shutdown orders,
2 particularly in the Northeast, and so that changed the dynamic
3 of how we could function every day.

4 Notwithstanding that, we -- we were able to manage from
5 afar, and ultimately, when there were some cases in the office
6 of COVID, we -- on the Highland side, not the related entity
7 side, but on the Highland side -- we determined that the staff
8 and the team should work from home, which they were able to do
9 quite well.

10 Q Okay. In those early months, do you recall that there was
11 a substantial erosion of value, at least as of the time you
12 were appointed in those first three or four months?

13 A There was. And I think we've heard some -- some noise
14 about what that value was and the drop in the asset value as
15 opposed to net value. But the asset value did, did drop
16 significantly.

17 Q Can you describe for the Court your recollection as to the
18 causes of the drop in the value that you just described?

19 A Yes. The number one drop was a reservation that the board
20 took for a receivable from an entity called Hunter Mountain.
21 The quick version of this is that Hunter Mountain owns
22 Highland. As I mentioned, while Strand is the GP, it only has
23 a quarter-percent interest in Highland. The vast majority of
24 the interests are owned by an entity called the Hunter
25 Mountain Investment Trust in a very complicated, tax-driven

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1 structure.

2 Dondero and Okada transferred their interests in Highland
3 at a high valuation to Hunter Mountain. Hunter Mountain then
4 didn't have the money, so it, in essence, borrowed the money
5 from the Debtor in a note to pay for those interests. There's
6 a circular running of the cash, but we were not sure where, if
7 any, where any assets are, if they would be sufficient. So we
8 took a reservation of \$58 million for that note.

9 The second biggest piece of the reduction in value was the
10 equity that was lost in the Select Equity account. This is a
11 Debtor trading account that was managed by Mr. Dondero. \$54
12 million was lost in that account. Basically, it was really
13 highly margined, very high leverage in that account when the
14 market volatility came in. As it grew through January,
15 February, March, more and more margin calls. Ultimately,
16 Jefferies, which had Safe Harbor protections -- technically,
17 the account was not a Debtor account, but they would have had
18 it anyway -- they seized that account. \$54 million in equity
19 was lost in that account.

20 The next highest amount is about \$35 million, but it's
21 higher now. That's just the bankruptcy costs, where we have
22 spent cash and Debtor assets in the case. It was about \$36 to
23 \$40 million through the end of the year. That's now higher.

24 About \$30 million was lost in paying back Jefferies on the
25 asset side of the ledger in the Highland internal equity

1 account. This was similar to the equity -- the Select Equity
2 account, also managed by Mr. Dondero. Extremely highly-
3 levered coming into the market volatility of the first
4 quarter, which was exacerbated, obviously, by the COVID. That
5 was about \$30 million that was repaid in margin loan in that
6 account.

7 In addition, \$25 million of equity was lost in that
8 account while Mr. Dondero was managing it. I took over
9 effectively managing it in mid-March and worked with Jefferies
10 to keep them from seizing the account. We've since gotten a
11 bunch of value coming back from that account, but that was the
12 amount that was lost.

13 About \$10 million was lost in the Carey Limousine loan
14 transaction. That is a -- an interesting little company. Has
15 done a nice job -- management did a very good job coming into
16 the year, and it actually had real value, notwithstanding the
17 changeover to Uber in people's preferences. But with the
18 COVID, it really relied on events, airport travel, executive
19 travel, and that really took a bite out of it, although, you
20 know, we're hoping to be able to restructure, we have
21 restructured it to some degree, and we're hoping that there
22 could be value there.

23 And then about \$7 million was lost in equity in an entity
24 called NexPoint Hospitality Trust. This is another extremely
25 highly-levered hospitality REIT that NexPoint manages. It

1 trades on the Toronto Stock Exchange. And I think likely that
2 -- it's got a lot of issues with respect to its mortgage debt.
3 And because it was hospitality, it was really hurt by the
4 COVID.

5 And I think that's probably -- those numbers add up to
6 north of \$200 million of the loss.

7 Q All right. Thank you for that recitation, Mr. Seery. So,
8 turning to the spring, after all of those issues were
9 addressed, at the same time you were working on the grand
10 bargain, did the Debtor and its professionals begin
11 formulating the monetization plan that we have today?

12 A I'm sorry, in the spring? I lost that question. I
13 apologize.

14 Q That's okay. After you dealt with everything that you
15 just described, were you doing two things at once? Were you
16 working on the grand bargain and the asset monetization plan
17 at the same time?

18 A Yes, that's correct.

19 Q All right. Can you just describe for the Court kind of,
20 you know, how the asset monetization plan evolved up until the
21 point of the mediation?

22 A Yes. I alluded to it earlier, but because the Debtor was
23 running an operating deficit, we were very concerned about
24 liquidity. Highland typically runs, from a liquidity
25 perspective and a cash perspective, very close to the edge. I

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1 don't feel particularly comfortable helping lead an
2 organization that's running that close to the edge. And I was
3 very focused on the burn that we had on an operating basis, as
4 well as the professional cost burn, because for a case this
5 size it was significant.

6 The rest of the board felt similarly, and one of the
7 directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel,
8 came up with the idea that we needed an alternative to
9 continuing to just burn assets while we were in this case.
10 There had to be some sort of catalyst to get the parties, both
11 Mr. Dondero as well as the creditors -- at that point, as I
12 said, we weren't settled with Acis or UBS, and we weren't,
13 frankly, close with either of them. And so we needed what --
14 what I think the -- the idea was that we needed a catalyst to
15 have people focus on what the alternative was. Because
16 continuing to run the case until we ran out of money was not
17 an acceptable alternative.

18 What I didn't like about the plan was it didn't have
19 anybody's support, and so I wasn't sure how we made progress
20 with it without having some Committee member or Mr. Dondero in
21 support of it. I was outvoted, although maybe I came around
22 in the actual vote. But ultimately, I think it was actually a
23 quite smart idea, because it did set the basis for what the
24 case would be. Either there would be some resolution or it
25 would push towards the monetization plan, and parties could

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1 then assess whether they liked the monetization plan or not.

2 That if I was going to be the Claimant Trustee or the --

3 defending the, you know, against the claims, they would have

4 the pleasure of litigating with me for some period of time.

5 Or they could come to some either grand bargain or ultimately

6 some other resolution.

7 And as we started to develop a plan and put more of a

8 framework -- more flesh around the framework, it actually

9 started to look more and more like a real viable alternative

10 to either long-term litigation or some other grand bargain if

11 we couldn't get there.

12 Q And ultimately, did the board authorize the Debtor to file

13 its initial version of the asset monetization plan at around

14 the time of the mediation?

15 A Yeah. We developed it over the summer and really fleshed

16 it out in terms of how the structure would work, what the tax

17 issues were, what the governance issues were. We did that

18 largely negotiating with ourselves, so we -- we were extremely

19 successful. And then we filed, we filed that plan right

20 before the mediation.

21 And my recollection is that there was some concern from

22 the mediators that they thought that putting that plan out in

23 the public could upset the possibility of a grand bargain, so

24 we ended up filing that under seal.

25 Q Do you recall what the Committee's initial reaction was to

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1 the asset monetization plan that you filed under seal?

2 A Well, initially, they -- the Committee didn't like it.
3 They didn't like the governance. They didn't like the fact
4 that it set up for those creditors who didn't litigate the
5 prospect of litigations to try to resolve their claims. It
6 effectively cut out some of the advisory that the Committee
7 currently had. The -- one of the driving forces behind the
8 asset monetization plan and how we initially started it is we
9 can't continue these costs, as I said. Well, an easy way to
10 get rid of -- to reduce the costs is to get rid of half of
11 them.

12 So if you could get rid of the Committee, effectively, and
13 coalesce around an asset monetization vehicle, then if folks
14 wanted to resolve their claim, you could. If you had to
15 litigate it, you could, but you'd have one set of lawyers that
16 the estate was paying for, one set of financial advisors the
17 estate was paying for, as opposed to multiple sets.

18 Q In addition to the corporate governance issues that you
19 just described, did the Committee and the Debtor quickly reach
20 an agreement on the terms of the treatment of employee claims
21 and the scope of the releases for the employees?

22 A No. Not very quickly at all.

23 Q Yeah.

24 A You know, again, one of the issues in this case that
25 drives perspectives is the history that creditors have in

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1 dealing with Highland and in dealing with many of the
2 employees at Highland, you know, who had worked for Mr.
3 Dondero and served at his pleasure for a long time, and how
4 they had been treated in various of their attempts to collect
5 their claims. So the idea of giving any sort of releases to
6 the employees was anathema to -- to many of the Committee
7 members.

8 From my perspective, you know, releases are particularly
9 important because there's a *quid pro quo* leading up to the
10 confirmation of a plan, particularly with a monetization plan
11 where it's clear that the employees are all going to be or
12 largely going to be either transitioned or terminated. If
13 they're going to keep working towards that, we either have to
14 have some sort of financial incentive or some sort of
15 assurance that their actions which are done in good faith to
16 try to pursue this give them the benefit of more than just
17 their paycheck.

18 And so we thought we were setting up the *quid pro quo* in
19 terms of work towards the monetization, bring the case home,
20 and you're entitled to a release, so long as you haven't done
21 something that was grossly negligent or willful misconduct.
22 And the Committee, I think, wanted to have a more aggressive
23 posture.

24 Q And did those disagreements over corporate governance and
25 the employee releases kind of spill out into the public at

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1 that disclosure statement hearing in October?

2 A I think they spilled out at that hearing as well as in the
3 hearing either the next day or two days later around Mr.
4 Daugherty's claim. And again, it was -- it was contentious.
5 I tend to try to reach resolution, but I tend to hold firm
6 when I think that there's a good reason, an equitable reason
7 to do so, and compromising that issue was very difficult for
8 me.

9 Q But in the weeks that followed, did the Committee and the
10 Debtor indeed negotiate to resolve to their mutual
11 satisfaction the issues surrounding corporate governance and
12 employee releases?

13 A We did, yes.

14 Q And were -- was the Debtor able to get its disclosure
15 statement approved with Committee support in late November?

16 A We did, yes.

17 Q Can you describe for the Court generally kind of the
18 process by which the Debtor negotiated with the Committee?
19 I'll ask it as broadly as I can, and I'll focus if I need to.

20 A Yeah. The process was usually in group settings with the
21 independent directors, professionals, and the Committee
22 members and their professionals. Oftentimes, then, there
23 would be certain one-off conversations if there was a
24 particular issue that was more important to one Committee
25 member or another, or if they were designated by the Committee

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1 to be the point on that. And so I negotiated on behalf of the
2 Debtor, both collectively and individually, around these
3 points.

4 The biggest issues related to governance of the Claimant
5 Trust, the separation of the Claimant Trust and the Litigation
6 Trust, which was important to me, the treatment of employees
7 between the filing -- the time we came up with the case and
8 when we were going to exit, and then how that release
9 provision would work.

10 Q Is it fair to say that numerous iterations of the various
11 documents that embodied the plan were exchanged between the
12 Debtor and the Committee?

13 A Yes. There were -- there were dozens.

14 Q Fair to say that the negotiations were arm's length?

15 A Absolutely. Often contentious, always professional, but I
16 do think that there were, you know, well -- good-faith views
17 held by folks on both sides. And I think we were fortunate to
18 be able to get resolution of those, because they were
19 strongly-held views.

20 Q Okay. And ultimately, I think you've already testified,
21 and Mr. Clemente certainly made it clear: Is the Debtor --
22 does the Debtor have the Committee on board for their plan
23 today?

24 A My understanding is again -- and you heard Mr. Clemente --
25 both the Committee and each of the individual members are

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 16**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

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Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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1 supportive of the plan.

2 Q All right. Let's switch to Mr. Dondero and his reaction
3 to the asset monetization plan. Can you describe for the
4 Court based on your experience and your interaction with him
5 what you interpreted Mr. Dondero's position to be?

6 A VOICE: Objection, hearsay, or --

7 MR. DRAPER: Objection, hearsay. Calls for
8 speculation, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah. I had direct discussions with
11 Mr. Dondero regarding the plan, the asset monetization plan,
12 as I mentioned, direct discussions regarding a potential grand
13 bargain. The initial view from Mr. Dondero was, and he told
14 me, that if he didn't get a plan that he agreed to, if he
15 didn't have a specific control or agreement around what got
16 paid to Acis and Mr. Terry and what got paid to Redeemer
17 specifically, that he would, quote, burn the place down. I
18 know that because it is, excuse the pun, seared into my mind,
19 but I also wrote it down. And that was, you know, in the
20 early summer.

21 We had subsequent discussions around the plan, and as we
22 were talking about the -- about the grand bargain or -- the
23 pot plan hadn't come out at that point -- even on a large call
24 -- the plan initially called for a transition, and still does,
25 of employees of the Debtor to a related entity to continue

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1 performing services that were under the prior shared service
2 agreements that we were going to terminate.

3 But that transition is wholly dependent on Mr. Dondero.
4 And we had a call with at least five to seven people on it
5 where I said to Mr. Dondero, look, this is going to be in your
6 financial interest to agree to a smooth transition. These
7 people have worked for you for a long time. It's for their
8 benefit. You portfolio-manage these funds. It's to the
9 benefit of those funds to do this smoothly. And if there's
10 litigation between you and the estate later, then those chips
11 will fall where they may.

12 And he told me to be prepared for a much more difficult
13 transition than I envisioned.

14 And I specifically said to him, and this one sticks in my
15 mind because I recall it, I said, don't worry, Mr. Dondero --
16 I think I used Jim -- I will be prepared. I was a Boy Scout
17 and we spend time preparing for these kinds of things. So
18 we're -- we would love to get done the best transition we can,
19 but we will be prepared for a difficult one.

20 So, from the start, the idea of the monetization plan was
21 not something that obviously he supported. We did agree with
22 -- after his inquiry or request with the mediators, to file it
23 under seal while we went into the mediation.

24 BY MR. MORRIS:

25 Q And after, after that was filed in September, early

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1 October, did Mr. Dondero start to act in a way that the board
2 perceived to be against the Debtor's interests?

3 A Certainly. I mean, he previously had shown inclinations
4 of that, but that -- it got very aggressive as he interfered
5 with the trades we were trying to do in terms of managing the
6 CLO assets. He took a position that postpetition, which was
7 really one of his entities taking a position, that
8 postposition a sale of life policy assets was somehow not in
9 the best interests of the funds and that we had abused our
10 position, notwithstanding that he turned it over to us with no
11 liquidity to maintain those life policies. There were several
12 other instances. And those led to the decision to, one, have
13 him resign, and then ultimately, after the text to me that I
14 perceived as threatening, and we've had subsequent hearings on
15 it, we asked him to leave the office.

16 Q Okay. Let's move back to the plan here. Can you
17 describe, you know, generally, if you can, the purpose and
18 intent of the asset monetization plan?

19 A Well, very simply, the main purpose is to maximize value.
20 This is not a competition between Mr. Dondero and myself. I
21 have no stake in getting more money out of the maximization
22 other than my duty to do the job that I was hired to do.

23 So our goal is to manage the assets in what we think is
24 the best way to do that over time, and find opportunities
25 where the market is right to monetize the assets, primarily

1 through sales. There may be other instances, depending on the
2 type of asset, whether a sale makes sense, if we can structure
3 it through some kind of distribution that's more structured.

4 Q We've used the phrase a bunch of times already. Can you
5 describe in your own words what an asset monetization plan is
6 in the context of the Debtor's proposal?

7 A Well, it may be slightly an awkward moniker, but I think
8 it's not completely different than what you'd see, in some
9 respects, to a regular plan, where you equitize debt and you
10 operate the business for the benefit of the equitized debt.
11 Here, it's a little different in that we know exactly how
12 we're going to move forward. We've effectively -- we'll
13 effectively turn the debt obligations into trust interests and
14 we will pay those as we sell down assets. So we've got it
15 structured in a way where we can pivot depending on market
16 conditions and we'll be managing certain funds that the assets
17 sit in.

18 So there's really four assets where the assets sit, and
19 we'll manage those. First are the ones that the Debtor owns
20 directly. Second will be the ones that are in Restoration
21 Capital -- Restoration Capital Partners. Third are the assets
22 in a fund called Multi-Strat. Fourth is the direct ownership
23 interest in Cornerstone, and technically (garbled) would be
24 the -- would be the next one.

25 So we have the ability to manage these individual assets

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1 and then be able to sell them in what we determine to be the
2 best way to maximize value, depending on the timing.

3 Q And when you say that you're going to continue to operate
4 the business, do you mean that the Debtor will continue to
5 manage the assets you've just described in the same way that
6 it had prior to the petition date?

7 A It'll be a smaller team, but that's the Debtor's business.
8 So what we won't be doing are the shared services anymore.
9 That was part of the Debtor's business. But we will be
10 managing the assets. So the 1.0 CLOs, we'll manage those
11 assets. The RCP assets, we'll manage those assets. The
12 Trussway Holdings assets, we'll managing those assets. Each
13 of them is a little bit different. There's things as diverse
14 as operating companies to real estate. We'll operate, subject
15 to final agreement, but the Longhorn A and B, which are
16 separate accounts that are -- were funded and are controlled
17 by the largest -- one of the largest investors in the world.
18 And so they have agreed that we should manage those assets for
19 them.

20 So we're -- that's the business that the Debtor is in. It
21 won't be doing all of the businesses that the Debtor was in
22 before, like the shared services, but the management of the
23 assets will be very similar.

24 Q And why do these funds and these assets need continued
25 management? Why aren't you just selling them?

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1 A Well, in some respects, they could just be sold, but the
2 -- we believe that the value would be a lot lower. So, a lot
3 of them are complex. The time to sell them may not be now.
4 Some will require restructuring in some way, whether -- not
5 through a reorganization process, but some sort of structural
6 treatment to how the obligations at the individual asset are
7 treated, or the equity at the individual asset. So we're
8 going to manage each of them and look for market opportunities
9 where we think the value can be maximized.

10 MR. MORRIS: Your Honor, I'm about to switch to
11 another topic. We have been going for a little bit more than
12 two and a half hours. I'm happy to just continue if you and
13 the witness are, but I just wanted to give you a head's up
14 that I'm about to switch topics. If you wanted to take a
15 short break, we could. If you want me to continue, I'm happy
16 to do that, too.

17 THE COURT: Well, let me ask you, how much longer do
18 you think you're going to take overall with Mr. Seery?

19 MR. MORRIS: I think I'll probably have another hour
20 to an hour and a half, Your Honor. We want to make a complete
21 factual record here.

22 THE COURT: All right. Well, it's 12:07 Central
23 time. Why don't we take a 30-minute lunch break, okay? Can
24 everybody do their lunch snack that fast?

25 MR. MORRIS: Sure.

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1 THE COURT: I think that would probably be the way to
2 go. So we'll come back -- it's now 12:08. We'll come back at
3 12:38 Central time and resume --

4 MR. MORRIS: Okay.

5 THE COURT: -- resume this direct testimony, okay?
6 So, see you in 30 minutes.

7 MR. MORRIS: Thank you very much.

8 THE COURT: Okay.

9 THE CLERK: All rise.

10 (A recess ensued from 12:08 p.m. to 12:44 p.m.)

11 THE COURT: We are going back on the record in the
12 Highland confirmation hearing. It's 12:44 Central time. I
13 took a little bit longer break than I said we would.

14 Mr. Morris and Mr. Seery, are you ready to resume?

15 MR. MORRIS: I am, Your Honor.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Okay, good. A couple of things. I'm
18 required to remind you you're still under oath, Mr. Seery.
19 And also, just for people's planning purposes, what I intend
20 to do is, when the direct examination of Mr. Seery is
21 finished, I'm going to allow cross-examination of the
22 Objectors in the same amount of time in the aggregate that the
23 Debtor got, okay? So, Objectors, in the aggregate, you can
24 spend as long cross-examining as the Debtor spent examining.
25 I can figure out this is the most significant witness, so I'm

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1 assuming that Debtor's other witnesses are going to be a lot
2 shorter than this, but --

3 MR. MORRIS: Yes, I promise.

4 THE COURT: -- that's how we'll proceed. And I
5 expect to finish Mr. Seery today.

6 So, all right. With that, you may proceed, Mr. Morris.

7 MR. MORRIS: Okay.

8 DIRECT EXAMINATION, RESUMED

9 BY MR. MORRIS:

10 Q Can you hear me okay, Mr. Seery?

11 A Yes, sir.

12 Q Okay. Before we move on to the next topic, you spent some
13 time describing the asset monetization plan. Would it be fair
14 to describe that as a long-term going-concern liquidation?

15 A Long-term is subjective. We anticipate that we'll be able
16 to monetize the assets in two years. We could go out longer
17 to three. There's no absolute restriction that we couldn't
18 take longer, depending on what we see in the market, but the
19 objective would be to find maximization opportunities within
20 that time period.

21 Q Okay. So let's turn now to the post-confirmation
22 corporate governance structure.

23 (Interruption.)

24 THE WITNESS: Mr. Golub (phonetic), you should mute.

25 THE COURT: Yes. I don't know -- I didn't catch who

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1 that was. But anyway, anyone other than --

2 A VOICE: It's someone named Garrett Golub.

3 THE COURT: -- Morris and Seery, please mute. All
4 right. Go ahead.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q At a high level, Mr. Seery, can you please describe for
8 the Court the post-confirmation structure that's envisioned
9 under the proposed plan?

10 A At a high level, we anticipate reorganizing HCMLP such
11 that the current parties of interest will be extinguished and,
12 in exchange, creditors will get trust interests. There'll be
13 a trust that will sit on top of HCMLP and it will have an
14 overall responsibility for the Claimant Trust, which will be
15 the HCMLP assets plus the assets that we move into the
16 Claimant Trust, depending on structural considerations. And
17 then a Litigation Trust, which will be a separate trust, and
18 that will roll up into the main trust. And the main trust
19 will be where the creditors hold their interests. And those
20 interests take the form of senior interests or junior
21 interests.

22 Q All right. You mentioned a Claimant Trust. Who is
23 proposed to serve as the Claimant Trustee?

24 A I am.

25 Q And you mentioned a Litigation Trust. Is there someone

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1 proposed to serve as the Litigation Trustee?

2 A A gentleman named Marc Kirschner. He's been doing these
3 kinds of things for a long time.

4 Q Is there going to be any kind of oversight group or
5 committee?

6 A There is an oversight committee that sits at the main
7 trust. Into it will report Mr. Kirschner and myself. It has
8 oversight responsibilities similar to a board of directors in
9 terms of the operations of the Claimant Trust and the
10 Litigation Trust.

11 Q Do you have an understanding as to who the initial members
12 of the Claimant Oversight Committee?

13 A The initial members will be each of the members of the
14 Creditors' Committee. So, UBS, Acis, Redeemer, a
15 representative from Redeemer, and Meta-e, as well as an
16 independent named David Pauker. So that's the initial
17 structure.

18 Q And can you describe for the Court, how did Mr. Pauker get
19 involved in this?

20 A He was selected by the Committee.

21 Q Okay. Is there -- Meta-e is a convenience class claim
22 holder. Do I have that right?

23 A Yeah. They're -- they -- as I went through earlier, they
24 had a liquidated claim for litigation services. So we
25 expected that they'll be paid off rather early in the process.

1 At that point, we suspect they wouldn't -- they would no
2 longer be an Oversight Committee member and they would be
3 replaced by an independent.

4 Q And do you have any understanding as to how that
5 independent will be chosen?

6 A I believe it's chosen by the other members.

7 Q Okay. Can you describe your proposed compensation
8 structure as the proposed Claimant Trustee?

9 A My compensation will be \$150,000 a month, which is the
10 same compensation I have now. In addition, we'll negotiate a
11 bonus structure with the Oversight Committee. And that will
12 likely be a bonus not just for myself but for the entire team,
13 depending on performance.

14 Q Okay. And that -- and who is that negotiation going to be
15 had with?

16 A The Oversight Committee.

17 Q Okay. Are you familiar with Mr. Pauker's compensation
18 structure?

19 A I -- I've seen it. I don't recall specifically. I think
20 his -- from the models, I think he's about 40 or 50 grand a
21 month, something along those lines.

22 Q Okay. How about Mr. Kirschner? Do you recall -- let me
23 just ask you this. Does it refresh your recollection at all
24 if I said that 250 in year one for Mr. Pauker?

25 A Yeah. So maybe closer to \$20,000 to \$25,000 a month. And

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1 then Mr. Kirschner is a lower amount, but he would get a
2 contingency fee arrangement somewhere dependent on the
3 recoveries from his litigations.

4 Q Okay. You mentioned earlier that the Debtor intends to
5 continue operations at least for some period of time post-
6 effective date. Do you have a view as to whether the post-
7 confirmation entity will have sufficient personnel to manage
8 the business?

9 A I do, yes.

10 Q And why is that? What makes you believe that the Debtor
11 will have -- the post-confirmation Debtor will have sufficient
12 personnel to manage the business?

13 A Well, we've gone through and looked at each of the assets
14 and what is required to manage those assets. We have a lot of
15 experience doing it during the case. The bulk of the
16 employees, who do a fine job, are really doing shared service
17 arrangements. The direct asset management group is a smaller
18 group, and we'll be able to manage those with the team we're
19 putting together.

20 Q Okay. How does the ten employees compare to the original
21 plan that was set forth in the disclosure statement, if you
22 recall?

23 A Well, we had less, and I believe the number was either two
24 or three, along with me, and then using a lot of outside
25 professional help. But we determined that we wanted to have a

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1 much more robust team, based on the litigation that we're
2 seeing around the case and we expect to continue post-exit, so
3 that the team can manage those assets unfettered.

4 In addition, we were taking on the CLO management, the 1.0
5 CLO contracts. These one -- as I've mentioned before, they're
6 not traditional CLOs in the sense that they require the same
7 hands-on management, but they do require an experienced team
8 to help manage the exposures, most of which are cross-holdings
9 in different -- in different entities or different investments
10 that Highland also has exposure to.

11 Q In addition to the assumption of the CLO management
12 agreements, has the Debtor made any decisions regarding the
13 possibility of hiring a sub-servicer?

14 A We have, yes.

15 Q And did that factor into the Debtor's decision to increase
16 the number of personnel it was going to retain?

17 A Well, we determined we weren't going to hire a sub-
18 servicer. And I'm not sure exactly when we made that
19 determination. We do have a TPA, which is SEI, and that's a
20 third-party administrator, to sift through the funds and
21 provide accounting supporting to those, to those funds. So
22 that -- they will help. We also have an outside consultant
23 that we're using, Experienced Advisory Consultants, who are
24 financial consultants who've worked in the business. So we do
25 have those.

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1 But we didn't think that we would get a third-party sub-
2 servicer, as was the case in Acis, and determined that wasn't
3 in the best interest of the estate.

4 Q Can you just shed a little light on what factors the
5 Debtor took into account in deciding not to hire a sub-
6 servicer?

7 A Well, we primarily looked at cost, as well as control of
8 the assets, and determined that that was -- those were in the
9 best interests of the estate, to keep them managed internally.
10 We reviewed that with the Committee, and they agreed.

11 Q Okay.

12 MR. MORRIS: Let's turn now to the best interests of
13 creditors' test, Your Honor, 1129(a)(7), and let's talk about
14 whether the plan is in the best interests of creditors.

15 BY MR. MORRIS:

16 Q Has the Debtor done any analysis to determine the likely
17 value to be realized in a Chapter 7 liquidation?

18 A We have, yes.

19 Q And has the Debtor done any analysis to determine the
20 likely recoveries under the plan?

21 A Yes.

22 Q Okay. Do you recall when these projections were first
23 prepared?

24 A We started working on projections in the fall, as we were
25 developing the monetization plan. We filed projections, I

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1 believe, in November. We've subsequently updated those
2 projections based on the claims, market condition, and value
3 of the assets.

4 Q And were those updates provided to plan objectors last
5 week?

6 A Yes, they were.

7 Q Okay. Can we refer to the projections that were in the
8 disclosure statement as the November projections?

9 A That'd be fine.

10 Q And can we refer to the projections that were provided to
11 the objectors last week as the January projections?

12 A Yes.

13 Q And as --

14 A I think they're actually -- I think they're actually dated
15 February 1, is the most recent update.

16 Q Okay. And then was a further update provided yesterday
17 and filed on the docket, to the best of your knowledge?

18 A Yes.

19 Q All right. We'll talk about some of the changes in those
20 projections.

21 MR. MORRIS: Can we call up on the screen Debtor's
22 Exhibit 7D as in dog? And this document is in evidence. Um,
23 --

24 THE COURT: No, this is -- oh, wait. How many Ds is
25 it? Seven?

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1 MR. MORRIS: It's 7D, so that would be on Docket
2 1866, all of which has been admitted.

3 THE COURT: Okay. You're right.

4 MR. MORRIS: Okay.

5 And if we could just, I'm sorry, go to Page 3.

6 BY MR. MORRIS:

7 Q Is there any way to look at this, Mr. Seery? Is this the
8 January projections that were provided last week?

9 A Yes.

10 Q Okay. Can you describe for the Court the process by which
11 this set of projections and the November projections were
12 prepared? How did the Debtor go about preparing these
13 projections?

14 A Yeah. These are prepared what I would call bottoms-up.
15 So what we did was we looked at each of the assets that the
16 Debtor owns or manages or has a direct or indirect interest
17 in, used the values that we have for those assets, because we
18 do keep valuations for each of the assets that the Debtor owns
19 or manages in the ordinary course of business. We then
20 adjusted those depending on what we saw as the outcomes for
21 the case, either a plan outcome or a liquidation outcome, and
22 then rolled those into the -- into the numbers that you see
23 here.

24 So the 257 and change. And please excuse my eyesight.
25 I'm going to make this bigger. The 257 is the estimated

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1 proceeds from monetization. Above that, you see cash. That's
2 our estimated cash at 131. And we monitor those, those values
3 daily.

4 Q And were these projections prepared under your
5 supervision?

6 A They were, yes.

7 Q Okay. And who was involved in the preparation of this
8 document and other iterations of the projections?

9 A The team at DSI. Obviously, myself; the team at DSI; as
10 well as the, at least from a review perspective, counsel.

11 Q All of these contain various assumptions. Do I have that
12 right?

13 A Yes.

14 MR. MORRIS: Can we go to the prior page, please, I
15 think is where the assumptions are? And let's just look at a
16 few of them. Okay. Can we make that a little bigger, La
17 Asia? Okay. Good.

18 BY MR. MORRIS:

19 Q Why does the Debtor's projections and liquidation analysis
20 contain any assumptions? Why, why include assumptions?

21 A Well, all projections contain assumptions. So an
22 assumption -- I was strangely asked the question at
23 deposition, what does that mean? It's a thing or fact that
24 one accepts as true for the purposes of analysis. And so in
25 terms of looking out into the future as to what the potential

1 operation expenses will be and what the potential recoveries
2 will be, one has to make assumptions in order to be able to
3 compare apples to apples.

4 Q And do you believe that these assumptions are reasonable?

5 A Yes. It would make no sense to have assumptions that
6 aren't reasonable. I mean, and we've all seen that with
7 analysis through our respective careers. It really should be
8 grounded in some fact and a reasonable projection on what can
9 happen in the future, based upon experience.

10 Q Okay. And have you personally vetted each of the
11 assumptions on this page?

12 A Yes.

13 Q Okay. Let's just look at a few of them. Let's start with
14 B. It says, All investment assets are sold by December 31,
15 2022. Do you see that?

16 A Yes.

17 Q Why did the Debtor make that assumption?

18 A We looked at a two-year projection horizon. We thought
19 that that was a reasonable amount of time, looking at these
20 assets, to monetize the assets. Remember that we did go
21 through a process of the case over the last year, and we did
22 consider monetization asset events for certain of the assets
23 throughout the case, some of which we were successful on, some
24 of which we weren't, some we just determined to pull back.
25 But we do believe that, based upon our view of the market and

1 where we think these assets will be positioned, that
2 monetizing them over a two-year period makes sense.

3 Q And is it possible that it takes longer than that?

4 A It's possible. The -- you know, we would be wrong about
5 the market. The -- we could go into a full-blown recession.
6 Capital could dry up. The financing markets could turn
7 negative. But they're extremely positive right now. Those
8 things could happen. But we're assuming that they won't.

9 Q And is it possible that you complete the process on a more
10 accelerated timeframe?

11 A That's always possible. It's not, in my experience, a
12 good way to plan. Luck really isn't a business strategy. But
13 if good opportunity shows up and folks want to pay full value
14 for an asset, we certainly wouldn't turn them away just so we
15 could stretch out the time period.

16 Q Is it fair to say that this projected time period is your
17 best estimate on the most likely timeframe needed?

18 A It's -- I think it's the best estimate that we have based
19 upon our experience with the assets, again, and our projection
20 of the marketplace that we see now. If things change, we'll
21 adjust it, but this is a fair estimate of when we can get the
22 monetization accomplished.

23 Q Okay. The next assumption relates to certain demand
24 notes. Do you see that?

25 A Yes.

1 Q Can you explain to the Court what that assumption is and
2 why the Debtor believed that it was reasonable?

3 A Well, the Debtor has certain notes that are demand notes.
4 These are all from related entities. Most of the notes, the
5 demand notes, we have demanded, and we've commenced litigation
6 to collect. And we assume that we're going to be able to
7 collect those.

8 Three notes that were long-term notes -- these were notes
9 with maturities in 2047 that had been stretched out a couple
10 years ago -- were defaulted recently. And we have accelerated
11 those notes and we've asserted demands and we have commenced
12 litigation, I believe, on each of those last week to collect.
13 So we do estimate that we will collect on all of the notes
14 that we've demanded and that we've commenced action on. So
15 the demand notes as well as the accelerated notes.

16 The next, the next bullet shows there's one Dugaboy note
17 that has not defaulted. That also has a 2047 maturity. I
18 believe it's about \$18 million. And we expect that one to
19 stay current, because now I think the relater parties learned
20 that when you don't pay a long-dated note, it accelerates,
21 provided the holder, which is us, wishes to accelerate it,
22 which we did. And so that note we do not expect to be
23 collected in the time period.

24 Q Okay.

25 MR. MORRIS: Let's go down to M.

1 BY MR. MORRIS:

2 Q M relates to certain claims. Do you see that?

3 A Yes.

4 Q Can you just describe at a high level what assumption was
5 made with which -- with respect to which particular claims?

6 A Well, we've summarized them there. And what we've assumed
7 is that, with respect to Class 8, IFA, which is a derivative
8 litigation claim that seeks to hold, loosely, HCMLP liable for
9 obligations of NexBank, is worth zero. I think that's pretty
10 close to settling. We assumed here \$94.8 million for UBS,
11 which was the estimated amount, and \$45 million for
12 HarbourVest.

13 Q And when you say the estimated amount, are you referring
14 to the 3018 order on voting?

15 A Yes. We just use the estimated amount in this projection
16 based upon the 3018 order.

17 Q Okay. And finally, let's look at P. P has a payout
18 schedule. Do I have that right?

19 A That's an estimated payout schedule, yes.

20 Q And what do you mean by that, that it's estimated?

21 A Based upon our projections and how we perceive being able
22 to monetize the assets and reach the valuations that we want
23 to reach, we believe we could make these distributions.
24 However, there's no requirement to make them.

25 So the first and foremost objective we have, as I said

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1 earlier, is to maximize value, and not -- it's not based on a
2 payment schedule, it's based upon the market opportunity. And
3 we've estimated for our purposes here that we'll be able to
4 meet these distribution amounts, but there's no requirement to
5 do so.

6 Q Okay.

7 MR. MORRIS: Let's go to Page 3 of the document,
8 please.

9 BY MR. MORRIS:

10 Q Can you just describe generally what this page reflects?

11 A This is a comparison of the plan analysis and what we
12 expect to achieve under the plan and the liquidation analysis
13 if a trustee, a Chapter 7 trustee, were to take over. And it
14 compares those two distribution amounts based upon the
15 assumptions on the prior page.

16 Q All right. Let's just look at some of the -- some of the
17 data points on here. If we look at the plan analysis, what is
18 -- what is projected to be available for distribution, the
19 value that's available for distribution?

20 A \$222.6 million.

21 Q Okay. So, 222? And on a claims pool that's estimated to
22 be, for this purpose, how much?

23 A \$313 million.

24 Q And what is the distribution, the projected distribution
25 to general unsecured creditors on a percentage basis?

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1 A On this analysis, to general unsecured creditors, it's
2 62.14 percent. But remember, that backs out the payment to
3 the Class 7 creditors of 85 cents above.

4 Q Okay. And does this plan analysis include any value for
5 litigation claims?

6 A No, it does not.

7 Q And is that true for all forms of the Debtor's
8 projections?

9 A That's correct, yes.

10 Q Okay. And let's look at the right-hand column for a
11 moment. It says, Liquidation Analysis. What does that column
12 represent?

13 A That represents our estimate of what a Chapter 7 trustee
14 could achieve if it were to take over the assets, sell them,
15 and make distributions.

16 Q Okay. And let's just look at the comparable data points
17 there. Under the liquidation analysis, as of -- the January
18 liquidation analysis as of last week, what was projected to be
19 available for distribution?

20 A A hundred and -- approximately \$175 million.

21 Q Okay. And what was the claims pool?

22 A The claims pool was \$326 million. Recall that that's a
23 slightly larger claims pool because it doesn't back out the
24 Class 7 claims.

25 Q Okay. The convenience class claims?

1 A Correct.

2 Q Okay. And what's the projected recovery for general
3 unsecured claims under the liquidation analysis?

4 A Based on this analysis and the assumptions, 48 (audio
5 gap).

6 Q Okay. Based on the Debtor's analysis, are creditors
7 expected to do better under this analysis in the -- under the
8 Debtor's plan versus the hypothetical Chapter 7 liquidation?

9 A Yes. Both -- both Class 7 and Class 8.

10 Q Okay. Now, this set of projections differs from the
11 projections that were included in the disclosure statement; is
12 that right?

13 A That's correct.

14 Q Okay. Can we just talk about what the differences are
15 between the November projections that were in the disclosure
16 statement and the January projections that are up on the
17 screen? Let's start with the monetization of assets, the
18 second line. Do you recall if there was an increase, a
19 decrease, or did the value from the monetization of assets
20 stay the same between the November projections and the January
21 projections?

22 A They increased from November 'til -- 'til now.

23 Q Okay. Can you explain to the judge why the value from the
24 monetization of assets increased from November to January?

25 A Well, really, it's the composition of the assets and their

1 value. So there's four main drivers.

2 The first is HarbourVest. We had a settlement with
3 HarbourVest, which include HarbourVest transferring to the
4 Debtor \$22-1/2 million of HCLOF interests. Those have a real
5 value, and we've now included them in the -- in the asset
6 pool. We've also included HarbourVest in the claims pool.

7 The second was we talked a little bit earlier on the
8 assumptions on the notes. We previously had anticipated that,
9 on the long-dated notes, a collection, we -- we'd receive
10 principal and interest currently, but we wouldn't receive the
11 full amount of the principal that was due well off in the
12 future, and we would sell it a discount.

13 So the amount of the asset pool has been increased by \$24
14 million, and that reflects the delta between or the change
15 between what was in the prior plan, the notes paying and then
16 being sold at a discount, and what's in the current plan,
17 which include the accelerated notes, which is a \$24 million
18 note that Advisors defaulted on that we have accelerated and
19 brought action on, as well as two six -- roughly \$6 million
20 notes, one from Highland Capital Real Estate and the other
21 from HCM Services. So that's, that's additional 24.

22 In addition, Trussway, we've reexamined where Trussway is
23 in the market, both its marketplace and its performance, and
24 reassessed where the value is. So that has increased by about
25 \$10.6 million.

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1 That doesn't mean that we would sell it today. It means
2 that, when you look at the performance of the company, what we
3 think are the best opportunities in the market. As we see the
4 marketplace with managing the company over time, we think that
5 that asset has appreciated considerably since November.

6 And then, finally, there were additional revenues that
7 flow into the model from the November analysis which would be
8 distributable, and those include revenues from the 1.0 CLOs.

9 Q Okay. So that accounts for the difference and the
10 increase in value from the monetization of assets. Is there
11 also an increase in expenses from the November projections to
12 the January projections?

13 A Yeah. It's -- it's about -- it's around \$25 million
14 additional increase.

15 Q And can you explain to the Court what is the driver behind
16 that increase in expenses?

17 A Yeah. There's several drivers to that. The first one is
18 head count. So our head count, we've increased. As I
19 mentioned earlier, we determined that we wanted to have a much
20 more robust management presence. So we've increased the head
21 count, so we have a base comp, compensation, about \$5 million
22 more than we initially thought.

23 Secondly, we have bonus comp. So we've back-ended --
24 structured a backend bonus performance bonus for the team, and
25 that will run another \$5 million, roughly.

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1 Previously, we had thought about, as you mentioned
2 earlier, the sub-servicing, but we've now talked about and we
3 have engaged a TPA, SEI, as well as experienced advisors.
4 That's another \$1 to \$2 million.

5 Operating expenses have increased by about \$8 million,
6 based upon our assessment. The biggest driver there is D&O,
7 which is up about \$3 million. In addition, we've gotten -- we
8 determined to keep a bunch of agreements related to data
9 collection and operations. Those were requested by the
10 Committee, but they also serve us in performing our functions.
11 That's another couple million dollars.

12 My comp, my bonus comp was not in the prior model. So I
13 have a bonus that has not been agreed to by the Court for the
14 bankruptcy performance. This is not a future bonus. And we
15 built that into the model. Obviously, it's subject to Court
16 approval and Committee objection, and I suppose anybody else's
17 objection, but we'll -- we'll be before the Court for that.
18 But we wanted to build that into the model so that we had it
19 covered in the event that it was approved.

20 Q Was there also a change in the assumption from November to
21 January with respect to the size of the general unsecured
22 claim pool?

23 A Yes. There have been -- there have been several changes
24 that have happened, and we've added those and refined the
25 claim pool numbers.

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1 Q And are those changes reflected in the assumption we
2 looked at earlier, Exhibit -- Assumption M, which went through
3 certain claims that have been liquidated?

4 A Some, some are. That assumption, I don't believe, was --
5 it's not in front of me, but wasn't up to date. So, that one,
6 for example, assumed UBS at the 3018 estimated amount. We've
7 since refined that number to reflect the agreed-upon
8 transaction with UBS, which is subject to Court approval.

9 Q Right. But before we get to that, for purposes of the
10 January model, the one that's up on the page -- and if we need
11 to look at the prior page --

12 MR. MORRIS: Let's go to the prior page, the
13 assumption. Assumption M.

14 BY MR. MORRIS:

15 Q Assume the UBS, the UBS claim at the \$94.8 million, the
16 3018 number. Do you remember that?

17 A Yeah. That's, that -- that's the assumption in this
18 model. I think back in November we assumed HarbourVest at
19 zero and UBS at zero. So we've since -- we've since refined
20 those numbers, obviously, through both the 3018 process as
21 well as the settlement with HarbourVest.

22 Q And did the -- did the inclusion -- withdrawn. At the
23 time that you prepared the November model -- withdrawn. At
24 the time the Debtor prepared the November model, did it know
25 what the UBS or the HarbourVest claims would be valued at?

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1 A No. We just had our assumption back then, which was zero.
2 And now, obviously, we know.

3 Q And so the January model took into account the settlement
4 with HarbourVest and the 3018 motion; do I have that right?

5 A That's correct. That's in the assumptions.

6 Q And what was the impact on the projected recoveries to
7 general unsecured creditors from the changes that you've just
8 described, including the increase in the claims amount?

9 A Well, when -- like any fraction, the distribution will go
10 down if the claimant pool goes up. So, with the denominator
11 going up by the UBS and the UBS amount -- the UBS and the
12 HarbourVest amounts, the distribution percentage went down.

13 Q Okay. I want to focus your attention on the second line
14 where we've got the monetization of assets under the plan at
15 \$258 million but under the liquidation analysis it's \$192
16 million. Do you see that?

17 A Yes.

18 Q Can you tell Judge Jernigan why the Debtor believes that
19 under the plan the Debtor or the post-confirmation Debtor is
20 likely to receive or recover more for the --

21 (Interruption.)

22 THE COURT: All right. Hang on a minute. Where is
23 that coming from, Mike?

24 THE CLERK: Someone is calling in.

25 THE COURT: Okay.

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1 MR. MORRIS: Thank you.

2 THE COURT: Mr. --

3 MR. MORRIS: Let me restate the question.

4 THE COURT: Yes. Restate.

5 BY MR. MORRIS:

6 Q Can you explain to Judge Jernigan why the Debtor believes
7 that the -- under the plan corporate structure, the Debtor is
8 likely to recover more from the monetization of assets than a
9 Chapter 7 liquidation trustee would?

10 A Sure. My experience is that Chapter 7 trustees will
11 generally try to move quickly to monetize assets. They will
12 retain their own professionals, they will examine the assets,
13 and they will look to sell those assets swiftly.

14 The monetization plan does not plan to do that. I've got
15 a year's of experience -- a year now of experience with these
16 assets, as well as we'll have a team with several years at
17 least each of experience with the assets. We intend to look
18 for market opportunities, and think we'll be able to do it in
19 a much better fashion than a liquidating Chapter 7 trustee.

20 The nature of these assets is complex. Many of them are
21 private equity investments in operating businesses. Certain
22 of them are complicated real estate structures that need to be
23 dealt with. Some of them are securities that, depending on
24 when you want to sell them, we believe there'll be better
25 times than moving quickly forward to sell them now.

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1 So, with each of them, we think that we'll be able to do
2 better than a Chapter 7 trustee based upon our experience.
3 The only thing that we're level-set with a Chapter 7 trustee
4 on is that cash is cash.

5 Q Do you have any concerns that a Chapter 7 trustee might
6 not be able to retain the same personnel that the Debtor is
7 projected to retain?

8 A Well, again, in my experience, it would be very difficult
9 for a Chapter 7 trustee to retain the same professionals, and
10 typically they don't.

11 Secondly, retaining the individuals, I think, would be
12 very difficult for a Chapter 7 trustee, would not have a
13 relationship with them, and that gap of time and the risks
14 that they would have to take to join a Chapter 7 trustee I
15 think would lead most of them to look for different
16 opportunities.

17 Q Okay. One of the other things, one of the other changes I
18 think you mentioned between the November and the January
19 projections was the decision to assume the CLO management
20 contracts. Do I have that right?

21 A That's correct.

22 Q And why has the Debtor decided to assume the CLO
23 management contracts? How does that impact the analysis on
24 the screen?

25 A Well, it does add to the expense, but it also adds to the

1 proceeds.

2 When we did the HarbourVest settlement, we ended up with
3 the first significant interest in HCLOF. HCLOF owns the vast
4 majority of the equity in Acis 7, and also owns significant
5 preferred share interests in the 1.0 CLOs. And we think it's
6 in the best interest of the estate to keep the management of
7 those assets where we have an interest in the outcome of
8 maximizing value with the estate.

9 In addition, we're going to have employees who are going
10 to work with us to manage those specific assets, so we feel
11 like that will be something where we can control the
12 disposition much better.

13 There's also cross-interests that these CLOs have in --
14 the 1.0 CLOs have in a number of other investments that
15 Highland has. As in all things Highland, it's interrelated,
16 and so many of the companies have direct loans from the CLOs.
17 We intend to refinance that, but we feel much more comfortable
18 and feel that there would be value maximization if we're able
19 to work directly with the Issuers as a manager while we seek
20 in those underlying investments to refinance the CLO debt.

21 Q Has the Debtor -- has the Debtor reached an agreement with
22 the Issuers on the assumption of the CLO management
23 agreements?

24 A Yes, we have.

25 Q Can you describe for the Court the terms of the

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1 assumption?

2 MR. RUKAVINA: Your Honor, this --

3 THE WITNESS: Yes.

4 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
5 would object to this as hearsay.

6 THE COURT: Well, he has not --

7 MR. MORRIS: It's --

8 THE COURT: He's not said an out-of-court statement
9 yet, so I overrule.

10 Go ahead.

11 THE WITNESS: Yeah, we -- we are going to assume the
12 CLO contracts. We have had direct discussions with the
13 Issuers. They have agreed.

14 The basic terms are that we're going to cure them by
15 satisfying about \$500,000 of cure costs related to costs that
16 the CLO Issuers have incurred in respect of the case, and
17 we'll be able to pay that over time.

18 MR. RUKAVINA: Your Honor, this is Davor Rukavina. I
19 would renew my objection and move to strike his answer that
20 they've agreed. That is hearsay, an out-of-court statement
21 offered to prove the truth of the matter asserted.

22 THE COURT: Okay. Mr. Morris, what is your response?

23 MR. MORRIS: He's describing an agreement. I
24 actually think it's in the Debtor's plan that's on file
25 already. But he's describing the terms of an agreement. He's

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1 not saying what anybody said. There's no out-of-court
2 statement. It's an agreement that's being described.

3 THE COURT: All right. Thank you. I overrule the
4 objection.

5 MR. MORRIS: Okay.

6 BY MR. MORRIS:

7 Q Does the Debtor believe that the CLO agreements will be
8 profitable?

9 A Yes.

10 Q And why does the Debtor believe that the CLO agreements
11 will be profitable to the post-confirmation estate?

12 A Well, we don't -- we don't break out profitability on a
13 line-by-line basis. But the simple math is that the revenues
14 from the CLO contracts which will roll in to the Debtor from
15 the management fees are more than what we anticipate the
16 actual direct costs of monitoring and managing those assets
17 would be.

18 Q Okay. Are you aware that yesterday the Debtor filed a
19 further revised set of projections?

20 A I am, yes.

21 Q All right. Let's call those the February projections.

22 MR. MORRIS: Can we put those on the screen?

23 It's Exhibit 7P, Your Honor.

24 THE COURT: Okay.

25 MR. MORRIS: All right. I think that for some reason

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1 -- yeah, okay. There we go. Perfect. Right there.

2 Your Honor, these are the projections that were filed
3 yesterday. I'm going to move for the admission into evidence
4 of these projections.

5 THE COURT: All right.

6 MR. TAYLOR: Your Honor, this is Clay Taylor.

7 THE COURT: Go ahead.

8 MR. TAYLOR: We object. These were -- these were not
9 previously provided. They were provided on the eve of the
10 confirmation hearing, after the Debtors had already revised
11 them once and provided those on -- after close of business on
12 a Friday before Mr. Seery's deposition. And these were
13 provided even later, certainly not within the three days
14 required by the Rule. And therefore we move to -- that these
15 should not be allowed into evidence.

16 THE COURT: Mr. Morris, what is your response to
17 that?

18 MR. MORRIS: Your Honor, first of all, the January
19 projections were provided in advance of Mr. Seery's deposition
20 and he was questioned extensively on it. These projections
21 have been updated since then, I think for the singular purpose
22 of reflecting the UBS settlement.

23 As Your Honor just saw, the prior projections included an
24 assumption based on the 3018 motion. Since Mr. Seery's
25 deposition, UBS and the Debtor have agreed to publicly

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1 disclose the terms of the settlement, and that's reflected in
2 these revised numbers. I think there was one other change
3 that Mr. Seery can testify to, but those are the only changes
4 that were made.

5 THE COURT: All right. Mr. Seery, what besides the
6 UBS settlement do you think was put in these overnight ones?

7 THE WITNESS: I believe the only other change, Your
8 Honor, was correcting a mistake. In Assumption M, the second
9 line is assumes RCP claims will offset against HCMLP's
10 interest in the fund and will not be paid from the Debtor's
11 assets. That hasn't changed.

12 Basically, the Debtor got an advance from RCP that was to
13 -- for tax distributions, and did not repay it. The RCP
14 investors are entitled to recovery of that. So we had
15 previously backed that out. It's about four million bucks.
16 What happened was it was just double-counted.

17 THE COURT: Okay.

18 THE WITNESS: So, as an additional claim, it was
19 counted as \$8 million. I think that's the only other change.

20 THE COURT: All right. I overrule the objection.
21 You may go forward. I admit 7P.

22 MR. MORRIS: Thank you, Your Honor.

23 (Debtor's Exhibit 7P is received into evidence.)

24 MR. MORRIS: Can you just -- if we can go to the next
25 page, please.

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1 BY MR. MORRIS:

2 Q So, with -- seeing that the claims pool under the plan
3 previously was \$313 million, and what's the claims pool under
4 the projections up on the screen under the plan?

5 A Two -- well, remember, there's 273 for Class 8, and then
6 you'd add in the Class 7 as well, which is the \$10.2 million.
7 So the 273 went from 313 to 273 with that settlement.

8 Q And is there any -- is there any reason for the decrease
9 other than the change from the 3018 settlement -- order figure
10 to the actual settlement amount?

11 A For the UBS piece, no. And then, as I mentioned, I
12 believe the other piece would have been that four million --
13 that additional \$4 million that was taken out.

14 Q And did those two changes have a -- did those two changes
15 have an impact on the projected recoveries under the plan?

16 A Sure, particularly with respect to -- to the Class 8.
17 Those recoveries went up significantly because the denominator
18 went up.

19 Q Okay. Does the Debtor believe that its plan is feasible?

20 A Yes, absolutely.

21 Q And do you know whether the administrative priority and
22 convenience class claims will be paid in full under the
23 Debtor's plan?

24 A Yes. We monitor the cash very closely, so we do have
25 additional cash to raise, but we're set to reach or exceed

1 that target, so we do believe we'll be able to pay all the
2 administrative claims when they come in. Obviously, we have
3 to see what they are. We will be able to pay Class 7 on the
4 effective date. Any other distributions, we expect to be able
5 to make as well.

6 So, and then it's -- then it's a question of going forward
7 with a few other claims that we have to pay over time. We
8 have the cash flow to pay those. Frontier, for example, we'll
9 be able to pay that claim over time in accordance with the
10 restructured terms. If the assets that secure that claim are
11 sold, they would be paid when those assets are sold.

12 Q Frontier, will the plan enable the Debtor to pay off the
13 Frontier secured claim?

14 A Yes. That's what I was explaining. The cash flow is
15 sufficient to support the current P&I on that claim. We will
16 be able to satisfy it from other assets if we determine not to
17 sell the asset securing the Frontier claim, or if we sell the
18 asset securing the Frontier claim we could satisfy that claim.
19 The asset far exceeds the value of the claim.

20 Q Has the plan been proposed for the purpose of avoiding the
21 payment of any taxes?

22 A No. We expect all tax claims to be paid in accordance
23 with the Code, and to the extent that there are additional
24 taxes generated, we would pay them.

25 Q Okay. Let's just talk about Mr. Dondero for a moment

1 before we move on. Are you aware that Mr. Dondero's counsel
2 has requested the backup to, you know, these numbers,
3 including the asset values?

4 A It -- I'm not sure if it was his counsel or one of the
5 other related-entity counsels.

6 Q Okay. But you're aware that a request was made for the
7 details regarding the asset values and the other aspects of
8 this?

9 A Yes.

10 Q Those were -- were those formal requests or informal
11 requests?

12 A They were certainly at my deposition.

13 Q Right. But you haven't seen a document request or
14 anything like that, have you?

15 A No.

16 Q Did the Debtor make a decision as to whether or not to
17 provide the rollup, the backup information to Mr. Dondero or
18 the entities acting on his behalf?

19 A Yes.

20 Q And what did the Debtor decide?

21 A We would not do that.

22 Q And why did the Debtor decide that?

23 A Well, I think that's pretty standard. The underlying
24 documentation and the specific terms of the model are very
25 specific, and they are -- they are confidential business

1 information that runs through what we expect to spend and what
2 we expect to receive and when we expect to sell assets and
3 then receive proceeds, and the prices at which we expect to
4 sell them.

5 To the extent that any entity wants to have that
6 information as a potential bidder, that would be very
7 detrimental to our ability to maximize value. So, typically,
8 I wouldn't expect that to be given out, and I would not
9 approve it to be given out here.

10 Q Did the Debtor disclose to Mr. Dondero's counsel or
11 counsel for one of his entities the agreement in principle
12 with UBS before the updated plan analysis was filed last
13 night?

14 A I believe that disclosure was done a while ago, to Mr.
15 Lynn.

16 Q So, to the best of your -- so, to the best of your
17 knowledge, the Debtor actually shared the specifics of the
18 agreement with UBS with Mr. Dondero and his counsel before
19 last night?

20 A Yes. I have specific personal knowledge of it because we
21 had to ask UBS for their permission, and they agreed.

22 Q Okay.

23 MR. MORRIS: All right. Let's move on to 1129(b),
24 Your Honor, the cram-down portion.

25 BY MR. MORRIS:

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1 Q Are you aware, Mr. Seery, how various classes have voted
2 under the plan?

3 A I am generally, yes.

4 Q Okay. Did any class vote to reject the plan, to the best
5 of your knowledge?

6 A I don't -- I guess it depends on how you define the class.
7 I think the answer is that I don't believe that, when you
8 count the full votes of the -- the allowed claims and the
9 votes in any class, I don't believe any of the classes voted
10 to reject the plan.

11 Q What type of claims are in Class 8?

12 A General unsecured claims.

13 Q And what percentage of the dollar amount of Class 8 voted
14 to accept?

15 A It's -- I think it's near -- now with the Daugherty
16 agreements, it's near a hundred percent of the third-party
17 dollars. I don't know the individual employees' claims off
18 the top of my head.

19 Q All right. And what about the number in Class 8? Have a
20 majority voted to accept or reject in Class 8?

21 A If you include the employee claims -- which, again, we
22 think have no dollar amounts -- then I think it's a majority
23 would have rejected. The vast dollar amounts did accept.

24 Q Okay. Let's talk about those employees claims for a
25 moment. Do you have an understanding as to the basis of the

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1 claims?

2 A Yes.

3 Q What's your understanding of the basis of the claims?

4 A Most of the claims are based on deferred compensation, and
5 that's the 2005 Highland Capital Management bonus plan. And
6 that bonus plan provides certain deferred payment amounts to
7 the employees to be paid over multiple-year periods, provided
8 that they are in the seat when the payment is due. That's the
9 vesting date.

10 Q Okay.

11 MR. MORRIS: Your Honor, just as a note-keeping
12 matter, the deferred compensation plan and the annual bonus
13 plan are Exhibits 6F and 6G, respectively, and they're on
14 Docket 1822.

15 THE COURT: All right.

16 BY MR. MORRIS:

17 Q And Mr. Seery, are you generally familiar with those
18 plans?

19 A I am, yes.

20 Q In order to receive benefits under the plans, are the
21 employees required to be employed at the time of vesting?

22 A Yeah. Our counsel refers to them, various terms, but
23 generally -- our outside labor counsel. They're referred to
24 as seat-in-the-seat plans, meaning that your seat has to be in
25 a seat at the office at the day that the payment is due. If

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1 you're terminated for cause or if you resign, you're not
2 entitled to any payment.

3 So either you're there and you receive it or you're not
4 and you don't. The only exception to that, I believe, is
5 death and disability. Or disability.

6 Q All right. Did the Debtor terminate the annual bonus
7 plan?

8 A Yes, we did.

9 Q And in what context did the Debtor terminate the annual
10 bonus plan?

11 A Well, we had discussion on it last week. As Mr. Dondero
12 had also testified, the plan was to terminate all the
13 employees prior to the transition. That's well known among
14 the employees. The board terminated the 2005 bonus plan and
15 instead replaced it with a KERP plan that was approved by this
16 Court.

17 Q And what was your understanding of the consequences of the
18 termination of the bonus plan for -- for purposes of the
19 claims that have been asserted by the employees who rejected
20 in Class 8?

21 A It's clear that, under the 2005 HCMLP bonus plan, no
22 amounts are due because the plan has been terminated.

23 Q All right. Do you have an understanding as to when
24 payments become due under the deferred compensation -- under
25 the compensation plan?

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1 A I do, yes.

2 Q And when are they due?

3 A The next payments are due in May.

4 Q And what is the Debtor intending to do with respect to the
5 objecting employees?

6 A The Debtor will have terminated all those employees before
7 that date.

8 Q All right. So, what's -- what are the consequences of
9 their termination vis-à-vis their claims under the deferred
10 compensation plan?

11 A They won't have any claims.

12 Q Okay. So is it the Debtor's view that the employees who
13 voted to reject in Class 8 have no valid claims under the
14 annual comp -- annual bonus plan or the deferred compensation
15 plan?

16 MR. RUKAVINA: Your Honor, this is Davor Rukavina.
17 With due respect, Your Honor, these employees have voted. The
18 voting is on file. There has been no claim objections to
19 their claims filed. There's been no motion to designate their
20 votes filed. So Mr. Seery's answer to this is irrelevant.
21 They have votes -- pursuant to this Court's disclosure
22 statement order, they have votes and they have counted, and
23 now Mr. Seery is attempting to basically impeach his own
24 balloting summary.

25 THE COURT: Mr. Morris, what is your response?

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1 MR. MORRIS: The point of cram-down, Your Honor, is
2 it fair and equitable. Does -- does -- is it really fair and
3 equitable to the 99 percent of the economic interests to allow
4 24 employees who have no valid claims to carry the day here?
5 And this is -- that's what cram-down is about, Your Honor.

6 THE COURT: All right. I overrule the objection.

7 BY MR. MORRIS:

8 Q Let's talk about Class 7 for a moment, Mr. Seery. That's
9 the convenience class; is that right?

10 A That's correct.

11 Q How and why was that created?

12 A Well, initially, that was created because we had two types
13 of creditors in the case, broadly speaking. We had liquidated
14 claims, which were primarily trade-type creditors, and we had
15 unliquidated claims, which were the litigation-type creditors.
16 And so that class was created to deal with the liquidated
17 claims, and the Class 8 would deal with the unliquidated
18 claims, which were expected to, as we talked about earlier
19 with respect to the monetization plan, take some time to
20 resolve.

21 Q Was the creation of the convenience class a product of
22 negotiations with the Committee?

23 A The initial discussion on how we set it up I believe was
24 generated by the Debtor's side, but how it evolved and who
25 would be in it and how it was treated in terms of

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1 distributions was a product of negotiation with the Committee.

2 Q Okay. So how was the dollar threshold figure arrived at?
3 How did you actually determine to create a convenience class
4 at a million dollars?

5 A It was through negotiation with the Committee. So this
6 was one of those items that moved a fair bit, in my
7 recollection, through the many negotiations we had, heated
8 negotiations on some of these items, with the Committee.

9 Q And are all convenience class -- all holders of
10 convenience class claims holders of claims that were
11 liquidated at the time the decision was made to create the
12 class?

13 A I believe so. I don't think there's been -- other than --
14 well, there -- we just had some settlements today, and I think
15 that relates to the employees, but those would be the only
16 ones that there would be disputes about, and that would roll
17 into the liquidat... the convenience class.

18 Q Okay. Finally, is there any circumstance under which
19 holders of Class 10 or 11, Class 10 or Class 11 claims will be
20 able to obtain a recovery under the plan?

21 A Theoretically, there's a circumstance, and that is if
22 every other creditor in the case were to be paid in full, with
23 interest at the federal judgment rate, including Class 9,
24 which are the subordinated claims. If those all got paid in
25 full, then theoretically the junior interest holders could

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1 receive distributions.

2 However, based upon our projections, that would be wholly
3 dependent on a significant recovery in the Litigation -- by
4 the Litigation Trustee.

5 Q Okay. Let's move now to questions of the Debtor release
6 and the plan injunction. Is the Debtor providing a release
7 under the plan?

8 A Yes.

9 Q Is anyone other than the Debtor providing a release under
10 the plan?

11 A No.

12 Q Who is the Debtor proposing to release under the plan?

13 A The release parties are pretty similar to what you
14 typically would see, in my experience, in most plans. You
15 have the independent board, myself as CEO and CRO, the
16 professional -- the Committee members, the professionals in
17 the case, and the employees that we reached agreement with
18 respect to certain of them who have signed on to a
19 stipulation, and others, get a broader release for negligence.

20 Q Okay. Is the Debtor aware of any facts that might give
21 rise to a colorable claim against any of the proposed release
22 parties?

23 A Not with respect to any of the release parties. So the --
24 obviously, I don't think there's any claims against me. But
25 the same is true with respect to the oversight board, the

1 independent board.

2 The Committee has been, you know, working with us hand-in-
3 glove, and I think if they thought we -- there was something
4 there, we would have heard it.

5 With respect to the professionals, we haven't seen
6 anything as an independent board.

7 And with respect to the employees' that -- general
8 negligence release, these are current employees and we have
9 been monitoring them for a year and we don't have any evidence
10 or anything to suggest that there would be a claim against
11 them.

12 Q Are there conditions to the employees' release?

13 A There are. So, the employee release, as we talked about
14 earlier, was highly negotiated with the Committee. It
15 requires that employees assist in the monetization efforts,
16 which is really on the transition and the monetization. They
17 don't have to assist in bringing litigations against anybody,
18 so that's not part of what the provision requires. But it
19 does require that they assist generally in our efforts to
20 monetize assets.

21 We don't think that's going to be significant, but if
22 there are individual questions or help we need, we certainly
23 would reach out to them. If it's significant time, that will
24 be a different discussion.

25 And then with respect to the two senior employees who

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1 signed the stipulation, they have to give up a part of their
2 distribution for their release.

3 Q All right. I think you just alluded to this, but has the
4 release been the subject of negotiation with the Creditors'
5 Committee?

6 A Yeah. We've touched on it a bunch of times, and we
7 certainly, unfortunately, let it spill over into the court a
8 couple times. It was a hotly-negotiated piece of the plan.

9 Q Okay. Has the Committee indicated to the Debtor in any
10 way that anybody subject to the release is the subject of a
11 colorable claim?

12 A Anyone subject to the release? No.

13 Q Yeah. All right. Let's talk about the plan injunction
14 for a moment. Are you familiar with the plan injunction?

15 A Broadly, yes.

16 Q And what is your broad understanding of the plan
17 injunction?

18 A Anybody who has a claim or thinks they have a claim will
19 broadly be enjoined from bringing that, other than as it's
20 satisfied under the plan or else ultimately bringing it before
21 this Court. And that's the gatekeeper part, which is a little
22 bit of combining the two pieces.

23 Q And what's your understanding of the purpose of the
24 injunction?

25 A It's really to prevent vexatious litigation. We, as

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1 independent directors, stepped into what I think most people
2 would fairly say is one of the more litigious businesses and
3 enterprises that they've seen. And we have a plan that will
4 allow us to monetize assets for the benefit of the creditor
5 body, provided we're able to do that and not have to put out
6 fires every day on different fronts. So what we're hoping to
7 do with the injunction is ensure that we can actually fulfill
8 the purposes of the plan.

9 Q All right. Let's talk about some of the litigation that
10 you're referring to.

11 MR. MORRIS: Can we put up on the screen the
12 demonstrative for the Crusader litigation?

13 BY MR. MORRIS:

14 Q And Mr. Seery, I would just ask you to kind of describe
15 your understanding in a general way about the history of the
16 Crusader litigation.

17 MR. MORRIS: And, Your Honor, just to be clear here,
18 this is a demonstrative exhibit. As you can see in the
19 footnotes, it's heavily footnoted to the documents and to --
20 and, really, to the court cases themselves. The documents on
21 the exhibit list include the dockets from each of the
22 underlying litigations. And I just want to just have Mr.
23 Seery describe at an extremely high level some of the
24 litigation that the Debtor has confronted over the years, you
25 know, as the driver, as he just testified to, for the decision

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1 to seek this gatekeeper injunction.

2 THE COURT: All right.

3 BY MR. MORRIS:

4 Q So, Mr. Seery, can you just describe kind of in general
5 terms the Crusader litigation?

6 A Yeah. I apologize to the Redeemer team for maybe not
7 doing this justice. But this is litigation that came out of a
8 financial crisis upheaval related to this fund. Disputes
9 arose with respect to the holders of the interests, which were
10 the -- ultimately became the Redeemers, and Highland as the
11 manager.

12 That went through initial litigation, and then into the
13 Bermuda courts, where it was subject to a scheme. The scheme
14 required or allowed for the liquidation of the fund and then
15 distributions to the -- to the holders, and then deferred many
16 of the payments to Highland.

17 At some point, Highland, frustrated that it wasn't able to
18 get the payments, decided to just take them, and I think, you
19 know, fairly -- can be fairly described, at least by the
20 arbitration panel, as coming up with reasons that may not have
21 been wholly anchored in reality as to what its reasons were
22 for taking that money.

23 That led to further disputes with the Redeemers, who then
24 terminated Highland and brought an arbitration action against
25 Highland. They were successful in that arbitration and

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1 received a \$137 arbitration award. And right up to the
2 petition date, that arbitration pursued. When they finally
3 got their -- the arbitration award, they were going to
4 Delaware Chancery Court to file it and perfect it, and the
5 Debtor filed.

6 Q Okay.

7 MR. MORRIS: Let's go to the next slide, the Terry/
8 Acis slide. If we could just open that up a little bit. It's
9 -- as you can imagine, Your Honor, it's a little difficult to
10 kind of summarize the Acis/Terry saga in one slide, but we've
11 done the best we can.

12 BY MR. MORRIS:

13 Q Mr. Seery, can you describe generally for Judge Jernigan,
14 who is well-versed in the matter, the broad overview of this
15 litigation?

16 A There's clearly nothing I can tell the Court about the
17 bankruptcy that it doesn't already know. But very quickly,
18 for the record, Mr. Terry was an employee at Highland. He
19 also has a partnership interest in Acis, which was, in
20 essence, the Highland CLO business. He -- and he got into a
21 dispute with Mr. Dondero regarding certain transactions that
22 Mr. Dondero wanted to enter into and Mr. Terry didn't believe
23 were appropriate for the investors.

24 Strangely, the assets that underlie that dispute are still
25 in the Highland portfolio, both Targa (phonetic) and Trussway.

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1 Mr. Terry was terminated, or quit, depending on whose side of
2 the argument you take. Mr. Terry then sought compensation in
3 the arbitration pursuant to the partnership agreement.
4 Ultimately, he was awarded an arbitration award of roughly \$8
5 million.

6 When he went to enforce that -- that was against Acis.
7 When he went to enforce that against Acis, which had all the
8 contracts, Highland went about, I think, terribly denuding
9 Acis and moving value. Mr. Terry ultimately was able to file
10 an involuntary against Acis, and after a tremendous amount of
11 litigation had a plan confirmed that gave him certain rights
12 in Acis and any ability to challenge certain transactions with
13 respect to Highland that formed the basis of his claims in the
14 Highland bankruptcy.

15 That wasn't the end of the saga, because Highland
16 commenced a litigation -- well, not Highland, but HCLOF and
17 others, directed by others -- commenced litigation against Mr.
18 Terry in Guernsey, an island in the English Channel. That
19 litigation wound its way for a couple -- probably close to two
20 years, at least a year and a half, and ultimately was -- it
21 was dismissed in Mr. Terry's favor.

22 While that was pending, litigation was commenced in New
23 York Supreme Court against Mr. Terry and virtually anybody who
24 had ever associated with him in the business, including --
25 including some of the rating agencies. That was withdrawn as

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1 part of our efforts working with DAF to try to bring a little
2 bit of sanity to the case. But it was withdrawn without
3 prejudice.

4 But ultimately, you know, we've agreed to a claims
5 settlement, which was approved by this Court, with Acis and
6 Mr. Terry.

7 Q All right.

8 MR. MORRIS: How about UBS? Can we get the UBS
9 slide?

10 THE WITNESS: I should mention that there's other
11 litigations involving Mr. Terry and Highland individuals that
12 are outstanding, I believe, in Texas court. We have not yet
13 had to deal with those.

14 BY MR. MORRIS:

15 Q Okay. Can you describe for the Court your general
16 understanding of the UBS litigation?

17 A Again, UBS comes out of the financial crisis. It was a
18 warehouse facility that UBS had established for Highland. It
19 actually was a pre-crisis facility that was restructured in
20 early '08, while the markets were starting to slide but before
21 they really collapsed. That litigation started after Highland
22 failed to make a margin call. UBS foreclosed out -- or it
23 wasn't really a foreclosure, because it's a warehouse
24 facility, but basically closed out all the interest and sought
25 recovery from Highland for the shortfall.

1 Highland was one of the defendants, but there are numerous
2 defendants, including some foreign subsidiaries of Highland.

3 That case went its way through the New York Supreme Court,
4 up and down between the Supreme and the Appellate Division,
5 which is the intermediate appellate court in New York.
6 Incredibly litigious effort over virtually every single item
7 you could possibly think of.

8 Ultimately, UBS got a judgment for \$500-plus million and
9 -- plus prejudgment interest against two of the Highland
10 subsidiaries. It then sought to commence action up -- enforce
11 its judgment through various theories against Highland. That
12 is part of the settlement that we have -- it's been part of
13 the lift stay motion here, the 3019, as well as the 3018, and
14 as well as the ultimate settlement we've discussed today.

15 Q Okay. Moving on to Mr. Daugherty, can you describe for
16 the Court your understanding of the Daugherty litigation?

17 A The Daugherty litigation goes back even further. It did
18 -- I think the original disputes were -- or, again, started to
19 happen between Mr. Daugherty and Mr. Dondero even prior to the
20 crisis, but Mr. Dondero -- Daugherty certainly stayed with
21 Highland post-crisis. And then when Mr. Daugherty was severed
22 or either resigned or terminated from his position, there was
23 various litigations that began between the parties very
24 intensely in state court, one of the more nasty litigations
25 that you can imagine, replete with salacious allegations and

1 press releases.

2 That litigation then led to an award originally for Mr.
3 Daugherty from HERA, which was an entity that had assets that
4 Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay
5 a judgment against Highland. Ultimately, litigations were
6 commenced in both the state court and the Delaware Chancery
7 Court. Those litigations, many of those continue, because
8 they're not just against the entities but specific
9 individuals. Mr. Daugherty got a voting -- a claim allowed
10 for voting purposes in our case of \$9.1 million, and we've
11 since reached an agreement with Mr. Daugherty on his claim,
12 save for a tax case which we announced earlier that relates to
13 compensation, claimed compensation with respect to a tax
14 distribution, which we have defenses for and he has claims
15 for.

16 MR. MORRIS: All right. We can take that down,
17 please.

18 BY MR. MORRIS:

19 Q And let's just talk for a few minutes about some of the
20 things that have happened in this case. Did Mr. Dondero
21 engage in conduct that caused the Debtor to seek and obtain a
22 temporary restraining order?

23 A Yes, he did.

24 Q And did the Debtor -- did Mr. Dondero engage in conduct
25 that caused the Debtor to seek and obtain a preliminary

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1 injunction against him?

2 A Yes.

3 Q And has the Debtor filed a motion to hold Mr. Dondero in
4 contempt for violation of the TRO?

5 A Yes.

6 Q Are you aware that -- of the CLO-related motion that was
7 filed in mid-December?

8 A It's similar in that these are controlled entities that
9 brought similar types of claims against the Debtor and
10 interfered in similar ways, albeit not as directly threatening
11 with respect to the personnel of the Debtor.

12 Q Okay. And you're aware of how that -- that motion was
13 resolved?

14 A I know we resolved it, and I'm drawing a blank on that.
15 But --

16 Q All right. Are you aware, did Mr. Daugherty also object
17 to the Acis and HarbourVest settlements, or at least either
18 him or entities acting on his behalf?

19 A I think you meant Mr. Dondero. I don't believe Mr.
20 Daugherty did.

21 Q You're right. Thank you. Let me ask the question again.
22 Thank you for the clarification. We're almost done. To the
23 best of your knowledge, did Mr. Dondero or entities that he
24 controls file objections to the Acis and HarbourVest
25 settlements?

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1 A Yes, they did.

2 Q And we're here today with this long recitation because the
3 remaining objectors are all Mr. Dondero or entities owned or
4 controlled by him; is that right?

5 A That's correct.

6 Q All right.

7 MR. RUKAVINA: Your Honor, I didn't have a chance to
8 object in time. Entities owned or controlled by Mr. Dondero.
9 There's no evidence of that with respect to at least three of
10 my clients, and this witness has not been asked predicate
11 questions to lay a foundation. Mr. Dondero does not own or
12 control the three retail (inaudible). So I move to strike
13 that answer.

14 MR. MORRIS: Your Honor, I withdraw with respect to
15 the three funds. It's fine.

16 THE COURT: All right. With that withdrawal, then I
17 think that resolves the objection.

18 MR. MORRIS: Uh, --

19 THE COURT: Or I overrule the remaining portion.

20 Okay. Go ahead.

21 MR. RUKAVINA: That does, Your Honor. Thank you.

22 BY MR. MORRIS:

23 Q Are -- are -- is everything that you just described, Mr.
24 Seery, the basis for the Debtor's request for the gatekeeper
25 and injunction features of the plan?

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1 A Well, everything I described are a part of the basis for
2 that. I didn't describe every single basis with respect to
3 why those --

4 Q So what are -- what are the other reasons that the Debtor
5 is seeking the gatekeeper and injunction provisions in the
6 plan?

7 A We really do need to be able to operate the business and
8 monetize the assets without direct interference and litigation
9 threats. We didn't go through some of the specifics, and I
10 hesitate to burden the Court again, but the email to me, the
11 email to Mr. Surgent, the testimony threatening -- effectively
12 threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the
13 court in previous weeks, statements by his counsel indicating
14 that Mr. Dondero is going to sue me for hundreds of millions
15 of dollars down the road.

16 I mean, this is nonstop. I'm an independent fiduciary.
17 I'm trying to maximize value for the estate. I've got some
18 guy who's threatening to sue me? It's absurd.

19 MR. MORRIS: Your Honor, I have no further questions,
20 but what I would respectfully request is that we take just a
21 short five-minute break. I'd like to just confer with my
22 colleagues before I pass the witness.

23 THE COURT: All right. Five-minute break.

24 MR. MORRIS: Thank you, Your Honor.

25 THE CLERK: All rise.

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1 (A recess ensued from 1:58 p.m. to 2:06 p.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Please be seated. We're back
4 on the record in Highland. Mr. Morris, anything else?

5 MR. MORRIS: All right, Your Honor. Can you hear me?

6 THE COURT: I can, uh-huh.

7 MR. MORRIS: Okay. Mr. Seery, are you there?

8 THE WITNESS: I am, yes.

9 MR. MORRIS: I just have a few follow-up questions,
10 Your Honor, if I may.

11 THE COURT: Okay.

12 DIRECT EXAMINATION, RESUMED

13 BY MR. MORRIS:

14 Q Okay. Mr. Seery, we talked for a bit about the difference
15 between the convenience class and the general unsecured
16 claims. Do you recall that?

17 A Yes.

18 Q And that's the difference between Class 7 and 8; do I have
19 that right?

20 A Yes.

21 Q And what is the recovery for claimants in Class 7, to the
22 best of your recollection, the convenience class?

23 A It's 85 cents.

24 Q And under --

25 A On the dollar.

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1 Q And under the projections that were filed last night, and
2 we can call them up on the screen if you don't have total
3 recall, do you recall what Class 8 is projected to recover now
4 that we've taken into account the UBS settlement?

5 A Approximately 71.

6 Q Okay.

7 A Percent. 71 cents on the dollar.

8 THE COURT: Okay. The answer --

9 BY MR. MORRIS:

10 Q Okay. Do I this right --

11 THE COURT: The answer was a little garbled. Can you
12 repeat the answer, Mr. Seery?

13 THE WITNESS: Approximately 71 cents on the dollar,
14 Your Honor.

15 THE COURT: Okay. Thank you.

16 BY MR. MORRIS:

17 Q Okay. And do I have that right, that that 71 cents
18 includes no value for potential litigation claims?

19 A That's correct. We didn't even put that in our
20 projections at all.

21 Q So is it possible, depending on Mr. Kirschner's work, that
22 holders of Class 8 claims could recover an amount in excess of
23 85 percent?

24 A It's possible, yes.

25 Q Okay. Are you aware that Dugaboy has suggested that the

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1 Debtor should resolicit because their -- their -- the
2 projections in the November disclosure statement were
3 misleading?

4 A I'm aware that they've made allegations along those lines,
5 yes.

6 Q Okay. Do you think the November projections were
7 misleading in any way?

8 A No, not at all.

9 Q And why not?

10 A Well, the plan was -- the projections are for the plan,
11 and they contain assumptions. And it was clear in the plan
12 that those assumptions could change. So the value of the
13 assets, which aren't static, does change. The costs aren't
14 static. They do change. The amount of the claims, the
15 denominator, was not static and would change.

16 Q Okay. And were the -- were the changes in the claims, for
17 example, changes that were all subject to public viewing, as
18 the Court ruled on 3018, as the settlement with HarbourVest
19 was announced?

20 A Well, the plan -- the terms of the plan made clear that
21 the Class 8 claims would -- would be whatever the final
22 amounts of those claims were going to be. We did resolve the
23 claims of HarbourVest and then ultimately the settlement
24 announced today, but in front of -- in front of the world, in
25 front of the Court, with a 9019 motion.

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1 Q Okay. We had finished up with some questioning about the
2 gatekeeper and the injunction provision. Do you recall that?

3 A Yes, I do.

4 Q And you had testified as to the reasons why the Debtor was
5 seeking that particular protection. Do you recall that?

6 A Yes.

7 Q In the absence of that protection, does the Debtor have
8 any concerns that interference by Mr. Dondero could adversely
9 impact the timing of the Debtor's plan?

10 A Well, that's my opinion and what I testified to before. I
11 think the -- the injunction -- the exculpation, the
12 injunction, and the gatekeeper are really critical and
13 essential elements of this plan, because we have to have the
14 ability, unfettered by litigation, particularly vexatious
15 litigation in multiple jurisdictions, we have to be able to
16 avoid that and be able to focus on monetizing the assets and
17 try to maximize value.

18 Q Is there a concern that that value would erode if
19 resources and time and attention are diverted to the
20 litigation you've just described?

21 A Absolutely. The focus of the team has to be on the
22 assets' monetization, creative ways to get the most value out
23 of those assets, and not on defending itself, trying to paper
24 up some sort of litigation defense against vexatious
25 litigation, and also spending time actually defending

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1 ourselves in various courts.

2 Q Okay. Last couple of questions. If there was no
3 gatekeeper provision in the plan, would you accept appointment
4 as the Claimant Trustee?

5 A You broke up. No which provision?

6 Q If there was no gatekeeper provision in the -- in the
7 confirmation order, would you accept the position as Claimant
8 Trustee?

9 A No, I wouldn't. Just -- just like when I came on, there
10 were -- there are some pretty essential elements that I
11 mentioned before. One is indemnification. Two is directors
12 and officers insurance. And three was a gatekeeper function.
13 I want to make sure that we're not at risk, that I'm not at
14 risk, for doing my job.

15 Q And I think you just said it, but if you were unable to
16 obtain D&O insurance, would you accept the position as
17 Claimant Trustee?

18 A No, I would not.

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

20 THE COURT: All right. So, you went two hours and 34
21 minutes in total with your direct. So we'll now pass the
22 witness for cross. And the Objectors get an aggregate of two
23 hours and 34 minutes.

24 Who's going to go first?

25 MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

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1 THE COURT: Okay. Go ahead.

2 MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit
3 6N, the ballot summary, Page 7 of 15 on the top.

4 MR. POMERANTZ: Mr. Morris, you're not on mute.

5 MR. MORRIS: Thank you, sir.

6 MR. RUKAVINA: Mr. Vasek, did you hear me? There it
7 is.

8 CROSS-EXAMINATION

9 BY MR. RUKAVINA:

10 Q Mr. Seery, are you familiar with this ballot tabulation
11 that was filed with the Court and that has been admitted into
12 evidence?

13 A Yes, I believe I've seen this.

14 Q Okay. And this says that 31 Class 8 creditors rejected
15 and 12 Class 8 creditors accepted the plan, correct?

16 A That's correct.

17 Q And since then, I think we've heard that Mr. Daugherty and
18 maybe two other employees have changed their vote to an
19 accept; is that correct?

20 A That's correct, yes.

21 Q Okay. Other than three, those three employees that are
22 changing, do you know of any other Class 8 creditors that are
23 changing their votes?

24 A Mr. Daugherty is not an employee.

25 Q I apologize. Other than those three Class 8 creditors

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1 that are changing their votes, do you know of any other ones
2 that are changing their votes?

3 A No.

4 Q Okay. You didn't tabulate the ballots, did you?

5 A No, I did not.

6 Q Do you have any reason to question the accuracy of this
7 ballot summary that's been filed with the Court?

8 A No, I do not.

9 Q Okay. You mentioned that many of the people that rejected
10 the plan are former employees who you don't think will
11 ultimately have allowed claims, correct?

12 A Not ultimately. I said they don't have them now.

13 Q Okay. Are you aware that the Court ordered that
14 contingent unliquidated claims be allowed to vote in an
15 estimated amount of one dollar?

16 A I'm aware of that, yes.

17 Q Okay. All right. Now, no motion to reconsider that order
18 has been filed, correct?

19 A Not to my knowledge.

20 Q Okay. No objection to these rejecting employees' claims
21 have been filed yet, correct?

22 A Correct.

23 Q Okay. And no motion to strike or designate their vote has
24 been filed as of now, correct?

25 A Correct.

1 MR. RUKAVINA: You can take down that exhibit, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Mr. Seery, the Debtor itself is a limited partnership; I
5 think you confirmed that earlier, correct?

6 A Correct.

7 Q And its sole general partner is Strand Advisors, Inc.,
8 correct?

9 A Correct.

10 Q And to your understanding, the Debtor, as a limited
11 partnership, is managed by its general partner, correct?

12 A Correct.

13 Q Okay. And Strand, that's where the independent board of
14 you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm
15 misspelling, misstating his name -- that's where the board
16 sits, at Strand, correct?

17 A Yes.

18 Q Okay. And that board has been in place since about
19 January 9, 2020?

20 A Yes.

21 Q Okay. Strand is not a debtor in bankruptcy, correct?

22 A No.

23 Q Okay. Do you have any understanding as to whether, under
24 non-bankruptcy law, a general partner is liable for the debts
25 of the limited partnership that it manages?

1 A I do.

2 Q Okay. What's your understanding?

3 A Typically, a general partner is liable for the debts of
4 the partnership.

5 Q Okay. And under the plan, Strand itself is an exculpated
6 party and a protected party and a released party for matters
7 arising after January 9, 2020, correct?

8 A Yes.

9 Q Okay. You mentioned that you're the chief executive
10 officer and chief restructuring officer in this case for the
11 Debtor, correct?

12 A For the Debtor, yes.

13 Q Yeah. You are not a Chapter 11 trustee, right?

14 A No.

15 Q Okay. You are one of the principal authors of this plan,
16 correct?

17 A Consultant.

18 MR. MORRIS: Objection to the form of the question.

19 THE COURT: Sustained.

20 BY MR. RUKAVINA:

21 Q You are --

22 THE COURT: Sustained.

23 BY MR. RUKAVINA:

24 Q You are --

25 THE COURT: Rephrase.

1 BY MR. RUKAVINA:

2 Q -- one of the principal --

3 MR. RUKAVINA: I apologize.

4 BY MR. RUKAVINA:

5 Q You had input in creating this plan, didn't you?

6 A I did, yes.

7 Q Okay. And you're familiar with the plan's provisions,
8 aren't you?

9 A Yes.

10 Q Okay. And you, of course, approve of the plan, correct?

11 A Yes.

12 Q Okay. And you are, of course, familiar generally with
13 what the property of the estate currently is, correct?

14 A Yes.

15 Q Okay. And part of the purpose of the plan, I take it, is
16 to vest that property in the Claimant Trust in some respects
17 and the Reorganized Debtor in some respects, correct?

18 A I don't -- I don't know if that's a fair characterization.
19 Some property -- maybe some property will stay with the
20 Debtor, some will be transferred directly to the Trust.

21 Q Okay. All property of the estate as it currently exists
22 will stay with the Debtor or go to the Trust, correct?

23 A Yes.

24 Q Okay. And under the plan, the Creditor Trust will be
25 responsible for payment of prepetition claims, correct?

1 A Yes.

2 Q And under the plan, the Creditor Trust will be responsible
3 for the payment of postpetition pre-confirmation claims,
4 correct?

5 A Do you mean admin claims? I don't --

6 Q Sure.

7 A I don't understand your question. I'm sorry.

8 Q Yes. We can call them admin claims.

9 A Yeah. Those -- they'll be -- they will be paid on the
10 effective date or in and around that time. So I'm not sure if
11 that's actually going to be from the Trust, but I think it's
12 actually from the Debtor, as opposed to from the Trust.

13 Q Okay. But after the creation of the Claimant Trust, --

14 A Uh-huh.

15 Q -- whatever administrative claims are not paid by that
16 time will be assumed by and paid from the Claimant Trust,
17 correct?

18 A I don't recall that specifically.

19 Q Is it your testimony that the Reorganized Debtor will be
20 obligated post-effective date of the plan to pay any admin
21 claims that are then unpaid?

22 MR. MORRIS: Objection to the form of the question.

23 THE COURT: Sustained. Rephrase.

24 BY MR. RUKAVINA:

25 Q Who pays unpaid admin claims under the plan once the plan

1 goes effective?

2 A I believe the Debtor does. The Reorganized Debtor.

3 Q Okay. The Reorganized Debtor also gets a discharge,
4 correct?

5 A Yes.

6 Q Okay. And there is no bankruptcy estate left after the
7 plan goes effective, correct?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Overruled.

10 MR. RUKAVINA: Your Honor, I have the right to know
11 what the objection to my question is.

12 THE COURT: I overruled.

13 MR. MORRIS: Okay.

14 THE COURT: I overruled the objection.

15 MR. RUKAVINA: Thank you.

16 BY MR. RUKAVINA:

17 Q Mr. Seery, do you remember my question?

18 A That whether there was a bankruptcy estate after the
19 effective date?

20 Q Yes.

21 A There wouldn't be a bankruptcy estate anymore, no.

22 Q Okay. Under the plan, the creditors, to the extent that
23 they have their claims allowed, the prepetition creditors,
24 they're the beneficiaries of the Claimant Trust, correct?

25 A They are some of the beneficiaries, yes.

1 Q Okay. And you would be the Trustee, I think you said, of
2 the Claimant Trust?

3 A Of the Claimant Trust, yes.

4 Q Okay. And you will have fiduciary duties to the
5 beneficiaries of the Claimant Trust, correct?

6 A I believe I have some, yes.

7 Q Okay. Well, as the Trustee, you will have some fiduciary
8 duties; you do agree with that?

9 A That's what I said, yes.

10 Q Okay. What's your understanding of what those fiduciary
11 duties to the beneficiaries of the Claimant Trust will be?

12 A I think they'll be -- they are cabined to some degree by
13 the provisions of the agreement, but generally there will be a
14 duty of care and a duty of loyalty.

15 Q Do you feel like you'll have a duty to try to maximize
16 their recoveries?

17 A That depends.

18 Q On what?

19 A My judgment on what's the -- if I'm exercising my duty of
20 care and my duty of loyalty.

21 Q Okay. But surely you'd like to, whether you have a duty
22 or not, you'd like to maximize their recoveries as Trustee,
23 wouldn't you?

24 A Yes.

25 Q Okay. Now, in addition to the beneficiaries, which I

1 believe are the Class 8 and Class 9 creditors, the plan
2 proposes to give non-vested contingent interests in the Trust
3 to certain holders of limited partnership interests, correct?

4 A Yes.

5 Q Okay. And those non-vested contingent interests would
6 only be paid and would only vest if and when all unsecured
7 creditors and subordinated creditors are paid in full, with
8 interest, correct?

9 A Yes.

10 Q Okay. And those non-vested contingent interests are a
11 property interest, although they're an inchoate property
12 interest, correct?

13 A I don't know. I think I testified in my deposition that I
14 -- I reached for inchoate, but I'm not an expert in the
15 definitions of property interests. I don't know if they're
16 too ethereal to be considered a property interest.

17 Q Okay.

18 MR. RUKAVINA: Mr. Vasek, will you please pull up Mr.
19 Seery's deposition at Page 215? And if you'll go to Page 200
20 -- can you zoom -- can you zoom that in a little bit? Mr.
21 Vasek, can you zoom on that?

22 MR. VASEK: Just a moment. There's some sort of
23 issue here.

24 MR. RUKAVINA: Okay. And then go to Page 216.
25 Scroll down to 216, please.

1 MR. VASEK: Okay. I can't see it, so --

2 MR. RUKAVINA: Okay. Stay, stay where you are. Go
3 down one more row.

4 BY MR. RUKAVINA:

5 Q Okay. Mr. Seery, can you see this?

6 A Yes.

7 Q Okay. So, I ask you on Line 21, "They may be a property
8 interest, but inchoate only, correct?" And you answer, "That
9 is my belief. I don't claim to be an expert on the different
10 types of property interests," --

11 MR. RUKAVINA: Mr. Vasek, can you go to the next
12 page?

13 BY MR. RUKAVINA:

14 Q (continues) "-- whether they be inchoate, reversionary,
15 ethereal. I don't claim to be an expert on the different
16 types of property interests."

17 Do you see that answer, sir?

18 A Yes.

19 Q And do you stand by your answer given on Lines 23 through
20 Line 4 of the next page?

21 A Yes.

22 Q Okay. And these non-vested contingency -- contingent
23 interests in the Claimant Trust, they may have some value in
24 the future, correct?

25 A Yes.

1 MR. RUKAVINA: Okay. You can take that down, Mr.
2 Vasek.

3 BY MR. RUKAVINA:

4 Q Have you tried to see whether anyone outside this case, or
5 anyone at all, would pay anything for those unvested
6 contingent interests to the Claimant Trust?

7 A No.

8 Q Okay. Now, the Debtor is a registered investment advisor
9 under the Investment Advisers Act of 1940; is that correct?

10 A That's correct.

11 Q And under that Act, the Debtor owes a fiduciary duty to
12 the funds that it manages and to the investors of those funds,
13 correct?

14 A Clearly to the funds, and generally to the investors more
15 broadly, yes.

16 Q Okay. And would you agree that that duty compels the
17 Debtor to look for the interests of the funds and the
18 investors of those funds ahead of its own interests?

19 A Generally, but it's a much more fine line than what you're
20 describing. It means you can't -- the manager can't put its
21 own interests in front of the investors and the funds. It
22 doesn't mean that the manager subordinates its interest in the
23 -- to the investors and the funds.

24 MR. RUKAVINA: Well, Mr. Vasek, please pull up the
25 October 20th transcript at Page 233.

1 MR. MORRIS: What transcript is this?

2 MR. RUKAVINA: October 20, 2019. Mr. Vasek has the
3 docket entry.

4 MR. MORRIS: Oh, so it's the -- Your Honor, I just do
5 want to point out that Mr. Rukavina objected, in fact, to the
6 use of trial transcripts, but we'll get to that when we put on
7 our evidence, when we finish up.

8 MR. RUKAVINA: Well, Your Honor, I believe that
9 you're allowed to use a trial transcript to impeach testimony,
10 which is what I'm going to do now.

11 So, for that purpose, Mr. Vasek, if you could -- are you
12 on Page 233?

13 THE COURT: And just so the record is clear, this is
14 from October 2020, not October 2019, which is, I think, what I
15 heard. Continue.

16 MR. MORRIS: Your --

17 MR. RUKAVINA: Your Honor, I apologize, you did hear
18 that and I did make a mistake. Yes, this is at Docket 1271.

19 Mr. Vasek, if you'll scroll down, please. Okay. No, stop
20 there.

21 BY MR. RUKAVINA:

22 Q And you see on Line 16, sir, you're asked your
23 understanding, and then you answer, "Okay." "And in
24 exercising those duties, the manager, under the Advisers Act,
25 has a duty to subordinate its interests to the interests of

1 those investors in the CLOs, correct?" And you answer --

2 MR. RUKAVINA: Go down, Mr. Vasek.

3 BY MR. RUKAVINA:

4 Q -- "I think -- I think, generally, when you think about
5 the fiduciary duty, and I think that we -- I want to make sure
6 I'm very specific about this, is that the manager has a duty,
7 fiduciary duties -- there's a whole bunch of legal analysis of
8 what they are, but they are significant -- that the manager
9 owes to the investors. And to the extent" --

10 MR. RUKAVINA: Scroll down, please.

11 BY MR. RUKAVINA:

12 Q "And to the extent that the manager's interests would
13 somehow be -- somehow interfere with the investors' in the
14 CLO, he is supposed to -- he or she is supposed to subordinate
15 those to the benefit of the investors."

16 Did I read that accurately, Mr. Seery?

17 A You did.

18 Q Was that your testimony on October 20th last?

19 A Yes.

20 Q Okay. Are you willing to revise your testimony from a few
21 minutes ago that the manager does not have to subordinate its
22 interests to the interests of the investors?

23 A No. I think that's very similar.

24 Q Okay.

25 A You left out the part about garbled up top where I said it

1 was nuanced, almost exactly what I just said. On Line 9, I
2 believe, on the prior page.

3 Q Well, I heard you say a couple of minutes ago, and maybe I
4 misunderstood because of the WebEx nature, that the manager
5 does not have to subordinate its interests to the interests of
6 the investors. Did I misheard you say that a few minutes ago?

7 A I think you misheard it. I said it's a nuanced analysis,
8 and it's -- it's pretty significant. But the manager does
9 subordinate his general interest and assures that the CLO or
10 any of the investors' interests are paramount, but he doesn't
11 subordinate every single interest.

12 For example, and I think it's in this testimony, the
13 manager, if the fund isn't doing well, doesn't just have to
14 take his fee and not get paid. He's allowed -- entitled to
15 take his fee. He doesn't subordinate every single interest of
16 his. He doesn't give up his home and his family. So it's --
17 it's a nuanced analysis. The interests of the manager are
18 subordinated to the interests of the investors and the fund.
19 I don't -- I don't disagree with anything I said there. I
20 think I'm consistent.

21 Q Okay.

22 MR. RUKAVINA: You can take that down, Mr. Vasek.

23 BY MR. RUKAVINA:

24 Q So, how do you describe, sir, the fiduciary duty that the
25 Debtor owes to the funds that it manages and to the investors

1 in those funds?

2 MR. MORRIS: Objection to the -- to the extent it
3 calls for a legal conclusion, Your Honor. I just want to make
4 sure we're -- we're asking a witness for his lay views.

5 THE COURT: Okay. I overrule the objection. He can
6 answer.

7 THE WITNESS: Yes. As a manager of a fund, the
8 manager is a fiduciary to the fund, and sometimes to the
9 investors, depending on the structure of the fund. Some funds
10 are purposely set up where the investors are actually debt-
11 holders, and their interests are much more cabined by the
12 terms of the contract, as opposed to straight equity holders.
13 But the manager has a duty to seek to maximize value of the
14 assets in the best interests of the underlying -- of the fund
15 and the underlying investors, to the extent that it can,
16 within the confines and structure of the fund.

17 BY MR. RUKAVINA:

18 Q Okay. And these duties as you just described them, they
19 would apply to the Reorganized Debtor, correct?

20 A They would apply to the Reorganized Debtor to the extent
21 that it's a manager for a fund, not, for example, with respect
22 to necessarily interests -- the inchoate interests that we
23 talked about earlier.

24 Q Sure. And I apologize, I meant just for the fund. And if
25 the manager, the Reorganized Debtor, breaches those duties,

1 then it's possible that there's going to be liability,
2 correct?

3 A It's possible.

4 Q Okay. Now, under the plan, the limited partnership
5 interests in the Reorganized Debtor will be owned by the
6 Claimant Trust, correct?

7 A Yes.

8 Q Okay. And there's a new entity called New GP, LLC that
9 will be created or already has been created, correct?

10 A Yes.

11 Q Okay. And that entity will hold the general partnership
12 interest in the Reorganized Debtor, correct?

13 A I believe that's correct.

14 Q Okay. And that entity -- that being New GP, LLC -- will
15 also be owned by the Claimant Trust, correct?

16 A Yes.

17 Q Okay. Who will manage the Reorganized Debtor?

18 A The G -- the GP will manage the Reorganized Debtor.

19 Q Okay. And will there be an officer or officers of the
20 Reorganized Debtor, or will it all be managed through the GP?

21 A It'll be managed through the GP.

22 Q Okay. And who will manage the GP?

23 A Likely, I will.

24 Q Okay. That's the current plan, that you will?

25 A I'll be the Claimant Trustee, and I believe that I'll be

1 responsible for any assets that remain in the Reorganized
2 Debtor, yes.

3 Q Okay. Right now, the Debtor is managing its own assets as
4 the Debtor-in-Possession, right?

5 A Yes.

6 Q And it is managing various funds and CLOs, right?

7 A Yes.

8 Q Okay. And right now, the Debtor is attempting to reduce
9 some of its assets to money, like the promissory notes that
10 you mentioned earlier that the Debtor filed suit on, correct?

11 A Yes.

12 Q And the Debtor is trying to reduce some of its assets to
13 money, like the promissory notes, to benefit its creditors,
14 correct?

15 A Yes.

16 Q Okay. And correct me if I'm wrong, but the Committee has
17 filed various claims and causes of action against Mr. Dondero,
18 correct?

19 A They -- they've filed some. I haven't -- I haven't looked
20 at their (indecipherable) closely, but --

21 Q Okay.

22 A -- some are preserved in the case.

23 Q You understand --

24 A In the plan. I'm sorry.

25 Q You understand that the Committee is doing that for the

1 benefit of the estate, correct?

2 A Yes.

3 Q And you understand that they're also doing that for the
4 benefit of creditors, correct?

5 A Yes.

6 Q Okay. And under the plan, just so that I'm clear, those
7 claims that the Committee has asserted will be preserved and
8 will vest in either the Claimant Trust or the Litigation Sub-
9 Trust, correct?

10 A Yes.

11 Q Okay. And under the plan, the Reorganized Debtor would
12 continue to manage its assets, correct?

13 A Yes.

14 Q And it would continue to manage the Funds and the CLOs,
15 correct?

16 A Yes.

17 Q And the Claimant Trust would attempt to liquidate and
18 distribute to its beneficiaries the assets that are
19 transferred to it, correct?

20 A Yes.

21 Q Okay. And you mentioned that the Claimant Trust will have
22 an Oversight Board comprised of five members, right?

23 A Yes.

24 Q And four of them will be the people that are currently on
25 the Committee, right?

1 A Yes.

2 Q And the fifth is David Pauker, and I think you mentioned
3 that he's independent. David Pauker is the fifth member,
4 right?

5 A Yes.

6 Q Who -- who is he?

7 A David Pauker is a very well-known professional in the
8 restructuring world. He's a long-time financial advisor in --
9 in reorganizations. He's served on numerous boards in
10 restructuring -- restructurings.

11 Q Okay. So, other than a different corporate structure and
12 the Claimant Trust, the monetization of assets for the benefit
13 of creditors would continue post-confirmation as now, correct?

14 A I -- I believe so. I'm not exactly sure what you asked
15 there.

16 Q No one is putting in any new money under the plan, are
17 they?

18 A No. No.

19 Q Okay. There's no exit financing contingent on the plan
20 being confirmed, right?

21 A You mean no exit -- the plan is not contingent on exit
22 financing. I think you just mixed up your -- your financing
23 and your plan.

24 Q I apologize. There's no exit financing in place today,
25 correct?

1 A No.

2 Q Okay. So, post-confirmation, you are basically going to
3 continue managing the CLOs and funds and trying to monetize
4 assets for creditors the same as you are today, correct?

5 A Similar, yes.

6 Q Okay. And just like the Committee has some oversight role
7 in the case, the members of the Oversight Board will have some
8 oversight role post-confirmation, correct?

9 A Yes.

10 Q Okay. You don't need anything in the plan itself to
11 enable you to continue managing the Debtor and its assets,
12 correct?

13 A I don't need anything in the plan?

14 Q Correct.

15 A I don't -- I don't understand the question. Can you
16 rephrase it?

17 Q Well, you are managing the Debtor and its assets today,
18 correct?

19 A Yes.

20 Q Okay. Nothing in the plan is going to change that,
21 correct?

22 A Well, it's going to change it a lot.

23 Q Okay. Well, with respect to you managing the Funds and
24 the CLOs, you don't need anything in the plan that you don't
25 have today to keep managing them, do you?

1 A No. The Debtor manages them, and I will -- I'm the CEO
2 and I'll be in a similar position with a different team.

3 Q Okay. And I believe you told me that you expect the
4 Debtor to administer the CLOs for two or three years, maybe?

5 A However long it takes, but we expect -- our projections
6 are that we'd be able to monetize most of the assets within
7 two years.

8 Q Does that include the CLOs?

9 A It does, yes.

10 Q Okay. Now, you're going to be the person for the
11 Reorganized Debtor in charge of managing the CLOs, correct?

12 A I'll be the person responsible for managing the
13 Reorganized Debtor. The Reorganized Debtor will be the
14 manager of the CLOs.

15 Q Okay. But the buck will stop with you at the Reorganized
16 Debtor, right?

17 A Yes.

18 Q Okay. You're going to have a team of employees and
19 outside professionals helping you, but ultimately, on behalf
20 of the Reorganized Debtor, you're going to be the one in
21 charge of managing the CLOs, correct?

22 A Yes.

23 Q Okay. That means that you'll also be making decisions as
24 to when to sell assets of the CLOs, correct?

25 A Yes.

1 Q Okay. And to be clear, the CLOs, they own their own
2 assets, whatever they are, and the Debtor just manages those
3 assets, right?

4 A Correct.

5 Q The Debtor doesn't directly own those assets, right?

6 A No.

7 Q And currently there's more than one billion dollars in CLO
8 assets that the Debtor manages?

9 A Approximately.

10 Q Yeah. And the Debtor receives fees for its services,
11 correct?

12 A Yes.

13 Q Can you generally describe how the amount of those fees is
14 calculated and paid, if you have an understanding?

15 A How the fees are calculated and paid?

16 Q Yes, sir.

17 A It's a percentage of the assets.

18 Q Assets administered or assets sold in any given time
19 period?

20 A Administered.

21 Q Okay. So the sale of CLO assets does not affect the fees
22 that the Reorganized Debtor would receive under these
23 agreements?

24 MR. MORRIS: Objection to the form of the question.

25 THE COURT: Over --

1 THE WITNESS: That's not correct.

2 THE COURT: Overruled.

3 BY MR. RUKAVINA:

4 Q Okay. What is not correct about that?

5 A When you sell the assets, the amount administered shrinks,
6 so you have less fees.

7 MR. RUKAVINA: Your Honor, the answer cut out at the
8 very end. You have less--?

9 THE WITNESS: Fees.

10 BY MR. RUKAVINA:

11 Q Fees? I understand. Okay. So are you saying that there
12 is a disincentive to the Reorganized Debtor to sell assets in
13 the CLOs?

14 A No.

15 Q Okay. Is there an incentive to the Reorganized Debtor to
16 sell assets in the CLOs?

17 A To do their job correctly, yes.

18 Q Okay. And the Debtor wishes to assume those contracts
19 because the Debtor will get those fees going forward and
20 there'll be a profit, even after the expenses of servicing
21 those contracts are taken out, correct?

22 A They are profitable. That's one of the reasons that we're
23 assuming, yes.

24 Q Okay. Now, over my objection, you testified that the CLOs
25 have agreed to the assumption of these contracts, right?

1 A Yes.

2 Q Okay. Is there anything in the record other than your
3 testimony here today demonstrating that?

4 A I believe there is, yes.

5 Q What do you believe there is in the record other than your
6 testimony?

7 A I believe we filed a notice of assumption.

8 Q Okay. My question is a little bit different. You
9 testified that the CLOs, over my objection, have agreed to the
10 assumption. You did testify so, right?

11 A Yes.

12 Q Okay. What is there in the record, sir, from the CLOs
13 confirming that?

14 A You mean today's record?

15 Q Yes, sir.

16 A I'm the only one who's testified so far.

17 Q Okay. Are you aware of anything in the exhibits that
18 would confirm your testimony?

19 A Not that I know of.

20 Q Has there been an agreement with the CLOs that's been
21 reduced to writing?

22 A Yes.

23 Q So there is a written agreement with the CLOs providing
24 for assumption?

25 A Yes.

1 Q A signed, written agreement?

2 A No, it's -- it's email.

3 Q Okay. When was this email agreement reached?

4 A Within the last couple weeks. There's a number of back
5 and forths where that was agreed to, and I believe we filed a
6 notice of assumption.

7 MR. RUKAVINA: Mr. Vasek, if you will please pull up
8 Mr. Seery's January 29th deposition.

9 BY MR. RUKAVINA:

10 Q Mr. Seery, you remember me deposing you last Friday,
11 correct?

12 A Yes.

13 Q And you remember me asking you if there was a written
14 agreement in place with the CLOs?

15 A I don't recall specifically.

16 MR. RUKAVINA: Okay. Mr. Vasek, if you would please
17 scroll to that. Okay. Stop there.

18 BY MR. RUKAVINA:

19 Q Sir, you'll recall I also deposed you January 20th, right?

20 A Yes.

21 Q Okay. And do you remember that we had some discussion
22 regarding whether the CLOs would consent or not?

23 A Yes.

24 Q Okay. And do you remember telling me something like that
25 like you think that they will and that's still in the works on

1 January 20th?

2 A I don't recall specifically, but if you say that's what it
3 says.

4 Q Okay. Well, here I'm asking you on January 29th, Line 17,
5 "I asked you before and you didn't have anything in writing by
6 then, so let me ask now. As of today, do you have anything in
7 writing from the CLOs consenting to the assumption of those
8 management agreements?" I'm sorry. Contracts. Answer, "I
9 don't believe that I do. It could be on my email I opened. I
10 don't recall."

11 MR. RUKAVINA: Scroll down, Mr. Vasek.

12 BY MR. RUKAVINA:

13 Q Okay. Then I ask, "Do you have an understanding of
14 whether those CLOs have consented in writing to the assumption
15 of the management agreements?" And you answer, "I believe
16 they have. The actual final docs haven't been completed, but
17 I believe they have agreed in writing, yes."

18 Then I ask --

19 MR. RUKAVINA: Scroll down a little bit more.

20 BY MR. RUKAVINA:

21 Q I ask, "Do you expect the final docs to be completed
22 before Tuesday's confirmation hearing?" Answer, "I don't know
23 whether they will be done by Tuesday."

24 Did I read all of that correctly, sir?

25 A Other than your misstatement. The word was "unopened."

1 Q Thank you. So, let me ask you again today. As of today,
2 is there a written agreement that has been signed by the
3 parties providing for the assumption of the CLO agreements?

4 A When phrased the way you did, is it signed by the parties,
5 no.

6 Q Okay.

7 MR. RUKAVINA: You can take that down, Mr. Vasek.

8 BY MR. RUKAVINA:

9 Q I think -- I'm not sure if you quantified this earlier,
10 but it might help. I believe that the Reorganized Debtor
11 projects that it will generate revenue of \$8.269 million post-
12 reorganization from managing the CLO contracts, correct?

13 A It's in that neighborhood. I did not testify to that
14 earlier.

15 Q That's what I meant. And when I asked you at deposition,
16 you were able to give me an estimate of how much it would cost
17 to generate that revenue, correct?

18 A I was not?

19 Q You were? I'm sorry. Let me --

20 A Did you say I wasn't or I was?

21 Q Let me -- I apologize. Let me ask again. I talk too fast
22 and I have an accent. You have been able to give an estimate
23 of how much the Reorganized Debtor will expend to generate
24 that revenue, correct?

25 A Yes.

1 Q Okay. Do you remember what your estimate is?

2 A I -- I think it was around \$2 million a year. It was a
3 portion of our employees plus the contracts.

4 Q Okay. So, over the life of the projection at \$8.2
5 million, do you remember that you projected costs of about
6 \$3.5 to \$4 million to generate that revenue?

7 A If -- if you are representing that to me, I'd accept it.
8 Yes, that sounds about right.

9 Q Well, suffice it to say you're projecting at least \$4
10 million in net profit over the next two years for the
11 Reorganized Debtor from managing the CLO agreements, correct?

12 A Net profit is not a fair, fair way to analyze it, no.

13 Q Okay. Are you projecting any profit for the Reorganized
14 Debtor from managing the CLO agreements post-confirmation?

15 A Yes.

16 Q Okay. Do you have an estimate of what that profit is?

17 A General overview are the contracts are profitable to about
18 the tune of \$4 million over that period.

19 Q Okay. Thank you. If the Reorganized Debtor makes a
20 profit post-confirmation, is it fair to say that that would
21 then be dividended up or distributed up to the partners,
22 ultimately to the Claimant Trust?

23 A I don't think that's fair to say, no.

24 Q Okay. So, if the Reorganized Debtor makes a profit post-
25 confirmation, where does that profit go?

1 A The Reorganized Debtor -- what kind of profit? I don't
2 understand your question.

3 Q Okay. I apologize if I'm being too simplistic about it.
4 If a business, after it takes account of its expenses to
5 generate revenue, has any money left over, would that be
6 profit to you?

7 A Yes.

8 Q Okay. Do you think that the Reorganized Debtor, post-
9 confirmation, will make a profit?

10 A I don't know.

11 Q Okay. Do you think that the Reorganized Debtor, post-
12 confirmation, will lose money?

13 A I think there will be costs, and the costs will exceed the
14 -- the amount that it generates on an income basis, yes.

15 Q Okay. Thank you.

16 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
17 the plan, the injunctions, and releases. 9F.

18 (Pause.)

19 BY MR. RUKAVINA:

20 Q I apologize, Mr. Seery.

21 MR. RUKAVINA: So, Mr. Vasek, if you'll go to the
22 bottom of the Page 51. Stop there.

23 BY MR. RUKAVINA:

24 Q So, I'm going to read just the first couple sentences
25 here, Mr. Seery, if you'll read it along with me. Subject --

1 this is the bottom paragraph: Subject in all respects to
2 Article 12(b), no enjoined party may commence or pursue a
3 claim or cause of action of any kind against any protected
4 party that arose or arises from or is related to the Chapter
5 11 case, the negotiation of the plan, the administration of
6 the plan, or property to be distributed under the plan, the
7 wind-down of the business of the Debtor or Reorganized Debtor.

8 I'd like to stop there. Do you see that clause there, Mr.
9 Seery, talking about the wind-down of the business of the
10 Debtor or Reorganized Debtor? Do you see that, sir?

11 A Yes.

12 Q Okay. Do I understand correctly that this provision we've
13 just read means that, upon the assumption of these CLO
14 management agreements, if the counterparties to those
15 agreements want to take any action against the Reorganized
16 Debtor, they first have to go through this channeling
17 injunction?

18 A I believe that's what it says, yes.

19 Q Okay. Because the wind-down of the business of the
20 Reorganized Debtor will include the management of these CLO
21 portfolio management agreements, correct?

22 A Yes.

23 Q Okay. As well as the management of various funds that the
24 Debtor owns, correct?

25 A Yes.

1 Q Okay. And would you agree with me that the new general
2 partner, New GP, LLC, is also a protected party under the
3 plan?

4 A I assume it is. I don't recall specifically.

5 Q I believe you discussed to some degree postpetition
6 losses. I'd like to visit a little bit about those. Since
7 January 9th, 2020, Mr. Dondero was not an officer of the
8 Debtor, correct?

9 A Correct.

10 Q And since January 9th, 2020, he was no longer a director
11 of Strand, correct?

12 A That's correct.

13 Q Since January 9th, 2020, until he was asked to resign, he
14 was an employee, correct?

15 A Yes.

16 Q And about -- I'm trying to remember. About when did he
17 resign? October something of 2020? Do you remember?

18 A I don't recall.

19 Q Okay. Do you recall if it was in October 2020?

20 A It was in the fall.

21 Q Okay. And he resigned because the independent board asked
22 him to resign, correct?

23 A Yes.

24 Q Okay. And you mentioned that the estate has had a
25 postpetition drop in the value of its assets and the assets

1 that it manages. Right?

2 A I believe I went through the estate's assets. The only
3 asset that wasn't a direct estate asset was the hundred
4 percent control of Select Equity Fund. I didn't talk about
5 the Fund assets.

6 Q Okay. Do you recall that the disclosure statement that
7 the Court approved states that, postpetition, there was a drop
8 from approximately \$566 million to \$328 million in the value
9 of Debtor assets and assets under Debtor management?

10 A Yes. That's the \$200 million I walked through earlier.

11 Q Okay. And I believe you mentioned some of it was due to
12 the pandemic, right?

13 A It certainly impacted the markets. The pandemic didn't
14 cause a specific loss. It impacted the markets and the
15 ability to work within those markets.

16 Q But you also believe that Mr. Dondero was responsible for
17 something like a hundred million dollars of these losses,
18 right?

19 A Probably more.

20 Q Okay. Mr. Dondero is not being released or exculpated for
21 that, is he?

22 A No.

23 Q And while Mr. Dondero was an employee during the period of
24 these losses, he answered to you as CEO and CRO, correct?

25 A Not during that period. I wasn't (audio gap) until later.

1 Q I'm sorry. As of January 9th, 2020, were you the CEO of
2 the Debtor?

3 A No.

4 Q When did you become the CEO of the Debtor?

5 A I believe the order was July 9th, retroactive to a date in
6 March.

7 Q July 9th, 2020?

8 A Correct.

9 Q Okay. And when did you become the CRO of the Debtor?

10 A At the same time.

11 Q Okay. So, between January and July 2020, you were one of
12 the independent directors, correct?

13 A Yes.

14 Q Okay. So, during that period of time, would Mr. Dondero
15 have answered to that independent board?

16 A Yes.

17 Q Okay. Now, if someone alleges that that independent board
18 has any liability on account of Mr. Dondero's losses, that's
19 released under this plan, isn't it?

20 A Yes.

21 Q Okay. And if someone alleges that Strand has any
22 liability on account of Mr. Dondero's losses, that's released
23 under this plan, correct?

24 A Yes.

25 Q Okay. And if someone believes that the Debtor -- that the

1 way that the Debtor has managed the CLOs or its funds
2 postpetition gives rise to a cause of action in negligence,
3 that's also released and exculpated in the plan, correct?

4 A I believe it would be. I'm not positive, but I believe it
5 would be.

6 Q Well, let's be clear. The plan does not release or
7 exculpate you or Strand or the board for willful misconduct,
8 gross negligence, fraud, or criminal conduct, correct?

9 A No, it does not.

10 Q Okay. And I'm not, just so we're clear, I'm not alleging
11 that, okay? So I want the judge to understand I'm not
12 alleging that. But the plan does release and exculpate for
13 negligence, right?

14 A Yes.

15 Q Okay. Where do you have an understanding a cause of
16 action for breach of fiduciary duty lies on the spectrum of
17 negligence all the way to criminal conduct?

18 A It's -- it's not -- generally not criminal, although I
19 suppose that breach of fiduciary duty could be criminal.
20 Typically, it's negligence, and that you would breach a duty
21 for either duty of care, duty of loyalty. But it could slide
22 to willful. And probably most of the instances where they
23 come up are where someone has done something willfully or
24 grossly negligent.

25 Q Okay. But -- and I would agree with you. But there are

1 certain breaches of fiduciary duty that are possible based on
2 simple negligence, correct?

3 A They are, and in these instances, they don't -- they don't
4 rise to actionable claims because they're indemnified by the
5 funds.

6 Q Okay. You have to explain that to me. So, the negligence
7 claim is not actionable because someone is indemnifying it?

8 A Typically, there's no way to recover because it's
9 indemnified by the fund that the investor might be in. If it
10 goes beyond that, then it wouldn't be.

11 Q Okay. So there are potential negligence breach of
12 fiduciary duty claims that might be subject to these
13 exculpations and releases that would not be indemnified?

14 A Gross negligence and willful misconduct, certainly.

15 Q Okay. Now, post-confirmation, post-confirmation, if the
16 Debtor, or the Reorganized Debtor, rather, engages in
17 negligence or any actionable conduct, that's when the
18 channeling injunction comes into play, right?

19 A I don't quite understand your question.

20 Q Okay.

21 A Can you repeat that?

22 Q Sure. To your understanding, does the channeling
23 injunction we're looking at right now -- and you can read it
24 if you need to -- does it apply to purely post-confirmation
25 alleged causes of action?

1 A It does apply to those, yes.

2 Q Okay. And it says that the Bankruptcy Court will have
3 sole and exclusive jurisdiction to determine whether a claim
4 or cause of action is colorable, and, only to the extent
5 legally permissible and as provided for in Article 11, shall
6 have jurisdiction to adjudicate the underlying colorable claim
7 or cause of action.

8 Do you see that, sir?

9 A I do.

10 Q Okay. And this -- the Bankruptcy Court's exclusive
11 jurisdiction here, that would continue after confirmation? Is
12 that the intent behind the plan?

13 A It has -- it says what it says. Will have the sole and
14 exclusive jurisdiction to determine whether a claim is
15 colorable, and then, to the extent permissible, it'll have
16 jurisdiction to adjudicate.

17 Q Okay. Nothing in this plan limits the period of the
18 Bankruptcy Court's inquiry to the pre-confirmation time frame,
19 correct?

20 A I don't believe it does, no.

21 Q Okay. Have you taken into account the potential that this
22 bankruptcy case will eventually be closed with a final decree?

23 A Have I taken that into account?

24 Q Well, do you know what a final decree in Chapter 11 is?

25 A I do.

1 Q Okay. So, help me understand. If there's a final decree
2 and the bankruptcy case is closed, then who do I go to,
3 because the Bankruptcy Court has exclusive jurisdiction, to
4 get this clearing injunction cleared?

5 MR. MORRIS: Objection to the form of the question,
6 Your Honor.

7 THE COURT: Sustained. Rephrase.

8 MR. RUKAVINA: Okay.

9 BY MR. RUKAVINA:

10 Q Is it the plan's intent, Mr. Seery, that this channeling
11 injunction that we just looked at would continue to apply even
12 after a point in time in which the bankruptcy case is closed?

13 A I don't believe so.

14 MR. RUKAVINA: Again, Your Honor, someone -- I heard
15 someone's phone ring when he answered, and I didn't hear his
16 answer, if he could please re-answer.

17 THE WITNESS: I don't -- I don't think if the case is
18 closed that's the intention.

19 BY MR. RUKAVINA:

20 Q Okay. What about if there's a final decree entered?

21 MR. MORRIS: Objection, Your Honor. You know, the
22 document kind of speaks for itself.

23 THE COURT: Overruled. He can answer if he knows.

24 THE WITNESS: Yeah. I don't -- I don't -- I'm not
25 making a distinction between the case being closed and the

1 final decree. I believe in both instances they'll be pretty
2 close to the same time and we'll make a judgment then as to
3 how to close the case in accordance --

4 Q Okay.

5 A -- with the rules.

6 MR. RUKAVINA: Mr. Vasek, if you'll please scroll up
7 to the beginning of this injunction. A little bit higher.
8 Right there. Right there.

9 BY MR. RUKAVINA:

10 Q The very first clause, Mr. Seery, if you'll read with me,
11 says, Upon entry of the confirmation order -- pardon me --
12 all enjoined parties are and shall be permanently enjoined on
13 and after the effective date from taking any actions to
14 interfere with the implementation or consummation of the
15 plan.

16 Do you see that, sir?

17 A I do, yes.

18 Q What does interfering with the implementation or
19 consummation of the plan mean?

20 A It means in some way taking actions to upset, distract,
21 stop, or otherwise prohibit or hurt the estate from
22 implementing or consummating the plan.

23 Q Okay. And is that intended -- is that clause we just
24 read and you described intended to be very broad?

25 A I -- I think it's -- if the words have meaning, yes, that

1 it should -- it's pretty broad.

2 Q Okay. Is the Debtor not able to state with more
3 specificity what it would believe interference with the
4 implementation or consummation of the plan would mean?

5 MR. MORRIS: Objection to the form of the question.

6 THE COURT: Sustained.

7 THE WITNESS: I think it's -- I think it's --

8 THE COURT: Sustained.

9 MR. RUKAVINA: Okay.

10 THE WITNESS: I'm sorry.

11 BY MR. RUKAVINA:

12 Q Well, you just gave us four or five examples of what
13 interfering with the implementation or consummation of the
14 plan might be. Why isn't that, those four or five examples,
15 why aren't they listed here?

16 MR. MORRIS: Object to the form of the question.

17 MR. RUKAVINA: Well, Your Honor, I'll withdraw it
18 and I'll argue this at closing argument.

19 THE COURT: Okay.

20 BY MR. RUKAVINA:

21 Q When did the Committee agree to you serving as the
22 Claimant Trustee?

23 A In the late -- in the late fall. I've been contemplated
24 to be the Claimant Trustee. I'm willing to take -- if we can
25 come to an agreement. They have their options open if we

1 can't come to an agreement on compensation.

2 Q Okay. And since the Committee agreed to you being the
3 Claimant Trustee, you have reached a resolution with UBS,
4 correct?

5 A I don't think so. I think that that was before UBS, the
6 UBS resolution was reached.

7 Q I'm sorry. When did you reach the UBS resolution in
8 principle with UBS?

9 A I don't recall the exact date, but I do recall specific
10 conversations where some of the Committee members were
11 supportive. I didn't know that UBS wasn't, but I assumed
12 that some meant not all. And that was UBS, because I don't
13 think we had a deal yet.

14 Q Well, let me ask the question in a little bit of a
15 different way. Whenever the Debtor reached the agreement in
16 principle with UBS that your counsel described this morning,
17 whenever that point in time was, the Committee had already
18 agreed before that point in time to you serving as Claimant
19 Trustee, correct?

20 A I believe so, yes.

21 Q And is the answer the same with respect to the
22 HarbourVest settlement?

23 A I believe so. With HarbourVest, I believe so as well,
24 yes.

25 Q What about the Acis settlement?

1 A I don't believe so. I think Acis came first. I don't
2 think we settled on an agreement on Claimant Trustee until
3 after the Acis -- certainly after the Acis agreement, maybe
4 not after the Acis 9019. I just don't recall.

5 Q Okay. And the million-dollar cutoff for convenience
6 class creditors, that number was a negotiated amount with the
7 Committee, correct?

8 A Yes.

9 Q Okay. Thank you, Mr. Seery.

10 MR. RUKAVINA: Your Honor, I'll pass the witness.

11 THE COURT: All right. Just for purposes of time,
12 it's 3:00 o'clock, so you went 48 minutes.

13 Who's next?

14 MR. DRAPER: Mr. Taylor is.

15 THE COURT: All right. Mr. Taylor, go ahead.

16 MR. TAYLOR: Yes, Your Honor. At this time, what we
17 would like the Court to do, we are asking for a brief
18 continuance and to go into tomorrow, and there is a reason
19 for that and I would like to explain it.

20 Mr. Dondero has communicated an offer which we believe to
21 be a higher and better offer than what the plan analysis,
22 even in its most recent iteration that was just changed last
23 night, will yield significantly higher recoveries. Those are
24 guaranteed recoveries. There is a cash component to that
25 offer. There are some debt components, but they would be

1 secured by substantially all of the assets of Highland.

2 We believe it's a higher and better offer, that the
3 creditors and the Creditors' Committee, Mr. Seery, who
4 obviously has been testifying all day on the stand, may have
5 heard some -- some inkling of it via a text or an email he
6 might have been able to glance at, or maybe not, because he's
7 been too busy, and that's understandable.

8 But we do believe it is a material offer. It is a real
9 offer. And for that reason, we would like to request the
10 Court's indulgence. This has gone rather fast. We believe
11 that in the event that it does not gain any traction, then we
12 could complete this confirmation hearing tomorrow, or it's
13 more than likely that we could. And therefore we would
14 request a continuance until tomorrow morning beginning at
15 9:30 so all the parties can confer, consider that offer, and
16 see if it gains any traction.

17 THE COURT: All right.

18 MR. POMERANTZ: Your -- Your --

19 THE COURT: Go ahead. Mr. Morris? Or who is going
20 to respond --

21 MR. POMERANTZ: Your --

22 THE COURT: -- to that?

23 MR. POMERANTZ: Your Honor, this is Jeff --

24 THE COURT: Mr. Pomerantz?

25 MR. POMERANTZ: This is Jeff Pomerantz. I will

1 respond.

2 I think right at the beginning of the hearing, or
3 slightly after, I did receive an email from Michael Lynn
4 extending this offer. The email was also addressed to Mr.
5 Clemente. As we have told Your Honor before, if the Committee
6 is interested in continuing negotiations with Mr. Dondero, far
7 be it from us to stand in the way.

8 So what I would really ask is for Mr. Clemente to respond
9 to think if -- to see if he thinks that this offer is worthy.
10 If it's worthy and the Committee wants to consider it, we
11 would by all means support a continuance. If it is not, I
12 think this is just a last-minute delay without a reason. And
13 if there is no likelihood of that being acceptable or the
14 Committee wanting to engage, we would want to continue on.

15 THE COURT: All right. Mr. Clemente, what say you?

16 MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente
17 on behalf of the Committee.

18 Obviously, I haven't had a chance to confer with my
19 Committee members, but there's no reason to not continue the
20 confirmation hearing today. I will be able to confer with
21 them over email, et cetera, this evening. There's simply no
22 reason to not continue going forward at this particular point
23 in time, Your Honor.

24 So, although I haven't conferred with the Committee
25 members, that would be what I would recommend to them. And so

1 my view, the Committee's view, I believe, would be let's
2 continue forward and we'll discuss Mr. Dondero's proposal that
3 I know came across after opening statements this morning, you
4 know, in due course. But I do not believe that a continuance
5 here is necessary or appropriate.

6 THE COURT: All right. Mr. Taylor, that request is
7 denied, so you may cross-examine.

8 MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor.
9 I have a couple people that are in my ear. But yes, I'm ready
10 to proceed.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Seery, I believe you can probably largely testify from
15 your memory of the various iterations of the plan analysis
16 versus the liquidation analysis. But to the extent that
17 you're unable to, we can certainly pull those up.

18 Mr. Seery, you put forth or Highland put forth on November
19 24th of 2020 a plan analysis versus a liquidation analysis,
20 correct?

21 A I think that's the approximate date, yes.

22 Q Okay. And do you recall what the plan analysis predicted
23 the recovery to general unsecured creditors in Class 8 would
24 be at that time?

25 A I believe it was in the 80s.

1 Q And approximately 87.44 percent?

2 A That sounds close, yes.

3 Q Okay. And then just right before -- the evening before
4 your deposition that took place on January 29th, I believe a
5 revised plan analysis versus a liquidation analysis was
6 provided. Do you remember that?

7 A Yes.

8 Q Okay. And what was the predicted recovery to general
9 unsecured creditors under that analysis?

10 A I believe that was --

11 MR. MORRIS: Object to the form of the question. I
12 just want to make sure that we're talking about the -- and
13 maybe I misunderstood the question -- plan versus liquidation.

14 THE COURT: Okay. Could you restate --

15 MR. TAYLOR: I said plan analysis.

16 THE COURT: Plan.

17 THE WITNESS: I believe that that initially was in
18 the -- in the high 60s.

19 BY MR. TAYLOR:

20 Q It was --

21 A Might have been --

22 Q -- 62.14 percent; is that correct?

23 A Okay. Yeah. That sounds -- I'll take your
24 representation. That's fine.

25 Q Okay. And going back to the November 28th liquidation

1 analysis, what did Highland believe that creditors in Class 8
2 would get under a liquidation analysis?

3 A I don't recall the -- if you just tell me, I'll -- I'll --
4 if you're reading it, I'll agree with -- because I -- from my
5 memory.

6 Q 62.6 percent? Is that correct?

7 A That sounds about right.

8 Q You would agree with me, would you not, that 62.6 cents on
9 the dollar is higher than 62.14 cents, correct?

10 A Yes.

11 Q And so at least comparing the January 28th versus -- of
12 2021 versus the November 24th of 2020, the liquidation
13 analysis actually ended up being higher than the plan
14 analysis, correct?

15 A Yes.

16 Q But there was -- there was some changes also in the plan
17 analysis. I'm sorry. There were some subsequent changes that
18 were done over the weekend that were provided on February 1st.
19 Is that correct?

20 A Yes.

21 Q Okay. And what were -- give us an overview of what those
22 changes were.

23 A What are -- what are you comparing? What would you like
24 me to compare?

25 Q Okay. The January to February plan analysis, what were

1 the changes? Why did it go up from 62.6 to 71.3?

2 A The main changes, as we discussed earlier, and maybe the
3 only major change, was the UBS claim amount, which went down
4 significantly from the earlier iteration. And then there was
5 the small change related to the RCP recovery, which was a
6 double-count.

7 Q Okay. And you talked about earlier about what assumptions
8 went into these analyses, correct?

9 A Yes.

10 Q And you said these assumptions were always done after
11 careful consideration. Is that a correct summation of what
12 you said?

13 A I think that's fair.

14 Q Okay.

15 MR. TAYLOR: Mr. Assink, could you pull up the
16 November assumptions?

17 BY MR. TAYLOR:

18 Q I believe that's coming up, Mr. Seery. The Court.

19 (Pause.)

20 MR. TAYLOR: And go down one page, please, Mr.
21 Assink. Roll up. The Assumption L.

22 BY MR. TAYLOR:

23 Q So, these are the November assumptions, correct, Mr.
24 Seery?

25 A I believe so, yes.

1 Q Okay. And what was the assumption that you made after
2 careful consideration regarding the claims for UBS and
3 HarbourVest?

4 A The plan assumes zero, that was L, for those claims.

5 Q Okay. And ultimately what did -- and I believe you just
6 announced this today and made this public today -- what is
7 UBS's claim? What are you proposing that it be allowed at?

8 A \$50 million in Class 8, and then they have a junior claim
9 as well.

10 Q Okay. And what about HarbourVest? What kind of allowed
11 claim did they end up with?

12 A \$45 million in Class 8 and a \$35 million junior claim.

13 Q So your well-reasoned assumption, carefully considered,
14 was off by \$95 million; is that correct?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Overruled.

17 THE WITNESS: The difference between zero and those
18 numbers is \$95 million, yes.

19 BY MR. TAYLOR:

20 Q You solicited creditors of the Highland estate based upon
21 the November plan analysis and liquidation analysis that was
22 provided and that we're looking at right now, correct?

23 A It was one of the bases, yes. It's the plan is what --
24 what we solicited votes for, not the projections.

25 Q But this was included within the disclosure statement; is

1 that correct?

2 A It's one of the bases. It was included, yes.

3 Q And this is the bases by which you believe that the best
4 interests of the creditors have been met better than a Chapter
5 7 liquidation, correct?

6 A I believe this evidences that the best interest test would
7 be satisfied, yes.

8 Q And so the record is very clear, for this Court and
9 anybody looking at the record, no solicitation was done of the
10 creditor body after the disclosure statement was sent out? No
11 updates were sent, correct?

12 A Updated projections were filed, but no solicitation was --
13 was -- there was only one solicitation. We did not resolicit.
14 That's correct.

15 Q Okay. Mr. Seery, how much are you -- after this plan, or
16 if this plan is confirmed, how much are you going to be paid
17 per month to be the Trustee?

18 A For the Trustee role, \$150,000 per month is the base.

19 Q It's a base amount? On top of that, you're going to
20 receive some sort of bonus amount, correct?

21 A There's two bonuses. There's a bonus for the bankruptcy
22 case, which I'd need Court approval for, and then I'm going to
23 seek a bonus for the Trustee work, which would be a
24 combination of myself and the team for a performance bonus.
25 That's to be negotiated.

1 To be fair, the Committee or the Oversight Group may not
2 agree to any change, in which case we would not have an
3 agreement.

4 Q And what would happen if you don't come to an agreement,
5 Mr. Seery?

6 A They would have to get a different Plan Trustee.

7 Q Okay. So it's certainly going to have to be greater than
8 zero, correct?

9 A Typically.

10 Q Is it going to be in the nature of three or four percent
11 of the sales proceeds, or have you considered that?

12 A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been
13 thinking -- my apologies. I misunderstood. I thought you
14 meant any number. I haven't -- I haven't had negotiation with
15 them. I'm thinking about looking at the full recovery of the
16 team -- for the team, looking at expected performance numbers,
17 and then trying to negotiate a structure of bonus compensation
18 that would be payable to the whole team, and then allocated by
19 the CEO (garbled) which would be made.

20 Q When predicting the expenses of the Trust going forward in
21 your projections, did you build in an amount for a bonus fee?

22 A No. It wouldn't be part of the expenses. It would come
23 out at the end.

24 Q Okay. So those additional expenses are not shown in the
25 plan analysis, correct?

1 A No, they're not. It's just not going to be an expense.
2 It'll be a -- as an operating expense. It'll be an
3 expenditure at the end out of distributions.

4 Q Okay. And did you subtract those from the distributions?

5 A No.

6 Q Okay. A Chapter 7 trustee is not going to charge \$150,000
7 or more to monetize these assets, is he?

8 A No.

9 Q Have you priced how much D&O insurance is going to be on a
10 go-forward basis post-confirmation?

11 A I'm sorry. I couldn't -- couldn't hear you.

12 Q Sorry. Let me get closer to my mic. Have you priced what
13 D&O insurance is going to run the Trust on a go-forward basis
14 post-confirmation?

15 A Yes.

16 Q Okay. And what are you projecting that to run?

17 A About \$3-1/2 million.

18 Q And is that per annum for over the two-year life of this
19 plan?

20 A Well, it's the two-year projection period, not life. But
21 I expect that that's for the two-year projection period.

22 Q Okay. So approximately one point -- I'm sorry, you said
23 \$3.5 million, correct?

24 A Yes.

25 Q Okay. So, \$1.75 million per year?

1 A Yes.

2 Q On top of the minimum \$1.8 million per year that you're
3 going to be paid, correct?

4 A Well, that's -- that's the base compensation. But, again,
5 to be fair to the Oversight Committee, they haven't approved
6 it yet. So the Committee, the Committee reserves their rights
7 to negotiate a total package.

8 Q And there's going to be a Litigation Trustee, correct?

9 A Yes.

10 Q And that Litigation Trustee is going to be paid some
11 amount of compensation, correct?

12 A Yes.

13 Q That has not been negotiated yet, correct?

14 A No, I believe -- I believe the base piece has. But his --
15 I don't know what the contingency fee or if that's been
16 negotiated yet. I don't know.

17 Q And what is the base fee for the Litigation Trustee?

18 A My recollection is it was about \$250,000 a year, some
19 number in that area.

20 Q Thank you. So, at this point, over the two-year period,
21 we're looking at approximately \$3.6 million to you, \$3.5
22 million to the D&O insurance, and approximately \$500,000 base
23 fee to the Litigation Trustee, plus a contingency. Is that
24 correct?

25 A That's probably real close, yes.

1 Q Okay. And how about U.S. Trustee fees? You've estimated
2 of how much those are going to be during the two-year period,
3 correct?

4 A They're built into the plan up 'til -- I think it's only
5 up until the actual effective date, but I don't recall the
6 specifics.

7 Q Okay. And U.S. Trustee fees, the case is going to stay
8 open and those are going to continue to have to be paid, even
9 after confirmation, correct?

10 A Yes.

11 Q Okay. And do you have an estimate of how much those are
12 going to run per annum or over that two-year period?

13 A I don't recall, no.

14 Q Okay. Well, they're provided within your projections,
15 correct?

16 A Yes.

17 Q Okay. A Chapter 7 trustee would not have to incur any of
18 these costs, would they?

19 A I don't think they'll have to incur Chapter -- U.S.
20 Trustee fees. I don't know whether they would bring on a
21 litigation trustee or not. I would assume, since there's --
22 appear to be valuable claims, they probably would, but perhaps
23 they would do it themselves. So I don't know the specifics of
24 what they would do.

25 Q In preparing your liquidation analysis, did you ask

1 Pachulski if they would be willing to work for a Chapter 7
2 trustee if one was appointed?

3 A I didn't specifically ask, no.

4 Q Did you ask DIS, your, for lack of a better word,
5 financial advisors in this case, if they would be willing to
6 work with a Chapter 7 trustee?

7 A DSI. No, I did not specifically ask them.

8 Q Okay. All right. Any of the accountants that you're
9 working with, did you ask them if they would be willing to
10 work with a Chapter 7 trustee?

11 A I didn't specifically ask them, no.

12 Q Okay. The proposed plan has no requirements that you
13 notice any potential sale of either Highland assets or
14 Highland subsidiary assets; is that correct?

15 A Do you mean after the effective date?

16 Q Yes.

17 A No, it does not.

18 Q In the SSP sale, which is a subsidiary of Trussway, which
19 is a subsidiary of Highland, or actually it's a sub of a sub
20 of Highland, you conducted the sale of SSP, correct?

21 A The team did, yes. I was part.

22 Q All right. That was not noticed to the creditor body; is
23 that correct?

24 A That's correct.

25 Q And it is the Debtor's and your position that no notice

1 was required because this was a sub of a sub and therefore
2 this was in the ordinary course?

3 A Not exactly, no.

4 Q Okay. Then what is your position?

5 A It was in the ordinary course. It was -- I believe it's a
6 sub of a sub of a sub, and a significant portion of the
7 interests are owned by third parties.

8 Q It is possible, is it not, that had you noticed this to
9 the larger creditor body, that you might have engendered a
10 competitive bidding situation that might have reached a higher
11 return for investors, correct?

12 A The same possibility is it could have gone lower.

13 Q But it is possible, correct?

14 A Certainly possible.

15 Q In fact, there is normally requirements under the
16 Bankruptcy Code and the Rules that asset sales are noticed out
17 to the creditor body, correct?

18 A Asset sales that -- property of the estate, yes. Other
19 than in the ordinary course, of course.

20 Q I believe you have described Mr. Dondero as being very
21 litigious within this case; is that correct?

22 A I believe so, yes.

23 Q Okay. Did Mr. Dondero initiate any litigation in this
24 case prior to September 2020?

25 A Prior to September? I don't believe so. I don't know

1 when he filed the claim from NexPoint. It certainly indicated
2 that -- I believe it was from NexPoint. My memory is slightly
3 off here. He filed a claim in -- administrative claim, which
4 effectively is like you're bringing a complaint, against HCMLP
5 for the management of Multi-Strat and the sale of the life
6 settlement policies out of Multi-Strat, which was conducted in
7 the spring.

8 Q And wasn't Mr. Dondero seeking document production related
9 to that sale?

10 A No.

11 Q Okay. I believe that the preliminary injunction that you
12 talked about and were questioned earlier, the plan asks to
13 enjoin (garbled) party from allowing the plan to go effective.
14 Is that correct?

15 A I'm sorry. I didn't understand your question. There was a
16 -- there was a bunch of interference.

17 Q Okay. Sure. I'm sorry about that. I don't know if
18 that's -- I don't think that's me, but --

19 A It may not be. It sounded like someone else.

20 Q The injunction prohibits anybody from interfering with the
21 plan going effective, correct?

22 A The plan injunction?

23 Q Yes.

24 A Yes.

25 Q Okay. Just so I'm clear, is the plan injunction

1 attempting to strip appellate rights of Mr. Dondero?

2 A No.

3 Q Okay. So, if, for instance, if he were to file any appeal
4 of an order confirming this plan, he wouldn't be in violation
5 of that plan injunction?

6 A I don't think so, because the order wouldn't be final.

7 Q Okay. But it -- it says upon entry of a confirmation
8 order, you're enjoined from doing so. So that's not the
9 intent?

10 A It certainly would not be my intent. I don't think that
11 anybody had that in mind.

12 Q Okay. And if Mr. Dondero were to seek a stay pending
13 appeal either during that 14-day period or afterwards, is that
14 plan injunction attempting to stop that -- that sort of
15 action?

16 A I apologize. You're breaking up. But I think I
17 understood your question. No, it was -- it was your screen as
18 well. No. If either this Court stays its own order or a
19 higher court says that the order is stayed, then there would
20 be no way there could be any allegation that it's interfering
21 with an order if it's not effective.

22 Q Mr. Dondero opposed the Acis sale, correct?

23 A The Acis settlement?

24 Q Correct.

25 A Yes.

1 Q After he opposed the Acis settlement, the next filing Mr.
2 Dondero made was requesting that the Debtor notice the sale of
3 any assets or any major subsidiary assets. Is that correct?

4 A I don't recall the sequence of his filings. I think that
5 Judge Lynn at least sent a letter to that effect. I don't
6 recall if there is a filing to that effect.

7 Q Did Mr. Dondero, through his counsel, attempt to resolve
8 that motion without filing anything further?

9 A I don't recall the specifics of the motion. I know they
10 asked for some sort of relief that -- that we thought was
11 inappropriate.

12 Q When the Court postponed any hearing on Mr. Dondero's
13 request for relief until the eve of the confirmation hearing,
14 and Mr. Pomerantz announced that no sales were expected before
15 confirmation, did Mr. Dondero withdraw his motion?

16 A Again, I don't recall the specifics of the motion. I only
17 recall the letter from Judge Lynn.

18 Q Did Mr. Dondero do anything more than object to the
19 HarbourVest deal?

20 A Not that I know of.

21 Q Did Mr. Dondero do anything more than respond to the
22 Defendants' injunction suit?

23 MR. MORRIS: Objection to the form of the question.
24 I mean, -- objection to the form.

25 THE COURT: Overruled.

1 MR. TAYLOR: I apologize. I should have said the
2 Debtor's injunction suit.

3 THE WITNESS: Yeah, the -- I'm not sure of the
4 specific order, but certainly the communications with me,
5 which I think are prior to the order. The communications with
6 Mr. Surgent, which I believe are after the order. Certain
7 communications with Mr. Waterhouse, which were oral. Those
8 were all similarly difficult and obstreperous actions.

9 BY MR. TAYLOR:

10 Q Has Mr. Dondero commenced any adversary proceeding or
11 litigation in this case other than filing a competing plan?

12 MR. MORRIS: Objection to the form of the question.

13 THE COURT: Over --

14 THE WITNESS: Yeah, I don't --

15 THE COURT: -- ruled.

16 THE WITNESS: I don't believe he's commenced an
17 adversary. I'm sorry, Judge. I don't believe he's commenced
18 an adversary proceeding, no.

19 BY MR. TAYLOR:

20 Q Mr. Dondero didn't file any opposition to the life
21 settlement sale, did he?

22 A We didn't do the life settlement (garbled) Court.

23 Q Right. Again, that wasn't noticed through the -- this
24 Court, was it?

25 A It was an -- the reason was it was an asset of Multi-Strat

1 Fund. It wasn't an asset of the Debtor's.

2 Q Okay. Mr. Dondero did have concerns regarding the life
3 settlement sale, correct?

4 A Yes.

5 Q In fact, he believed that they were being sold for
6 substantially less than what could have otherwise been
7 received, correct?

8 A He may have.

9 Q And if you conduct any subsequent sales for less than
10 market value that might ultimately prevent the waterfall from
11 ever reaching Mr. Dondero, he would have no recourse under
12 this proposed plan to object to this sale or otherwise have
13 any comment on it. Is that correct?

14 A I clearly object to the thinking that that was less than
15 market value. It was -- it was more than market value. So I
16 don't -- I disagree with the premise of your question.

17 Q So, I don't believe that was the question that was asked.
18 The question that was asked is, as you move forward with your
19 -- what I will characterize as a wind-down plan, not putting
20 that word in your mouth -- but as you execute forward on your
21 plan, as these sales of these assets go through, no notice is
22 going to be provided, correct?

23 A Not necessarily. It depends on the asset and what we
24 think of the, you know, the -- the position of the parties at
25 the time.

1 If we have a -- if we have a transaction that's pending
2 that wouldn't be hurt by a notice and that we'd be able to get
3 the Court's imprimatur to maybe more better insulate, if you
4 will, against Mr. Dondero's attacks, then we may well come to
5 the Court to seek that.

6 The problem with noticing sales is that -- that it often
7 depresses value. That's just not the way folks outside of the
8 bankruptcy world (audio gap) sales.

9 Q So there's no requirement that either public or private
10 notice be provided, correct?

11 A No. Meaning it is correct.

12 Q Okay. And if Mr. Dondero had objections either to the
13 pricing of the sale or the manner and means by which the sale
14 was being conducted, he would be prohibited by the plan
15 injunction from bringing any objection to such sale, correct?

16 A I believe so, yes.

17 Q Mr. Dondero also had concerns regarding the OmniMax sale,
18 correct?

19 A Mr. Dondero did not go along with the OmniMax sale with
20 the assets that he managed. I don't know if he had concerns
21 with -- with our sale or OmniMax's interests.

22 Q Did Mr. Dondero ever express to you any concern that the
23 value wasn't being maximized regarding the sale of those
24 assets?

25 A He thought he could get more. I don't know that he

1 thought that he could get more for his assets that he was
2 managing or whether he thought he could get more for all of
3 the assets.

4 Q Other than voicing those concerns, did Mr. Dondero file
5 any pleading with this Court attempting to block that sale?

6 A Pleading with the Court? No.

7 MR. TAYLOR: Your Honor, I would like to confer with
8 my colleagues just very briefly and see if they have anything
9 further. And even if they don't, Mr. Lynn of my firm would
10 like a very brief moment to address the Court prior to me
11 passing the witness.

12 So, if I may have a literally hopefully one-minute break
13 where I can turn my camera off and my microphone off to confer
14 with my colleagues, and then move forward?

15 THE COURT: Okay. Well, you can have a one-minute
16 break, but we're going to continue on with cross-examination
17 at this point. Okay? I'm not sure what you meant by Mr. Lynn
18 wants to raise an issue at this point. Could you elaborate?

19 MR. TAYLOR: I will get some elaboration during our
20 30-second to one-minute break, Your Honor. I was just passed
21 a note.

22 THE COURT: All right. So, but I'll just you know,
23 --

24 A VOICE: Your Honor?

25 THE COURT: -- I'm inclined to continue with the

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1 cross-examination. You know, this isn't a time for, you know,
2 arguments or anything like that. All right?

3 So, we'll take a one-minute break. You can turn off your
4 audio and video for one minute, and come back.

5 (Off the record, 3:33 p.m. to 3:34 p.m.)

6 THE WITNESS: Your Honor?

7 THE COURT: Yes?

8 THE WITNESS: It's Jim Seery. Can I turn it into
9 just a two-minute break, since I've sat in my seat, and it
10 would be better for him to just continue straight through. I
11 could use one or two minutes.

12 THE COURT: Okay.

13 THE WITNESS: I apologize.

14 THE COURT: All right. Well, it's been more than
15 minute. Let's just say a five-minute break for everyone, and
16 we'll come back at 3:39 Central time. Okay.

17 THE WITNESS: Okay. Thank you, Your Honor. I
18 appreciate that.

19 (A recess ensued from 3:35 p.m. until 3:40 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. All right. We are
22 back on the record. Mr. Taylor, are you there?

23 MR. TAYLOR: I am, Your Honor. My video is not
24 wanting to start, but my -- I believe my audio is on.

25 THE COURT: Okay. After you went offline for your

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1 one-minute break, Mr. Seery asked for a five-minute bathroom
2 break, or a couple-minute. Anyway, we've been gone on a
3 bathroom break. We're back now.

4 MR. TAYLOR: Thank you. I was actually -- I was
5 still listening with one ear, --

6 THE COURT: Okay.

7 MR. TAYLOR: -- Your Honor, so I understand.

8 THE COURT: All right.

9 MR. TAYLOR: So, thank you.

10 THE COURT: Are you finished with cross, or no?

11 MR. TAYLOR: Just a little bit of a follow-up.

12 CROSS-EXAMINATION, RESUMED

13 BY MR. TAYLOR:

14 Q Mr. Seery, you had previously testified that Mr. Dondero's
15 counsel had threatened you and/or the independent board, I was
16 not exactly sure who you were referring to, with suits, and I
17 believe you said a hundred million dollars' worth of suits and
18 getting dragged into litigation.

19 Is that still your testimony today, that you were -- you
20 were threatened with suit by this firm of a suit of over a
21 hundred million dollars?

22 A I believe what I was told by my counsel was that, not Mr.
23 Dondero's, but one of the other counsel, who I can name, said
24 specifically that Dondero will sue Seery for hundreds of
25 millions of dollars. We're going to take it up to the Fifth

1 Circuit, get it reversed, and he'll go after him.

2 Q Okay. So it was not Mr. Dondero's counsel, and you were
3 not -- is that correct?

4 A No. It was one of the other counsel on the phone today.

5 Q Okay. And you base that not upon your own personal
6 knowledge but based on some -- something else that you were
7 told, correct?

8 A Yes. By my counsel.

9 Q Thank you.

10 MR. TAYLOR: Yes, Your Honor. We can pass the
11 witness.

12 THE COURT: Okay. So, you've gone, or you and Mr.
13 Rukavina collectively have gone one hour and 17 minutes. Mr.
14 Draper, you're next.

15 MR. DRAPER: Yes, Your Honor. Thank you. I
16 basically have no more than ten questions, so I gather the
17 Court will welcome that.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. DRAPER:

21 Q Mr. Seery, has the new general partner been formed yet?

22 A I don't know if they've been -- we've actually done the
23 formation, but it -- it would be in process.

24 Q So it either has been formed or has not been formed?

25 A I don't -- I don't know the answer.

1 Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will
2 have nothing to do with the Reorganized Debtor, correct?

3 A Not necessarily, but they don't have a specific role at
4 this time.

5 Q They won't be officers or directors of the new general
6 partner or the Reorganized Debtor, correct?

7 A I don't -- I don't believe so, but it's not set in stone.

8 Q All right. Has any finance -- has any party who is the
9 beneficiary of an exculpation, a release, or the channeling
10 injunction contributed anything to this plan of reorganization
11 in terms of money?

12 A No.

13 Q Have you ever interviewed a trustee as to how they would
14 liquidate the assets or monetize the assets in this case?

15 A No.

16 Q And last question is, is there any bankruptcy prohibition
17 that you're aware of that a Chapter 7 trustee could not do
18 what you're doing?

19 A Which -- which -- what do you mean, under the plan?

20 Q No. Could not monetize the assets of the estate in the
21 manner that you're attempting to monetize them.

22 A I don't think there's a specific rule, but I just haven't
23 -- I haven't seen that before, no. So I don't think there's a
24 specific rule that I know of.

25 Q Okay.

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1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. I should have asked, we had a
3 couple of other objectors. Ms. Drawhorn, did you have any
4 questions?

5 MS. DRAWHORN: I have no questions, Your Honor.

6 THE COURT: All right. Were there any other
7 objectors out there that I missed that might have questions?

8 All right. Any redirect?

9 MR. MORRIS: Your Honor, if I may, can I -- can I
10 just take a short minute to confer with my colleagues?

11 THE COURT: Sure. You can --

12 MR. MORRIS: Thank you.

13 THE COURT: -- put you --

14 MR. MORRIS: Two -- two minutes, Your Honor.

15 THE COURT: Okay.

16 (Pause, 3:45 p.m. until 3:48 p.m.)

17 THE COURT: All right. We've been a couple of
18 minutes. Mr. Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: What are --

21 MR. MORRIS: Just, just a few points, Your Honor.

22 THE COURT: Okay.

23 MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

24 THE WITNESS: I am, yes.

25 REDIRECT EXAMINATION

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1 BY MR. MORRIS:

2 Q You were asked a number of questions about your
3 compensation. Do you recall all that?

4 A Yes, I do.

5 Q And you testified to the \$150,000 a month. Do you recall
6 that?

7 A Yes.

8 Q Under the -- under the documentation right now, your
9 compensation is still subject to negotiation with the
10 Committee; is that right?

11 A Yes, it is.

12 Q Okay. You were asked a couple of questions about the
13 conduct of Mr. Dondero. Earlier, you testified that the
14 monetization plan was filed under seal at around the time of
15 the mediation. Do I have that right?

16 A Yes. Right at the start of the mediation.

17 Q Okay. And is that the first time that the Debtor made the
18 constituents aware, including Mr. Dondero, that it intended to
19 use that as a catalyst towards getting to a plan?

20 A That's the first time that we filed it, but that plan had
21 been discussed prior to that.

22 Q And do you recall that there came a point in time where
23 you -- when the Debtor gave notice that it intended to
24 terminate the shared services agreements with the Dondero-
25 related entities?

1 A Yes.

2 Q And when did that happen?

3 A That was about 60 -- now it's like 62 days ago.

4 Q Uh-huh. And you know, from your perspective, from the
5 filing of the monetization plan in August through the notice
6 of shared services, is that what you believe has contributed
7 to the resistance by Mr. Dondero to the Debtor's pursuit of
8 this plan?

9 A Well, I think there's a number of factors that
10 contributed, but the evidence that I've seen is that when we
11 started talking about a transition, if there wasn't going to
12 be a deal, if Mr. Dondero couldn't reach a deal with the
13 creditors, we were going to push forward with the monetization
14 plan. And the monetization plan required the transition of
15 the employees. And indeed, it called specifically, and we had
16 testimony regarding it all through the case, about the
17 employees being terminated or transferred.

18 In order to transfer them over to an entity that's
19 related, Mr. Dondero pulls all of those strings. And he
20 refused to engage on that. We started in the fall. We
21 specifically told employees of the Debtor not to engage. They
22 couldn't spend his money, which made sense --

23 MR. TAYLOR: Objection, Your Honor.

24 THE WITNESS: So, very -- that --

25 THE COURT: Just -- there's an objection.

1 MR. MORRIS: There's an objection.

2 THE WITNESS: I'm sorry.

3 THE COURT: There was an objection.

4 MR. TAYLOR: Yes, Your Honor. Object --

5 THE COURT: Go ahead.

6 MR. TAYLOR: Yes, Your Honor. This is Clay, Clay
7 Taylor. Objection. He's directly said Mr. Dondero told other
8 employees x, and that is purely hearsay, not based upon his
9 personal opinion, or his personal knowledge, and therefore
10 that part of the answer should be struck.

11 MR. MORRIS: Your Honor, it's a statement against
12 interest.

13 THE COURT: Overrule the objection. Go ahead.

14 THE WITNESS: Yeah. The difficulty of transitioning
15 this business, I've equated it to doing a corporate carve-out
16 transaction on an M&A side. It's hard, and you need
17 counterparties on the other side willing to engage. And what
18 we went through over the weekend, on Friday, was seemingly
19 that the Funds, you know, directed by Mr. Dondero, just
20 haven't engaged.

21 We actually gave them an extra two weeks to engage,
22 because it's -- they've really been unable to do anything. I
23 mean, hopefully, we've got the employees working in a way that
24 can -- that can foster and get around some of this
25 obstreperousness, and I've used that word before, but that's

1 what it is. It's really an attempt to just prevent the plan
2 from going forward.

3 And at some point, the plan will go forward. And if we
4 are unable to transition people, we will simply have to
5 terminate them. And that is not a good outcome for those
6 employees, but it's not a good outcome for the Funds, either.
7 And the Funds, Mr. Dondero, the Advisors, the boards, nobody
8 wants to do anything except come in this court.

9 BY MR. MORRIS:

10 Q Do you recall being asked about Mr. Dondero and certain
11 things that he didn't do and certain actions that he hadn't
12 taken?

13 A Yes.

14 Q By Mr. Taylor? To the best of your recollection, did Mr.
15 Dondero personally object to the HarbourVest settlement?

16 A I -- I don't recall if he did or if it was one of the
17 entities.

18 Q It was Dugaboy. Does that refresh your recollection?

19 A Dugaboy certainly objected, yes.

20 Q And do you understand that Dugaboy has appealed the
21 granting of the 9019 order in the HarbourVest settlement?

22 A Yes.

23 Q And Mr. Taylor asked you to confirm that Mr. Dondero
24 hadn't taken any action with respect to the life settlement
25 deal. Do you remember that?

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1 A I do.

2 Q But are you aware that Dugaboy actually filed an
3 administrative claim relating to the alleged mismanagement of
4 the life settlement sale?

5 A Yes, I did, I did allude to that. I wasn't sure it was
6 Dugaboy, but -- but that was very --

7 Q Uh-huh.

8 A -- very early on, an objection filed in the form of an
9 administrative claim or complaint against, if you will,
10 against Highland for the management of Multi-Strat.

11 Q Uh-huh. And Mr. Dondero didn't personally file any motion
12 seeking to inhibit the Debtor from managing the CLO assets; is
13 that right?

14 A No, not the CLO assets, no.

15 Q Yeah. But the Funds and the Advisors did. That was the
16 hearing on December 16th. Do you recall that?

17 A Yeah. That was the -- the Funds. K&L Gates, the Funds,
18 and the various Advisors.

19 Q All right. Do you recall Mr. Rukavina asking you whether
20 there was any evidence in the record to support your testimony
21 that there was an agreement in place to assume the CLO
22 management agreements?

23 A I recall the question, yes.

24 Q Okay.

25 MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

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1 to put up on the screen the Debtor's omnibus reply to the plan
2 objections.

3 THE COURT: Okay.

4 MR. MORRIS: It was filed -- it was filed on January
5 22nd. And if we can go, I think, to -- I think it's Paragraph
6 -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

7 BY MR. MORRIS:

8 Q Take a look at that, Mr. Seery. Does that -- does that
9 statement in Paragraph 135 accurately reflect the
10 understanding that's been reached between the Debtor and the
11 CLO Issuers with respect to the Debtor's assumption of the CLO
12 management agreements?

13 A Yes. I think that's consistent with what I testified to
14 earlier, the substance of the agreement.

15 MR. MORRIS: And if we can just scroll to the top,
16 just to see the date. Or the bottom. I guess the top.

17 THE WITNESS: Do you mean the date of this pleading?

18 BY MR. MORRIS:

19 Q Yeah. So, it was filed on January 22nd, right, ten days
20 ago? Okay.

21 A That's correct.

22 MR. MORRIS: I'd like to put up on the screen an
23 email, Your Honor, that I'd like to mark as Debtor's Exhibit
24 10A. And this is --

25 BY MR. MORRIS:

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1 Q Do you recall, Mr. Seery, you testified that the agreement
2 was reflected in an email?

3 A Yes.

4 Q Is this the email that you're referring to?

5 MR. MORRIS: If we could scroll down. Right there.

6 THE WITNESS: Yes.

7 MR. MORRIS: Okay. One -- the email below. Okay.

8 Right there.

9 BY MR. MORRIS:

10 Q Is that the -- is that the email you had in mind?

11 A It was the series of emails. We -- we had a -- I think I
12 testified in the prior testimony, or my -- one of my
13 depositions, that we had had a number of conversations with
14 the Issuers and their counsel, and this was the summary of the
15 agreement that was contained in these emails.

16 Q Okay. And this is, this is the same date as the omnibus
17 reply that we just looked at, right, January 22nd?

18 A That's correct.

19 Q Okay. You were asked a question, I think, late in your
20 cross-examination about a Chapter 7 trustee's ability to sell
21 the assets in the same way as you are proposing to do. Do you
22 recall that testimony?

23 A Yes.

24 Q And I think, if I understood correctly, the question was
25 narrowly tailored to whether there was any legal impediment to

1 a trustee doing -- performing the same functions as you. Do I
2 have that right?

3 A That's the question I was asked, whether the Bankruptcy
4 Code had a specific prohibition.

5 Q Okay. And I think, I think you testified that you weren't
6 aware of anything. Is that right?

7 A That's correct.

8 Q All right. But let's talk about practice. Do you think a
9 Chapter 7 trustee will realize the same value as you and the
10 team that you're assembling will, in terms of maximizing value
11 and getting the maximum recovery for the assets?

12 A No. As I testified earlier, you know, I've been working
13 with these assets now for a year. It's a complicated
14 structure. The assets are all slightly different. And
15 sometimes much more than slightly. And the team that we're
16 going to have helping managing is familiar with the assets as
17 well. We believe we'll be able to execute very well in the
18 markets that we (garbled).

19 Q Do you think a Chapter 7 trustee will have a steep
20 learning curve in trying to even begin to understand the
21 nature of the assets and how to market and sell them?

22 A I think anybody coming into this, the way this company is
23 set up, as an asset manager, and the diversity of the assets,
24 would have a steep learning curve, yes.

25 Q Do you have any view as to whether the perception in the

1 marketplace of a Chapter 7 trustee taking over to sell the
2 assets will have an impact on value as compared to a post-
3 confirmation estate of the type that's being proposed under
4 the plan?

5 A Yes, I do, and it certainly would be negative, in my
6 experience. Typically, assets are not conducted -- asset
7 sales are not conducted through a bankruptcy court, and
8 certainly not with a Chapter 7 trustee that has to sell them,
9 and generally is viewed as having to sell them quickly. So we
10 -- we approach each asset differently, but certainly in a way
11 that would be much more conducive to maximizing value than a
12 Chapter 7 trustee could, just by the nature of their role.

13 Q Is it -- is it your understanding that, under the proposed
14 plan and under the proposed corporate governance structure,
15 that the Claims Oversight Committee will -- will manage you?
16 That you'll report to that Committee and that they'll have the
17 opportunity to make their assessment as to the quality of your
18 work?

19 A Yeah, absolutely. And that's consistent with what we've
20 done before in this case. Even where it wasn't an asset of
21 the estate or was being sold in the ordinary course, we spent
22 time with the Committee and the Committee professionals before
23 selling assets.

24 Q And you've worked with the Committee for over -- for a
25 year now, right?

1 A It's over a year.

2 Q And the Committee is comfortable with you taking this
3 role; is that right?

4 A I think they're supportive of it. Comfortable might be
5 not the right word choice.

6 Q Okay. I appreciate the clarification. And do you have
7 any reason to believe that the -- that the Oversight Committee
8 is going to allow you the unfettered discretion to do whatever
9 you want with the assets of the Trust?

10 A Not a chance. Not with this group. Nor would I want to.
11 There's no right or wrong answer for most of these things, and
12 the collaborative views from professionals and people who have
13 an economic stake in the outcome will be helpful.

14 Q Okay. You were asked some questions about the November
15 projections and the -- and the assumption that was made that
16 valued the HarbourVest and the UBS claims at zero. Do you
17 recall that?

18 A Yes.

19 Q As of that time, was the Debtor still in active litigation
20 with both of those claim holders?

21 A Very much so.

22 Q And after the disclosure statement was issued, do you
23 recall that the Court entered its order on UBS's Rule 3018
24 motion?

25 A Yes.

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1 Q And do you recall what the -- what the claims estimate was
2 for voting purposes under that order?

3 A It was about \$95 million. That was -- it was together
4 with the summary judgment orders of that date. They were
5 separate orders, but that was the lone hearing.

6 Q And was that public information, that order was publicly
7 filed on the docket; isn't that right?

8 A Yes, it was.

9 Q Is there anything in the world that you can think of that
10 would have prevented any claim holder from doing the math to
11 try to figure out the impact on the estimated recoveries from
12 the -- by using that 3018 claims estimate?

13 A No. It would have -- it would have been quite easy to do.

14 Q And, in fact, that's what you wound up doing with respect
15 to the January projections, right?

16 A That's correct.

17 Q And do you recall when the HarbourVest settlement, when
18 the 9019 motion was filed?

19 A I don't recall the actual filing. It was subsequent to
20 the UBS, though.

21 MR. MORRIS: Ms. Canty, if you have it, can we just
22 put it on the screen, to see if we can refresh Mr. Seery's
23 recollection? If we could just look at the very top.

24 BY MR. MORRIS:

25 Q Does that refresh your recollection that the 9019 motion

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1 was filed on December 23rd?

2 A Yes, it does. The agreement was reached before that, but
3 it took a little bit of time to document the particulars and
4 then to -- to get it filed.

5 Q And this wasn't filed under seal, to the best of your
6 recollection, was it?

7 A No, no. This was -- this was open, and we had a very open
8 hearing about it, because it was a related-party objection.

9 Q And to the best of your recollection, did this 9019 motion
10 publicly disclose all of the material terms of the proposed
11 settlement?

12 A Yes, it did.

13 Q Can you think of anything in the world that would have
14 prevented any interested party from doing the math to figure
15 out how this particular settlement would impact the claim
16 recoveries set forth in the Debtor's disclosure statement?

17 A No. And just again, to be clear, the plan and the
18 projections had assumptions, but the plan was very clear that
19 the denominator was going to be determined by the total amount
20 of allowed claims.

21 Q And, again, at the time that that was filed, you hadn't
22 reached a settlement with HarbourVest, had you?

23 A No.

24 Q And the order on the 3018 motion hadn't yet been filed; is
25 that right?

1 A That's correct.

2 Q Okay. Has -- are you aware of any creditor expressing any
3 interest in trying to change their vote as a result of the
4 updates of the forecasts?

5 A Only Mr. Daugherty. And actually, they have a stipulation
6 with the two -- the two former employees.

7 Q All right. But to be fair, that wasn't -- had nothing to
8 do with the revisions to the projections? That was just in
9 connection with their settlement; is that right?

10 A That's correct. As was, I suspect, Mr. Daugherty's, but
11 he'd been aware of the settlements, just like everyone else.

12 Q Okay. You were asked a couple of questions, I think, by
13 Mr. Rukavina about whether there is anything that you need to
14 do your job on a go-forward basis. And I think you said no.
15 Do I -- do I have that right? Nothing further that you need?

16 A I -- I'm not really sure what your question means, to be
17 honest.

18 Q Okay. Fair enough. To be clear, is there any chance that
19 you would accept the position as the Claimant Trustee if the
20 gatekeeper and injunction provisions of the proposed plan were
21 extracted from those documents?

22 A No. As I said earlier, they're integral in my view to the
23 entire plan, but they're absolutely essential to my bottom.

24 Q Okay. And through -- through the date of the effective
25 date, are you relying on the exculpation clause of the -- have

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1 you been relying on the exculpation clause in the January 9th
2 order that you testified to at the beginning of this hearing?

3 A Yeah. Both the January 9th order as well as the July
4 order with respect to my CEO/CRO positions.

5 Q Okay.

6 MR. MORRIS: I've got nothing further, Your Honor.

7 THE COURT: All right. Any recross on that redirect?

8 A VOICE: I believe Mr. Rukavina is speaking but is
9 muted, Your Honor.

10 THE COURT: Mr. Rukavina, do you have any recross?

11 MR. RUKAVINA: Your Honor, I do, yes. Thank you. I
12 apologize.

13 THE COURT: Okay.

14 MR. RUKAVINA: Can you hear me now?

15 THE COURT: Yes.

16 THE WITNESS: Yes.

17 MR. RUKAVINA: Thank you.

18 Mr. Vasek, if you'll please pull up the Debtor's Omnibus
19 Reply, Docket 1807. And if you'll go to Exhibit C. Do a word
20 search for Exhibit C. It's attached to it. Okay. Now scroll
21 down. Stop there.

22 RECROSS-EXAMINATION

23 BY MR. RUKAVINA:

24 Q Mr. Seery, do you see what's attached as Exhibit C to the
25 Omnibus Reply, which is proposed language in the confirmation

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1 order?

2 A I see the exhibit. I didn't know if this was -- I don't
3 know exactly what it's for. If it's proposed language, I'll
4 accept your representation.

5 MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr.
6 Vasek. I want to make sure that I understand what you're
7 saying. Scroll back up. Do the word search for where Exhibit
8 C appears first. Start again. Okay. So scroll up.

9 BY MR. RUKAVINA:

10 Q So, you'll recall Mr. Morris was asking you about the
11 paragraph in here where you outlined the terms of the
12 agreement with the CLOs. Do you recall that testimony?

13 A Yes.

14 Q Okay. And then you see it says, The Debtor and the CLOs
15 agreed to seek approval of this compromise by adding language
16 to the confirmation order. A copy of that language is
17 attached hereto as Exhibit C and will be included in the
18 confirmation order.

19 Do you see that, sir?

20 A I do.

21 Q Okay.

22 MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.

23 BY MR. RUKAVINA:

24 Q So it's correct that this Exhibit C is the referenced
25 agreement that the Debtor and the CLOs will seek approval of,

1 correct?

2 A The -- the -- it may be word-splitting, but I believe it
3 says that they've reached agreement and this is the language
4 that will evidence that agreement or embody that agreement.

5 Q Okay.

6 MR. RUKAVINA: Scroll down, Ms. Vasek, to the next
7 page, please.

8 BY MR. RUKAVINA:

9 Q Real quick, do the CLOs owe the Debtor any money for the
10 management fees?

11 A I don't -- well, the answer is there are accrued fees that
12 haven't been paid, but when they have cash they run through
13 the waterfall and pay them.

14 Q And I believe you mentioned to me those accrued fees
15 before. They're several million dollars, correct?

16 A It -- I don't know right off the top of my head. They can
17 aggregate and then they get paid down in the quarter depending
18 on the waterfall. And it's -- it's not a fair statement by
19 either of us to say the CLOs, as if they're all the same.
20 Each one is different.

21 Q I understand. But as of today, you agree that the CLOs
22 collectively owe some amount of money to the Debtor in accrued
23 and unpaid management fees?

24 A I believe that's the case.

25 Q Okay. And do you believe it's north of a million dollars?

1 A I don't recall.

2 Q Okay.

3 MR. RUKAVINA: Well, scroll down a couple of more
4 lines, Mr. Vasek. Stay there.

5 BY MR. RUKAVINA:

6 Q Sir, if you'll read with me, isn't the Debtor releasing
7 each Issuer, which is the CLOs, for and from any and all
8 claims, debts, et cetera, by this provision?

9 A Claims. Not -- not fees, but claims. I don't believe
10 there's any release of fees that the CLOs might owe and would
11 run through the waterfall here.

12 Q Okay. For and from any and all claims, debts,
13 liabilities, demands, obligations, promises, acts, agreements,
14 liens, losses, costs, and expenses, including without
15 limitation attorneys' fees and related costs, damages,
16 injuries, suits, actions, and causes of action, of whatever
17 kind or nature, whether known or unknown, suspected or
18 unsuspected, matured or unmatured, liquidated or unliquidated,
19 contingent or fixed.

20 Are you saying that that does not release whatever fees
21 have accrued and the CLOs owe?

22 A I don't believe it would. If it did, your client should
23 be ecstatic. But I don't believe it does that.

24 Q And you don't believe that it releases the CLOs of any and
25 all other obligations that they may have to the Debtor and the

1 estate?

2 A I -- again, I don't believe there are any, but I think
3 it's a broad release of claims away from the actual fees that
4 are generated by the Debtor. I don't believe there's an
5 intention to release fees that have accrued.

6 Q Have you seen this language before I showed it to you
7 right now?

8 A I believe I have, yes.

9 Q Okay. Take a minute. Can you point the Court to anywhere
10 where present or future fees under the CLO agreements are
11 excepted from the release?

12 A I could go through, I'll take your representation, but I
13 don't believe that that's what it -- it's supposed to release
14 fees. Again, if the fees are owed, they get paid, if there
15 are assets there to pay them.

16 Q Okay. This release and this settlement was never noticed
17 out as part of a 9019, was it?

18 A I don't believe so, no.

19 Q Okay. So, other than bringing it up here today, this is
20 the first that the Court, at least, has heard of this,
21 correct?

22 A Yeah, again, I don't --

23 MR. MORRIS: Objection to the form of the question.

24 THE WITNESS: Yeah. I just stated before that I
25 don't think this is a -- that there claims.

1 THE COURT: Wait. Slow down. I think --

2 MR. SEERY: Oh, I'm sorry, Your Honor.

3 THE COURT: -- there was an objection. Go ahead, Mr.
4 Morris.

5 MR. MORRIS: The notion that this is the first time
6 the Court has heard of this is just factually incorrect.
7 First of all, it's in the document from January 22nd. Second
8 of all, Mr. Seery testified to it last week at the preliminary
9 injunction hearing. I mean, --

10 THE COURT: I -- I --

11 MR. MORRIS: -- I don't know what the point of the
12 inquiry is, but there's -- this is not new news.

13 THE COURT: Okay. I sustain the objection.

14 BY MR. RUKAVINA:

15 Q And Mr. Seery, can you point me to any document where
16 counsel for the CLOs has signed this particular confirmation
17 order or any other document agreeing to this language in the
18 confirmation order?

19 A I don't think there's any document that's signed. I think
20 we already went over that. I think the email is evidence
21 their agreement to the general terms. I don't see any
22 agreement with respect to this particular language.

23 Q Well, you have no personal information? You're going on
24 what your lawyers told you that the CLOs agreed to, correct?

25 A That's correct.

1 Q Okay. You didn't personally --

2 A Excuse me. That's correct with respect to this language,
3 not with respect to the agreement. I was on the phone when
4 they agreed.

5 Q Okay. And they agreed orally, you're saying, to basically
6 the assumption of the CLO management agreements?

7 A Correct.

8 Q Okay.

9 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
10 witness.

11 THE COURT: All right. Other recross?

12 MR. TAYLOR: Yes, Your Honor, I do.

13 THE COURT: Go ahead.

14 RECROSS-EXAMINATION

15 BY MR. TAYLOR:

16 Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry,
17 let me restart. I believe you testified earlier, in response
18 to questions by Mr. Morris, that you didn't believe a Chapter
19 7 trustee would be very effective in monetizing these assets,
20 correct?

21 A I think I said I didn't believe that the Chapter 7 trustee
22 would be as effective at monetizing the assets as the
23 Reorganized Debtor would be, and me in the role as Claimant
24 Trustee.

25 Q And one of the reasons that you gave is you believe that

1 the Chapter 7 trustee had to liquidate assets so quickly that
2 it could not be effective; is that correct?

3 A Typically, that's the case, yes.

4 Q You worked for the Lehman trustee, correct?

5 A That's incorrect.

6 Q Okay. Did you work on the Lehman case?

7 A Did I work in the case? No.

8 Q Okay. Did you -- how were you involved within -- within
9 the Lehman case?

10 A It's a long history, but I was a relatively senior person,
11 not senior level, not senior management level person at
12 Lehman. I ran the loan businesses and I helped a number of
13 other places and I -- in the organization. I helped construct
14 the sale of Lehman to Barclays out of the broker-dealer and
15 then helped consummate that sale.

16 Q Okay. I believe, in that case, it was a SIPC -- the
17 trustee was a SIPC trustee, correct?

18 A With respect to the broker-dealer.

19 Q Okay. And you believe that a SIPC trustee is very -- has
20 very similar rules with respect to asset sales; is that
21 correct?

22 A There are some similarities, absolutely.

23 Q Okay. And so in that case, the trustee was in place for
24 seven years, yet you believe -- you want this Court to believe
25 that a Chapter 7 trustee has to liquidate assets in a very

1 short time frame, is that correct?

2 MR. MORRIS: Objection to the form of the question.

3 THE WITNESS: Yeah, in the Lehman case, --

4 THE COURT: Overruled.

5 THE WITNESS: I'm sorry, Judge.

6 THE COURT: Go ahead.

7 THE WITNESS: In the Lehman case, the SIPC trustee
8 spent years litigating, not liquidating. The broker-dealer
9 was sold in our structured deal to Barclays, and then the SIPC
10 trustee liquidated the remainder of the estate, which was the
11 broker-dealer, but most of it had been sold to Barclays. It
12 was really a litigation case.

13 BY MR. TAYLOR:

14 Q But it did -- that trustee did sell off subsequent assets
15 after the initial sale, correct?

16 A That trustee, I don't think, managed -- I don't know about
17 that. The trustee didn't really manage any assets. Other
18 than litigations.

19 Q You've also testified that you didn't believe or that you
20 would not take on this role without the gatekeeper and
21 injunction -- gatekeeper role and injunction being in place;
22 is that correct?

23 A Yes.

24 Q And you're also familiar with the Barton Doctrine,
25 correct?

1 A I'm not.

2 Q Okay. Do you believe that a Chapter 7 trustee could be
3 sued by third parties without obtaining either relief from
4 this Court -- let me just stop there. Do you believe that a
5 Chapter 7 trustee could be sued without seeking leave of this
6 Court?

7 A I think it would be difficult. I know that Chapter 7
8 trustees have qualified immunity, so I think, whether it would
9 be leave of this Court or it's just that there's a very high
10 bar to suing them, I'm not exactly sure. It's not something
11 I've spent time on.

12 Q Okay. So a hypothetical Chapter 7 trustee would have no
13 need of the gatekeeper role or injunction if this case were
14 converted to one under Chapter 7, correct?

15 A That's probably true.

16 Q Thank you.

17 MR. TAYLOR: No further questions.

18 THE COURT: All right. Any other recross?

19 MR. DRAPER: Your Honor, I have nothing --

20 THE COURT: All right.

21 MR. DRAPER: -- further.

22 THE COURT: All right. I think we're done, but
23 anyone I've missed?

24 All right. Mr. Seery, it's been a long day. You are
25 excused from the virtual witness stand.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. Mr. Morris, let's see if
3 there's anything else we can accomplish today. It's 4:18
4 Central time. Who would be your next witness?

5 MR. MORRIS: My next witness would be John Dubel,
6 Your Honor.

7 THE COURT: All right. Can you give us a time
8 estimate for direct?

9 MR. MORRIS: I wouldn't expect Mr. Dubel to be more
10 than 20 minutes or so, but I would offer the Court, if you
11 think it would be helpful, counsel for the CLO Issuers is on
12 the call, and I believe that they would be prepared to just
13 confirm for Your Honor that there is an agreement in
14 principle, just as Mr. Seery has testified to, and maybe you
15 want to hear from her. I know she's not really a witness, but
16 she might be able to make some representations to give the
17 Court some comfort that everything Mr. Seery has said is true.

18 THE COURT: I think that would be useful. Is it Ms.
19 Anderson or who is it?

20 MS. ANDERSON: That is -- it is, Your Honor. And you
21 know, I appreciate the testimony given. I certainly do not
22 want to testify, but thought it might be useful for the Court
23 to hear from us.

24 Amy Anderson on behalf of the Issuers from Jones Walker.
25 Schulte Roth also represents the Issuers. And I can represent

1 to the Court that the agreement as it's represented on Docket
2 1807, as more particularly described in Exhibit C, which Your
3 Honor has seen, is the agreement reached between the Issuers
4 and the Debtor.

5 There was some testimony about fees owed, accrued fees
6 owed to the Debtor. I certainly cannot speak to the substance
7 of each particular management agreement with each CLO. They
8 are all distinct and unique and very lengthy documents. I
9 will -- I can represent to the Court that any accrued fees
10 that are owed were not intended to be included in the release.
11 It is -- it is not meant to release fees owed to Highland
12 under the particular management agreements.

13 Of course, if the Court has any questions or if I can
14 provide anything further, I'm happy to. And I will be on the
15 hearing today and tomorrow, but I thought it might be useful,
16 given the topic of the testimony this afternoon.

17 THE COURT: All right. That was useful. Thank you,
18 Ms. Anderson.

19 All right. Well, Mr. Morris, shall we go ahead and hear
20 from Mr. Dubel today, perhaps finish up a second witness?

21 MR. MORRIS: Yeah. I think we have the time. I
22 think Mr. Dubel is here. Are you here, Mr. Dubel?

23 MR. DUBEL: I am. Can you hear me, Your Honor?

24 THE COURT: I can hear you, but I cannot see you.
25 Oh, now I can see you. Please raise your right hand.

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1 JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

2 THE COURT: All right. Thank you. Mr. Morris, go
3 ahead.

4 MR. MORRIS: Thank you very much, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Dubel, can you hear me?

8 A I can, Mr. Morris.

9 Q Okay. Do you have a position today with the Debtor, sir?

10 A I am a director of Strand Advisors, Inc., which is the
11 general partner of the Debtor.

12 Q Okay. And can you --

13 MR. MORRIS: Your Honor, just as a reminder, I'm
14 going to ask Mr. Dubel to describe his professional experience
15 in some detail, to put into context his testimony, but his
16 C.V. can be found at Exhibit 6Y as in yellow on Docket No.
17 1822.

18 THE COURT: All right.

19 BY MR. MORRIS:

20 Q Mr. Dubel, can you describe your professional background?

21 A Yes. I have approximately, almost, and I hate to say it
22 because it's making me feel old, but I have almost 40 years of
23 experience working in the restructuring industry.

24 I have served in many roles in that, both as an advisor,
25 an investor in distressed debt, and also a member of

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1 management teams, and as a director, both an independent
2 director and a non-independent director.

3 My executive roles have included the -- both an executive
4 director, chief executive officer, president, chief
5 restructuring officer, chief financial officer. And I have
6 been involved in some of the largest Chapter 11 cases over the
7 last several decades, including cases like *WorldCom* and
8 *SunEdison*.

9 Q Let's focus your attention for a moment just on the
10 position of independent director. Have you served in that
11 capacity before this case?

12 A I have.

13 Q Can you describe for the Court some of the cases in which
14 you've served as an independent director?

15 A Sure. I've served as an independent director in several
16 cases that were I'll call post-reorg cases. *Werner Company*,
17 which was the largest climbing equipment manufacturer in the
18 world, manufacturer of ladders, Werner Ladders. You'll see
19 them on every pickup truck running around the countryside.

20 *FXI Corporation*, which is a -- one of the largest foam
21 manufacturers. Everybody's probably slept or sat on one of
22 their products.

23 *Barneys New York*, back in 2012, when they did an out-of-
24 court restructuring. I had previously been involved with
25 *Barneys* 15 years before that, and so I was called upon because

1 of my knowledge to be an independent director in that
2 situation. Have had no relationship with Barneys since it
3 emerged from Chapter 11 back in 1998.

4 I have been the independent director in *WMC Mortgage*,
5 which was a mortgage company owned by General Electric.

6 And I am currently serving as an independent director in a
7 company -- in two companies. One, *Alpha Media*, which is a
8 large radio station chain that recently filed Chapter 11, I
9 believe it was late Sunday night, and I am also an independent
10 director in the *Purdue Pharma* bankruptcy, and have served
11 prior to the bankruptcy and am the chair of the special
12 independent committee of directors -- special committee of
13 independent directors in that particular situation.

14 Q That sounds like a lot. In terms of other fiduciary
15 capacities, I think your *C.V.* refers to Leslie Fay. Were you
16 involved in that case, and if so, how?

17 A I was. That was -- for those people who may remember it,
18 that goes back into the 1993 era. *Leslie Fay* was a large
19 apparel manufacturer, and at the time was one of the largest
20 companies that had gone through an extensive fraud. I say at
21 the time because it was about a \$180 million fraud, which
22 pales by some of the ones that have followed it.

23 I was brought in as the executive vice president in charge
24 of restructuring, chief financial officer, and was also added
25 to the board of directors. Even though I wasn't independent,

1 I was added to the board of directors to have the fresh face
2 on the board in that particular situation because of the fraud
3 that had taken place.

4 Q And --

5 A Sun --

6 Q Go ahead.

7 A SunEdison, I was brought in as the CEO. Actually,
8 initially, as the chief restructuring officer, with a mandate
9 to replace the CEO, which took place shortly after I was
10 brought on board and -- because of various issues surrounding
11 investigations by the SEC, DOJ, and allegations by the
12 creditors of fraud. And so I was brought in to run the
13 company through its Chapter 11 process.

14 As I'd mentioned earlier, WorldCom, I was brought in at
15 the beginning of the case as the fresh chief financial
16 officer. And I think everybody is familiar with what happened
17 in the WorldCom situation.

18 Q All right. Based on that experience, do you have a view
19 as to whether the appointment of independent directors is
20 unusual?

21 A It is not. More recently, it has -- it had been in the
22 past. Usually, you know, they would try and take the existing
23 directors and form a special committee of the existing
24 directors. But I think the state of the art has become more
25 where independent directors are brought in, mainly because the

1 cases have become a lot more complex in nature, and larger,
2 and the transactions themselves are much more sophisticated.
3 And so having somebody independent has been important for
4 analyzing the various transactions. And also, quite often,
5 it's just bringing a fresh, independent voice to the company
6 on the board.

7 Q Do you have an understanding as to the purpose and the
8 role of independent directors generally in restructuring and
9 bankruptcy cases?

10 A Sure. As I kind of alluded to a little bit earlier, the
11 -- probably the most critical thing is for restoring
12 confidence in the company and in the management in terms of
13 corporate governance, especially when there have been troubled
14 situations, where -- whether it's been fraud or allegations
15 made against the company and its prior management or when
16 management has left under difficult situations.

17 Also, you know, independent thought process being brought
18 to the board is very important for helping guide companies.
19 It's quite often the existing management team or the existing
20 board may get stuck in a rut, as you can say, you know, in
21 terms of their thinking on how to manage it, and having
22 somebody with restructuring experience who provides that
23 independent voice is very important to the operations.

24 In addition, having someone who can look at conflicts that
25 might arise between shareholders or shareholders and the board

1 members is important. As I mentioned earlier, the *WMC*
2 *Mortgage* situation was one where I was brought on to -- as an
3 independent member of the board to effectively negotiate an
4 agreement or a settlement between *WMC* and its parent, General
5 Electric. That entity was being -- *WMC* was being sued for
6 billions of dollars, and there were issues as to whether or
7 not General Electric should fund those obligations. And so
8 that was a role that is quite often occurring in today's day
9 and age.

10 In addition, evaluating transactions for companies is
11 important, whereby either the shareholders who sit on the
12 board or board members may be involved in those transactions,
13 needing an independent voice to review it. And, you know, I
14 have served in situations. Again, *Barneys New York* and *Alpha*
15 *Media* is another example where, as an independent director, I
16 am one of the parties responsible for evaluating those
17 transactions and making recommendations to the entire board.

18 And then, again, you know, situations where it's just
19 highly-contentious and having, as I said, having that
20 independent view brought to the table is something that is
21 very helpful in these cases.

22 Q I appreciate the fulsomeness of the answer. During the
23 time that you served in these various fiduciary capacities, is
24 it fair to say you spent a lot of time considering and
25 addressing issues relating to D&O and other executive

1 liability issues?

2 A It's usually one of the things that you get involved with
3 thinking about prior to taking on the role because you want to
4 make sure that there are the appropriate protections for the
5 director.

6 Q Can you describe for the Court some of the protections
7 that you've sought or that you've seen employed in some of the
8 cases you've worked on, including this one, by the way?

9 A Sure. I mean, one of the first things you look to is does
10 the company -- will the company indemnify the director for
11 serving in that capacity? And if the company will not
12 indemnify, then there's always a question as to why not, and
13 it's probably something you don't want to get involved with.

14 Generally, that is something that I don't think I've ever
15 seen a case where there has not been indemnification.
16 Obviously, it would, you know, cause great pause or concern if
17 they weren't willing to indemnify. But that is important.

18 Providing D&O insurance is very important. And in most
19 situations, you know, over the last 10-15 years, if there's
20 not adequate D&O insurance -- quite often, the D&O insurance
21 has been tapped out because of claims that will -- have been
22 brought or are anticipated to be brought -- new D&O insurance
23 is something that's front and center for the minds of
24 independent directors such as myself.

25 As you -- that gets you into the case and gets you moving.

1 As you start to look towards the confirmation and exit from
2 the case, things that would be appropriate, that, you know,
3 would always be something you would want to look at would be
4 exculpation language, releases. And in this particular case,
5 the injunction, or what Mr. Seery earlier referred to as the
6 gatekeeper clause, is something that is very important for
7 directors, both, you know, as they're thinking through it and
8 as they emerge.

9 Q All right. Let's shift now to this case, with that
10 background. How did you learn about this case?

11 A I had a party who was involved in the case reach out to me
12 in early part of December of 2019 to see if I would be
13 interested in getting involved. I think that was about the
14 time -- it was after -- as I recall, it was after the case had
15 been moved to Dallas and when there was a -- consideration of
16 either a Chapter 11 or a Chapter 7 trustee. I can't remember
17 exactly which it was. But there was talk about a motion to
18 bring on a trustee and get rid of all the management and the
19 like and such.

20 Q Can you describe in as much detail as you can recall the
21 facts and circumstances that led to your appointment as an
22 independent director?

23 A Sure. I, as I said, I had -- early December, I had an --
24 one of the parties involved -- had, probably within the next
25 week, probably two or three others -- that reached out to see

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1 if I would be interested in participating. I met with the
2 Creditors' Committee or -- I'm not sure if it was all the
3 members, but representatives of the Creditors' Committee,
4 along with counsel, and I believe financial advisors were
5 involved. They walked me through the issues. They wanted to
6 hear about my C.V. Quite a few of them knew me, knew me well,
7 but others wanted to hear about my background and how I would
8 look at things as an independent director.

9 That went through into the latter part of December. I
10 knew that they were talking to other parties. I think it was
11 probably right around the first of the year or so that I was
12 informed, maybe a little bit earlier than that, that I was
13 informed that Mr. Seery was one of the other parties that they
14 were talking to, and Mr. Seery and I were put in touch with
15 each other. I had worked with Mr. Seery back probably nine
16 years earlier when I was the CEO of FGIC. He was involved in
17 a matter that we were restructuring, and so knew him a little
18 bit and was comfortable working with him as a, you know,
19 another independent director.

20 Then we took the time that we had to to -- or, I took the
21 time to -- from the beginning, you know, the early part of
22 December, look at the docket, understand what was taking
23 place. I -- in addition, I met with the company and its
24 advisors, in-house counsel, the folks at DSI who were at the
25 time the CRO and the company's counsel to better understand

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1 some of the issues.

2 Mr. Seery and I, as I said, were both selected, and we
3 went through the process of, I guess, breaking the tie, I
4 think, if I could say it that way, amongst the creditors and
5 the Debtor as to who would be the third member of the board.
6 And we were given the opportunity to go out, interview, and
7 select the third member, which resulted in Russell Nelms'
8 appointment to the board. And also during that time, we were
9 given the opportunity to have some input -- not a hundred
10 percent input, but some input -- on the January 9th order that
11 -- the January 9, 2020 order that was put in place appointing
12 us and giving us some of the protections that we felt were
13 appropriate and necessary in this case.

14 Q All right. We'll get to that in a moment, but during this
15 diligence period, did you form an understanding as to why an
16 independent board was being formed, why it was being sought?

17 A Yes. There was, my words, there was a lot of distrust
18 between the creditors and the management -- not the CRO, but
19 the prior management of the company -- and there had been a
20 motion brought both to obviously bring the case back to Dallas
21 from I think it was originally in Delaware and then there was
22 a motion to seek, you know, to remove management and put in a
23 trustee.

24 There had been a dozen years of litigation with one party,
25 about eight or nine years with another major party, and

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1 several other of the major creditors were litigants. The
2 other, as I understood, the other creditors, main creditors in
3 the case were all lawyers who had not yet gotten paid for the
4 litigation work that they had done. And so it was obvious
5 that this was a very -- a highly-litigious situation.

6 Q In addition to speaking with the various constituents, did
7 you do any diligence on your own to try to understand the case
8 before you accepted the appointment?

9 A Yes. I went to the docket to look at all the -- not every
10 single thing that had been filed, but to try and look at all
11 the key, relevant items that had been filed, get a better
12 understanding of what was out there. Looked at some of the
13 initial filings of the company in terms of the, you know, the
14 creditors, to understand who the creditor base was per the
15 schedules that had been filed. Looked at the -- some of the
16 various pleadings that had been put in place.

17 Q Did you form a view as to the causes of the bankruptcy
18 filing?

19 A Litigation. That was my clear view. This company had
20 been in litigation with multiple parties, various different
21 parties, since around 2008. Generally, you would see
22 litigation like the types that were, you know, that were here,
23 you know, you'd litigate for a while, then you'd try and
24 settle it.

25 It did not appear to me that there was any intention on

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1 the -- the Debtor to settle these litigations, but would
2 rather just continue the process and proceed forward on the
3 litigation until the very last minute. And so it was obvious
4 that this was going to -- that the Debtor was a, as I said, a
5 highly-litigious shop, and that was one of the causes,
6 obviously, the cause of the filing, along with the fact that
7 judgments were about to be entered against the Debtor.

8 Q All right. And in January 2020, do you recall that's when
9 the agreement was reached between the Debtor, the Committee,
10 and Mr. Dondero?

11 A Yeah, it was the first week or so, which resulted in a
12 hearing on I believe it was January 9th in front of Judge
13 Jernigan.

14 Q And as a part of that -- I think you testified at that
15 hearing. Do I have that right?

16 A I don't recall if I did. I might have. I might have
17 testified at a subsequent hearing. But --

18 Q But was --

19 A -- I was in the courtroom for that hearing, yes.

20 Q Was it part of that process by which you accepted the
21 appointment as independent director?

22 A I accepted it based upon the order that had been
23 negotiated amongst the parties, the creditors, the Debtor, Mr.
24 Dondero, and others. And that was the key thing that was --
25 and approved by the Court on that date. And that was key for

1 my acceptance of the role as an independent director.

2 Q And did you and the other prospective independent
3 directors participate in the negotiation of the substance of
4 the agreement?

5 A We did. We didn't have a hundred percent say over it, but
6 we were able to get our voices heard. As Mr. Seery testified
7 earlier, he was instrumental in coming up with an idea about
8 how to put in place the injunction, you know, the -- I think
9 he referred to it as the gatekeeper injunction, which was
10 obviously in this case very critical to all three of us: Mr.
11 Seery, Mr. Nelms, and myself.

12 Q Can you describe for the Court kind of the issues of
13 concern to you and the other prospective board members? What
14 was it that you were focused on in terms of the negotiations?

15 A Well, obviously, indemnification was important, but that
16 was something that was going to be granted. Having the right
17 to obtain separate D&O insurance just for the three directors
18 was important. We were concerned that Strand Advisors, Inc.
19 really had no assets, and so we wanted to make sure that the
20 Debtor was going to get -- was going to basically guarantee
21 the indemnification.

22 The -- because of the litigious nature and what we had
23 heard from all of the various parties involved, including
24 people inside the Debtor who we had talked with, that it would
25 be something that was important for us to make sure that the

1 injunction, the gatekeeper injunction was put in place.

2 Q And can you elaborate a little bit on I think you said you
3 had done some diligence and you had formed a view as to the
4 causes of the bankruptcy filing, but did this case present any
5 specific concerns or issues that you and the board members had
6 to address perhaps above and beyond what you experienced in
7 some of the other cases you described?

8 A Well, as I said earlier, the fact that the litigation --
9 the various litigations with the creditors have been going on
10 for what I viewed as an inordinate amount of years, and that
11 it was clear from my diligence that I had done that this had
12 been directed by Mr. Dondero, to keep this moving forward in
13 the litigation, and to, in essence, just, you know, never give
14 up on the litigation.

15 It was important that the types of protections that we
16 were afforded in the January 9th order were put in place,
17 because we -- none of us -- none of the three of us, and
18 myself in particular, did not want to be in a position where
19 we would be sued and harassed through lawsuits for the next,
20 you know, ten years or so. That's not something anybody would
21 want to sign up for.

22 Q All right. Let's look at the January 9th order and the
23 specific provisions I think that you're alluding to.

24 MR. MORRIS: Can we call up Exhibit 5Q, please?

25 THE WITNESS: Pardon me while I put my glasses on to

1 read this.

2 MR. MORRIS: All right. And if we can go to
3 Paragraph 4.

4 BY MR. MORRIS:

5 Q Is that the paragraph, sir, that was intended to address
6 the concern that you just articulated about Strand not having
7 any assets of its own?

8 A Yes, it is.

9 Q And can you just describe for the Court how that
10 particular provision addressed that concern?

11 A Sure. Since we were directors of Strand, which is the
12 general partner of the Debtor, we felt it was important that
13 the general -- that Highland, the Debtor, would provide the
14 guaranty on indemnification, because Highland had the assets
15 to back up the indemnification.

16 It was also pretty clear, from my experience in having
17 placed D&O insurance, you know, over the last 25-30 years,
18 that if there was no, you know, opportunity for
19 indemnification, putting in place insurance would be very
20 difficult or exorbitantly expensive. So having this
21 indemnification by Highland was a very important piece of the
22 order that we were seeking.

23 Q And the next piece is the insurance piece in Paragraph 5.
24 Do you see that?

25 A I do.

1 Q Did you have any involvement in the Debtor's efforts to
2 obtain D&O insurance for the independent board?

3 A I did.

4 Q Can you just describe for the Court what role you played
5 and what issues came up as the Debtor sought to obtain that
6 insurance?

7 A Sure. The Debtors had been looking to get an insurance
8 policy in place. They were not able to do that. I happen to
9 have worked with an insurance broker on D&O situations in some
10 very difficult situations over the years and brought them into
11 the mix. They were able to go out to the market and find a
12 policy that would cover us, the -- kind of the key components
13 of that policy, though, were, number one, the guaranty that
14 HCMLP would give -- I'm sorry, the guaranty that HCMLP would
15 give to Strand's obligations, and also the -- I'll call it the
16 gatekeeper provision was very important because these parties
17 did not want to have -- they wanted to have what was referred
18 to, commonly referred to as the Dondero Exclusion.

19 So while we were -- we purchased a policy that covered us,
20 it did have an exclusion, unless there were no assets left,
21 and then the what I'll call -- we refer to as kind of a Side A
22 policy would kick in.

23 Q Okay. What do you mean by the Dondero Exclusion?

24 A The insurers did not want to cover the -- any litigation
25 that Mr. Dondero would bring against directors. It was pretty

1 commonly known in the marketplace that Mr. Dondero was very
2 litigious, and insurers were not willing to write the
3 insurance without the protections that this order afforded
4 because they did not want to be hit with frivolous -- hit with
5 claims on the policy for frivolous litigation that might be
6 brought.

7 MR. TAYLOR: Your Honor, this is Mr. Taylor. I've
8 got to object to the last answer. He testified as to what the
9 insurers' belief was and what they would or would not do based
10 upon their own knowledge. It's not within his personal
11 knowledge. And therefore we'd move to strike.

12 THE COURT: I overrule that objection.

13 MR. MORRIS: Your Honor?

14 THE COURT: I overrule the objection.

15 MR. MORRIS: Thank you. Thank you, Your Honor.

16 BY MR. MORRIS:

17 Q Mr. Dubel, can you explain to the Court, in your work in
18 trying to secure the D&O insurance, what rule the gatekeeper
19 provision played in the Debtor's ability to get that?

20 A Based upon my discussions with the insurance broker, who I
21 have worked with for 25-plus years, had that gatekeeper
22 provision not been put in place, we would not have been able
23 to get insurance.

24 Q All right. Let's look at the gatekeeper provision.

25 MR. MORRIS: Can we go down to Paragraph 10, please?

1 Perfect. Right there.

2 BY MR. MORRIS:

3 Q Is this gatekeeper provision, is this also the source of
4 the exculpation that you referred to?

5 A Yes.

6 Q And what's your understanding of how the exculpation and
7 gatekeeper functions together?

8 A Well, my apologies, I'm not an attorney, so just from a
9 business point of view, the way I look at this is that, you
10 know, obviously, we're -- you know, the directors are not
11 protected from willful misconduct or gross negligence, but any
12 negligence -- you know, claims brought under negligence and
13 the likes of such, and things that might be considered
14 frivolous, would have to first go to Your Honor in the
15 Bankruptcy Court for a review to determine if they were claims
16 that should be entitled to be brought.

17 Q If you take a look at the provision, right, do you
18 understand that nobody can bring a claim without -- in little
19 i, it says, first determining -- without the Court first
20 determining, after notice, that such claim or cause of action
21 represents a colorable claim of willful misconduct or gross
22 negligence against an indirect -- independent director. Do
23 you see that?

24 A I do.

25 Q Is it your understanding that parties can only bring

1 claims for gross negligence or willful misconduct if the Court
2 makes a determination that there is a colorable claim?

3 A That's my understanding.

4 Q And the second --

5 A I think they have the right -- I think they have the right
6 to go to the Court to ask if they can bring the claim, but the
7 Court has to make the determination that it's a colorable
8 claim for willful misconduct or gross negligence.

9 Q And if the Court -- is it your understanding that if the
10 Court doesn't find that there is a colorable claim of willful
11 misconduct or gross negligence, then the claim can't be
12 brought against the independent directors?

13 A That is my understanding, yes.

14 Q And was -- taken together, Paragraphs 4, 5, and 10, were
15 they of importance to you and the other independent directors
16 before accepting the position?

17 A They were absolutely critical to me and definitely
18 critical to the other directors, because we all negotiated
19 that together, and it would -- I don't -- I don't think any of
20 the three of us would have taken on this role if those
21 paragraphs had not been included in the order.

22 Q Okay. Just speaking for yourself personally, is there any
23 chance you would have accepted the appointment without all
24 three of those provisions?

25 A I would not have.

1 Q And why is that? In this particular case, why did you
2 personally believe that you needed all three of those
3 provisions?

4 A Well, you know, people like myself, you know, someone
5 who's coming in as an independent director, come in in a
6 fiduciary capacity. And, you know, we take on risks. Now,
7 granted, in a Chapter 11 case, as the saying goes, you know,
8 it's a lot safer because everything has to be approved by the
9 Court, but there are still opportunities for parties to, in
10 essence, have mischief going on and bring nuisance lawsuits
11 that would take a lot of time and effort away from either the
12 role of our job of restructuring the entity or post-
13 restructuring, would just be nuisance things that would cost
14 us money. And we, you know, I did not want to be involved in
15 that situation, knowing the litigious nature of Mr. Dondero
16 from the research that I had done, you know, the diligence
17 that I had done. I did not want to subject myself to that.
18 And it has proven an appropriate and very solid order because
19 of the conduct of Mr. Dondero, as Mr. Seery has testified to
20 earlier.

21 Q Do you have a view as to what the likely effect would be
22 on future corporate restructurings if you and your fellow
23 directors weren't able to obtain the type of protection
24 afforded in the January 9th order?

25 A I think it would be very difficult to find qualified

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1 people who would be willing to serve in these types of
2 positions if they knew they had a target on their backs. You
3 know, it was something that was clear to us, to Mr. Seery, Mr.
4 Nelms, myself at the time, that if we had a target -- we felt
5 like we would have a target on our back if we didn't have
6 these protections.

7 It just wasn't worth the risk, the stress, the
8 uncertainty, the potential cost to us. And so I don't think
9 anybody else would be, you know, willing to take on the roles
10 as an independent director with the facts and circumstances
11 and the players involved in this particular case.

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

13 THE COURT: All right. Pass the witness. Let's see.
14 You went -- I'm going to give a time. You went 32 minutes.
15 So, for cross of this witness, I'm going to limit it to an
16 aggregate of 32 minutes. Who wants to go first?

17 MR. DRAPER: Your Honor, this is Douglas Draper.
18 I'll be happy to go first.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. DRAPER:

22 Q Mr. Dubel, prior to your engagement, did you happen to
23 read the case of *Pacific Lumber*?

24 A I did not.

25 Q And were you advised about *Pacific Lumber* by somebody

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1 other than a -- your lawyer?

2 A I'm not familiar with the case at all, Mr. Draper.

3 Q Are you aware, and you've been around a long time, that
4 different circuits have different rules for liabilities of
5 officers, directors, and people like that?

6 A I am aware that there are different, I don't know what the
7 right term is, but precedents, I guess, in different circuits
8 for any number of things, whether it's a sale motion or
9 protections of officers and directors or anything. So each
10 circuit has its own unique situations.

11 Q And one last question. On a go-forward, after -- if this
12 plan is confirmed and on the effective date, you will not have
13 any role whatsoever as an officer or director of the new
14 general partner, correct?

15 A I have not been asked to. As Mr. Seery testified, he may
16 ask for assistance or just -- in most situations that I'm
17 involved with, I may have a continuing role just as a -- I'll
18 call it an advisor or somebody to provide a history. But at
19 this point in time, I have not been asked to have any
20 involvement.

21 Q And based on your experience, you know that there's a
22 different liability for a director and an officer versus
23 somebody who is an advisor?

24 MR. MORRIS: Objection to the form of the question.

25 No foundation.

1 THE COURT: Overruled.

2 MR. DRAPER: Mr. Dubel has shown --

3 THE COURT: Mr. Dubel, you can answer if you know.

4 MR. DRAPER: Mr. Dubel, you can answer.

5 THE WITNESS: I'm sorry, Your Honor, I didn't hear
6 you say overruled. Thank you.

7 Mr. Draper, I apologize, could you repeat the question?

8 BY MR. DRAPER:

9 Q The question is you know from your experience that there's
10 a different liability for somebody who is an officer or
11 director versus somebody who's an advisor?

12 A Yes, that's my experience, which is why in several
13 situations post-reorganization, while I have not been involved
14 *per se*, and I use the term involved meaning, you know, on a
15 day-to-day basis, if someone asks me to assist, I'll usually
16 ask them to bring me in as a non -- an unpaid employee or a,
17 you know, a nominally-amount-paid employee, so that I would be
18 protected by whatever protections the company might provide.

19 MR. DRAPER: I have nothing further for this witness,
20 Your Honor.

21 THE COURT: All right. Other cross?

22 MR. TAYLOR: Yes, Your Honor.

23 MR. RUKAVINA: Yes, Your Honor.

24 MR. TAYLOR: Oh, go ahead, Davor.

25 MR. RUKAVINA: No, Clay, go ahead.

Dubel - Cross

284

1

CROSS-EXAMINATION

2

BY MR. TAYLOR:

3

Q Mr. Dubel, this is Clay Taylor here on behalf on Mr.

4

Dondero. I believe you had previously testified in response

5

to questions from Mr. Morris that Mr. Dondero had engaged in a

6

pattern of litigious behavior; is that correct?

7

A I believe that's the testimony I gave, yes.

8

Q Okay. And please give me the specific examples of which

9

cases you believe he has engaged in overly-litigious behavior.

10

A Well, all of the cases that resulted in creditors, large

11

creditors in our bankruptcy. That would be the UBS situation,

12

the Crusader situation which became the Redeemer Committee,

13

litigation with Mr. Daugherty, with Acis and Mr. Terry. And

14

as I mentioned earlier, I'd, you know, been informed by

15

members of the management team that it was Mr. Dondero's style

16

to just litigate until the very end to try and grind people

17

down.

18

Q Okay. Was Mr. Dondero or a Highland entity the plaintiff

19

in the UBS case?

20

A No, but what was referred -- what I was referring to was

21

the nature in which he defended it and went overboard and

22

refused to ever, you know, try and settle things in a manner

23

that would have gotten things done. And just looking at,

24

having been involved in the restructuring industry for the

25

last 40 years, as I said, almost 40 years, and been involved

003652

1 in many, many litigious situations, it's obvious when someone
2 is litigious, whether they're the plaintiff or the defendant.

3 Q So are you personally familiar with the settlement
4 negotiations in the UBS case that happened pre-bankruptcy,
5 then?

6 A I have been informed that there were settlement
7 negotiations, and subsequently determined, through discussions
8 with the parties, that they weren't really close to -- to a
9 settlement.

10 Q But are you aware of --

11 A Mr. Dondero might have thought they were, but they were
12 not.

13 Q Okay. Would you be surprised to learn if UBS had offered
14 to settle pre-bankruptcy for \$7 million?

15 A As I understand, settlements -- settlement offers pre-
16 bankruptcy had a tremendous number of -- I don't know what the
17 right term is -- things tied to it and that clearly were never
18 going to get done.

19 Q Okay. When you say things were tied to it, what things
20 were tied to it?

21 A I don't know all of the settlement discussions that took
22 place, but what I was informed was that there were a lot of
23 conditions that were included in that. And it's -- if it had
24 been an offer of \$7 million and Mr. Dondero didn't settle for
25 that, there must have been a reason why. So, you know, since

1 the entities -- all of the entities within the Highland
2 Capital empire, if you'd call it that, were being sued for
3 almost a billion dollars.

4 Q Okay. And you say there was lots of conditions that were
5 tied to that. What were the conditions?

6 A As I said earlier, I wasn't informed of them on all the
7 prepetition settlements. That's just what I was told, there
8 was conditions.

9 Q Okay. And who were you told these things by?

10 A Both external counsel and internal counsel. Mr.
11 Ellington, Scott Ellington, and Isaac -- the litigation
12 counsel.

13 Q Okay. So --

14 A That's -- sorry.

15 Q Okay. In each of these cases, you were informed by your
16 views by statements that were made to you by other people?

17 A Yes.

18 Q Okay.

19 A Made -- and particularly made by members of management of
20 the Debtor, which is pretty informed.

21 Q Okay. Which members of management were those?

22 A As I just testified, it was Mr. Ellington, who was the
23 general -- the Debtor's general counsel, and Mr. Leventon,
24 Isaac Leventon, who was the -- I believe his title was
25 associate general counsel in charge of litigation.

1 Q Okay. Thank you.

2 MR. TAYLOR: No further questions.

3 THE COURT: All right. Mr. Rukavina?

4 CROSS-EXAMINATION

5 BY MR. RUKAVINA:

6 Q Mr. Dubel, we've never met, although I think we were on
7 the phone once together. I know you're a director, so you're
8 at the top, but having been in this case for more than a year,
9 you probably have some understanding of the assets that the
10 Debtor has, don't you?

11 A I do, but I'm not as facile with it as Mr. Seery,
12 obviously.

13 Q Sure. Is it true, to your understanding, that the Debtor
14 owns various equity interests in third-party companies?

15 A Either directly or indirectly. That's my understanding,
16 yes.

17 Q Okay. Have you heard of an entity called Highland Select
18 Equity Fund, LP?

19 A I have.

20 Q And is that a publicly-traded company?

21 A I'm not familiar with its nature there, no.

22 Q Do you know how much of the equity of that entity the
23 Debtor owns?

24 A I don't know off the top of my head, no.

25 Q And again, these may be unfair questions because you're at

1 the top, so I'm not trying to make you look foolish. I'm just
2 trying to see. Let me ask one more. Have you heard of
3 Wright, W-R-I-G-H-T, Limited?

4 MR. MORRIS: Objection, Your Honor. Beyond the
5 scope.

6 MR. RUKAVINA: Your Honor, I can recall him on my
7 direct, then.

8 THE COURT: Yeah. I'll --

9 MR. RUKAVINA: But I'd just rather get it over with.

10 THE COURT: I'll allow it.

11 MR. MORRIS: All right. If we're going to get rid of
12 --

13 THE COURT: Overruled.

14 MR. MORRIS: No, that's fine.

15 BY MR. RUKAVINA:

16 Q Have you heard of Wright, W-R-I-G-H-T, Limited?

17 A I think I have, but I just don't recall it, Mr. Rukavina.
18 I'm sorry, Rukavina. Sorry.

19 Q It's okay. It's a --

20 A I'm looking at your chart here, at your name here, and it
21 looks like Drukavina, so I really apologize.

22 Q Believe it or not, it's actually a very famous name in
23 Croatia, although it means nothing here.

24 So, all of the entities that the Debtor owns equity in, I
25 guess you probably, just because, again, you're not in the

1 weeds, you can't tell us how much of that equity the Debtor
2 owns, can you?

3 A I can't individually, no. You know, Mr. Seery is our CEO
4 and he's responsible for the day-to-day, you know, issues. So
5 usually we look at it more on a consolidated basis and not in
6 the, you know, down in the weeds, as you refer to it, unless
7 something specific came up.

8 Q Well, would you remember whether, when Mr. Seery or the
9 prior CRO would provide you, as the board member, financial
10 reports, whether that included P&Ls and balance sheets and
11 financial reports for the entities that the Debtor owned
12 interests in?

13 A We might -- we would have seen certain consolidating
14 reports that might -- that would be, you know, consolidating
15 financial statements that would be P&Ls. Where we didn't
16 consolidate them, I'm not sure we saw the actual individual-
17 entity P&Ls on a regular basis. We might have seen them if
18 there was a transaction taking place. But again, you know, I
19 don't have -- I don't remember every single one of them, no.

20 Q And you would agree with me, sir, that the Pachulski law
21 firm is an excellent restructuring, reorganization, insolvency
22 law firm, wouldn't you?

23 A Yes, I would agree with you there.

24 Q Okay. And you would expect them to ensure that anything
25 that has to be filed with Her Honor is timely filed, wouldn't

1 you?

2 A I would expect that they would follow the rules.

3 Q Okay. And you have the utmost of confidence, I take it,
4 in your CRO, don't you?

5 A I have a tremendous amount of confidence in our CEO, who
6 also happens to hold the title of CRO, yes, if that's what
7 you're referring to as, Mr. Seery.

8 (Interruption.)

9 MR. RUKAVINA: John.

10 BY MR. RUKAVINA:

11 Q Okay, I think -- yeah, I think I heard that you have
12 tremendous confidence in the CEO, who happens to be the CRO,
13 right?

14 A Yes, that's the case.

15 MR. RUKAVINA: Thank you, Your Honor. I'll pass the
16 witness.

17 THE COURT: All right. Any other cross of Mr. Dubel?
18 All right. Mr. Morris, redirect?

19 MR. MORRIS: Yeah, just very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MORRIS:

22 Q You were asked about that *Pacific Lumber* case, Mr. Dubel;
23 do you remember that?

24 A I do remember being asked about it.

25 Q And you weren't familiar with that case, right?

1 A I'm not familiar with the name of the case, no.

2 Q But you did know that the exculpation and gatekeeping
3 provisions were going to be included in the order; is that
4 fair?

5 A I did.

6 Q And did you testify that you wouldn't have accepted the
7 position without it?

8 A I did testify that way.

9 Q And if you knew that you couldn't get those provisions in
10 the Fifth Circuit, would you ever accept a position as an
11 independent director in the Fifth Circuit on a go-forward
12 basis?

13 A Not in a situation such as this, no.

14 Q Okay. Okay.

15 MR. MORRIS: No further questions, Your Honor.

16 THE COURT: All right. Any recross on that narrow
17 redirect?

18 All right. Well, Mr. Dubel, you are excused from the
19 virtual witness stand.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. I want to go ahead and --

22 MR. DUBEL: Do you mind if I turn my video off?

23 THE COURT: I'm sorry, what?

24 MR. DUBEL: I said, do you mind if I turn my video
25 off?

1 THE COURT: No, you may. That's fine.

2 MR. DUBEL: Thank you, Your Honor.

3 THE COURT: All right. I want to break now, unless
4 there's any quick housekeeping matter. Anything?

5 MR. MORRIS: No, Your Honor, but I would just ask
6 all parties to let me know by email if they have any
7 objections to any of the exhibits on the witness list that was
8 filed at Docket No. 1877, because I want to begin tomorrow by
9 putting into evidence the balance of our exhibits.

10 MR. RUKAVINA: And Your Honor, I was responsible for
11 this due to an internal mistake. The only ones I have an
12 objection to are -- is that 7? John, is that 7, right, 700 --

13 MR. MORRIS: Yes.

14 MR. RUKAVINA: Your Honor, I only have an objection
15 to 70 and 7P, although I think -- think the Court has already
16 admitted 7P, so my objection is moot.

17 THE COURT: I have.

18 MR. RUKAVINA: Okay.

19 THE COURT: So, what --

20 MR. RUKAVINA: Then it would just be --

21 THE COURT: Go ahead.

22 MR. RUKAVINA: I'm sorry. It would just be 70.
23 Septuple O or whatever the word is.

24 THE COURT: All right. So I will go ahead and admit
25 7F through 7Q, with the exception of 70. Again, these appear

1 at Docket Entry 1877. And Mr. Morris, you can try to get in
2 70 the old-fashioned way if you want to.

3 MR. MORRIS: Yeah, I'll deal with 70 and the very
4 limited number of other objections at the beginning of
5 tomorrow's hearing.

6 THE COURT: All right.

7 (Debtor's Exhibits 7F through 7Q, with the exception of
8 70, are received into evidence.)

9 THE COURT: So we will reconvene at 9:30 Central time
10 tomorrow. I think we're going to hear from the Aon, the D&O
11 broker, Mr. Tauber; is that correct?

12 MR. MORRIS: That's right. And that should be
13 shorter than even Mr. Dubel.

14 THE COURT: All right. Well, we will see you at 9:30
15 in the morning. We are in recess.

16 MR. MORRIS: Thank you so much.

17 THE CLERK: All rise.

18 (Proceedings concluded at 5:09 p.m.)

19 --oOo--

20 CERTIFICATE

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

23 **/s/ Kathy Rehling**

02/04/2021

24 _____
25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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	EXHIBITS	
	Debtor's Docket 1822 Exhibits	Received 55
	<i>(exclusive of Exhibits B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U)</i>	
	Debtor's Docket 1866 Exhibits	Received 56
	Debtors' Exhibits 7F through 7Q <i>(exclusive of Exhibit 7O)</i>	Received 293
	Debtor's Exhibit 7P	Received 140
	Debtor's Exhibit 7Q	Received 75

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END OF PROCEEDINGS 293

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EXHIBIT 5

Pro Tunc (the “Order of Reference”) and referring this case to the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). In support of its Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules).

RELIEF REQUESTED

4. The Debtor requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Defendant Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for an Order to Enforce the Order of Reference* (the “Memorandum of Law”), filed contemporaneously with this Motion, the Debtor requests that the Court: (a) enforce the Order of Reference and refer this case to the Bankruptcy Court, and (b) grant the Debtor such other and further relief as the Court deems just and proper under the circumstances.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of this Motion, the Debtor is filing: (a) its Memorandum of Law, and (b) the *Declaration of Gregory V. Demo Submitted in Support of the Debtor’s Motion for an Order to Enforce the Order of Reference* (the “Demo Declaration”) together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Demo Declaration and the arguments contained in the Memorandum of Law, the Debtor is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. The Debtor submits that no other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Debtor such other and further relief as the Court may deem proper.

[Remainder of Page Intentionally Blank]

Dated: May 19, 2021

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Robert J. Feinstein (NY Bar No. 1767805)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Judith Elkin (TX Bar No. 06522200)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
rfeinstein@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jelkin@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

language of the Order of Reference; (d) the Bankruptcy Court retains jurisdiction over all disputes relating to this Complaint; (e) the Bankruptcy Court retains jurisdiction to interpret and enforce its own orders; (f) there is no basis for a mandatory withdrawal of reference of this Complaint; and (g) the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. This proceeding is hereby referred to the Bankruptcy Court.

It is so ordered this _____ day of _____, 2021.

The Honorable Jane J. Boyle
United States District Judge

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 17**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*Vol. 1
000001*

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

000004

000006

*Vol. 2
000401*

Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

000501

Vol. 2

000505

000510

000543

000555

000568

000578

			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
004704				
004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

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004874

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

EXHIBIT 6

**DAF/CLO Holdco
Structure Chart**

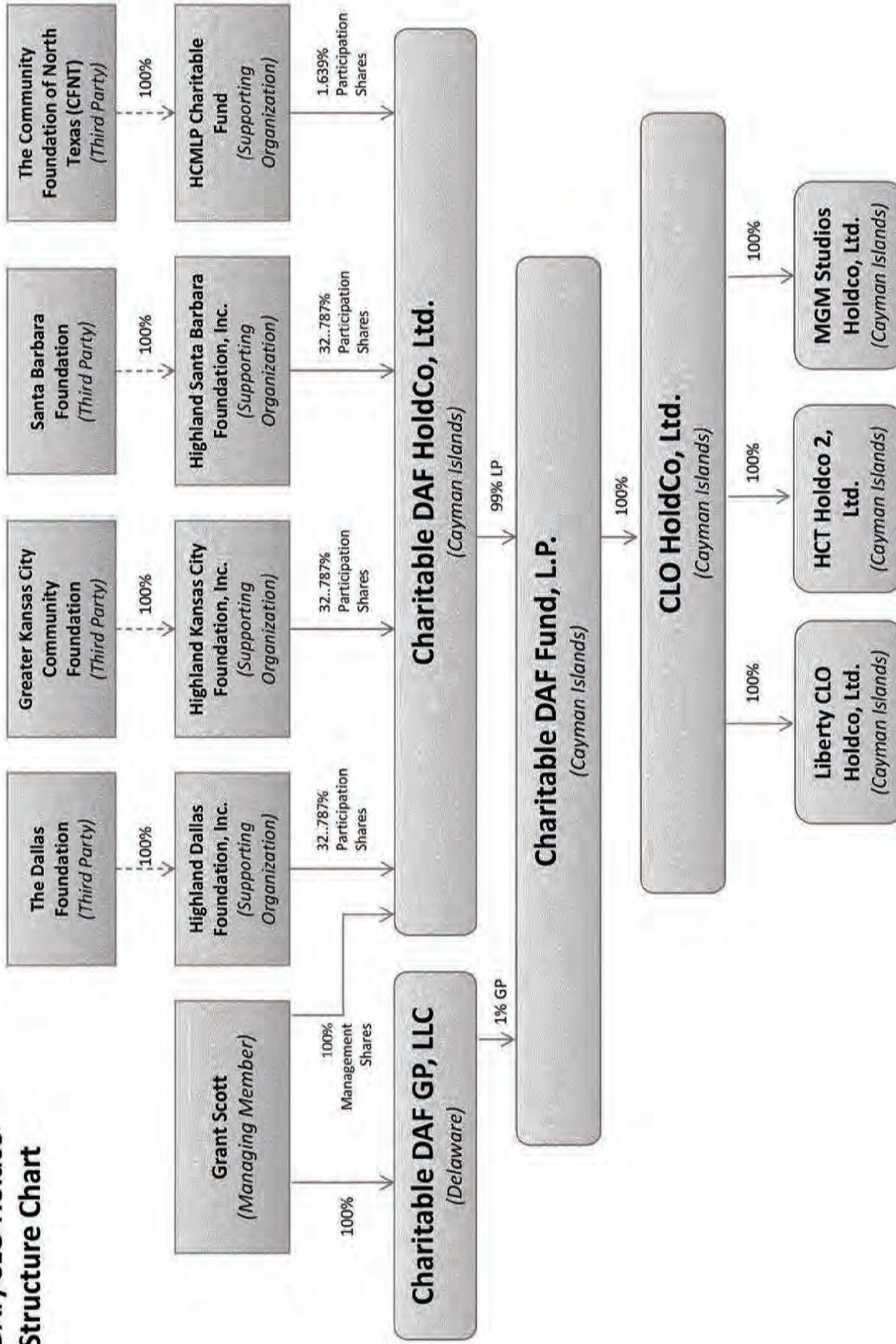


EXHIBIT 7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

Chapter 11

Case No. 19-12239 (CSS)

NOTICE OF APPEARANCE AND REQUEST FOR COPIES

Please take notice that John J. Kane, and the law firm of Kane Russell Coleman Logan PC hereby enter an appearance as counsel of record in the above-captioned case for CLO Holdco, Ltd. (the "**Creditor**"). The Creditor hereby request that all notices given or required to be given, and all papers served or required to be served in the case, be given to and served upon:

John J. Kane
KANE RUSSELL COLEMAN LOGAN PC
901 Main Street, Suite 5200
Dallas, TX 75202
E-mail: jkane@krcl.com

This request encompasses all notices, copies and pleadings referred to or contemplated in the Bankruptcy Code and Bankruptcy Rules, including without limitation, notices of any orders, motions, demands, complaints, plans, disclosure statements, petitions, pleadings, requests, applications and any other documents brought before the Court in this case, and any hearings, trials or proceedings related thereto, which affect or otherwise relate to the above case or Creditor.

Please take notice that the undersigned intends that neither this appearance and request for copies nor any later appearance, pleading, claim, or suit shall waive: (i) the right to have final orders in non-core matters entered only after *de novo* review by a district judge; (ii) the right to trial by jury in any proceeding so triable in this case, controversy, or proceeding related to this case; (iii) the right to have the district court withdraw the reference in any matter subject to mandatory or discretionary

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

EXHIBIT 8

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054 (SGJ)
)
Debtor.)
_____)

CERTIFICATE OF SERVICE

I, Alyssa Kim-Whittle, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On December 27, 2019, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Joint Motion for Entry of an Order Approving the Agreed Protective Order Between Highland Capital Management, L.P., and the Official Committee of Unsecured Creditors** [Docket No. 280]

Furthermore, on December 27, 2019, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit C** and via Overnight Mail upon the service list attached hereto as **Exhibit D**:

- **Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course** [Docket No. 281]
- **Motion for Setting and Request for Expedited Hearing** [Docket No. 283]

Furthermore, on December 27, 2019, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit C** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

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

- **Supplement to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date** [Docket No. 282]

Dated: January 2, 2020

/s/ Alyssa Kim-Whittle
Alyssa Kim-Whittle
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A
 Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	wbowden@asbygeddes.com; mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jubiloni@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esquire	lisa.l.lambert@usdoj.gov

Exhibit A
 Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaug@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to the Intertrust Entities	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarollo@winstead.com
Proposed Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit B

Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq. Melissa S. Hayward, Zachery Z. Annable	3161 Michelson Drive 10501 N. Central Expy., Ste. 106			Irvine	CA	92612
Proposed Counsel for the Debtor	Hayward & Associates PLLC					Dallas	TX	75231
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC Centralized Insolvency Operation	John Honis	87 Railroad Place Ste 403		Saratoga Springs	NY	12866
IRS	Internal Revenue Service		PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services		New York	NY	10022
Counsel to CLO Holdco, Ltd.	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Secured Creditor	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent as Agent	225 Franklin Street, 18 th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association		127 Public Square			Cleveland	OH	44114
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attanwala	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201

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Exhibit B
Core/2002 List
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arst & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC Bank	Morrison Cohen LLP NexBank	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq. John Danilowicz	909 Third Avenue 2515 McKinney Ave	Ste 1100		New York Dallas	NY TX	10022 75201
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq. Securities & Exchange Commission	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
SEC Headquarters	Office of General Counsel		100 F St NE			Washington	DC	20554
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esquire	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esquire	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Secured Creditor	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue			New York	NY	10022
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street		Wilmington	DE	19801
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	520	1617 JFK Boulevard	Philadelphia	PA	19103
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	787 Seventh Avenue			New York	NY	10019
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq. Penny P. Reid, Paige Holden	787 Seventh Avenue			New York	NY	10019
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	P.O. Box 13258			Austin	TX	78711
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney General's Office	Bankruptcy-Collections Division	P.O. Box 12548			Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201

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Exhibit B

Core/2002 List

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
U.S. Department of the Treasury	U.S. Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire	950 Pennsylvania Avenue, NW,	Room 4400	Washington	DC	20530-0001
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

Exhibit C

Exhibit C

Core/2002 List
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	wbowden@asbygeddes.com; mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jbibili@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor IRS	Hayward & Associates PLLC Internal Revenue Service	Melissa S. Hayward, Zachery Z. Annable Attn Susanne Larson	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esquire	lisa.l.lambert@usdoj.gov

Exhibit C

Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rjf.com; silveira@rjf.com
Counsel to the Intertrust Entities	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	Lattanasio@Sidley.com
Proposed Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarollo@winstead.com
Proposed Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit D

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Exhibit D

Core/2002 List
Served via Overnight Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500	Dallas	TX	75206
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road		Oklahoma City	OK	73129
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis	87 Railroad Place Ste 403	Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St		Philadelphia	PA	19104
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services	New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16 th Floor	Re: Prime Brokerage Services	New York	NY	10022
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18 th Floor		Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square		Cleveland	OH	44114
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700	Dallas	TX	75201
Bank	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100	Dallas	TX	75201
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street		Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.	Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esquire	1100 Commerce Street, 3rd Floor		Dallas	TX	75202
Secured Creditor	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue		New York	NY	10022
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	787 Seventh Avenue		New York	NY	10019
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division-Bankruptcy Section	P. O. Box 13258		Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
TX AG Office	Texas Attorney General's Office	Bankruptcy-Collections Division	P. O. Box 12548		Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust – Exempt Trust #1		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust – Exempt Trust #2		300 Crescent Court	Suite 700	Dallas	TX	75201
Equity Holders	U.S. Department of the Treasury	Office of General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
U.S. Department of the Treasury	U.S. Department of the Treasury		1500 Pennsylvania Avenue, NW		Washington	DC	20220

EXHIBIT 9



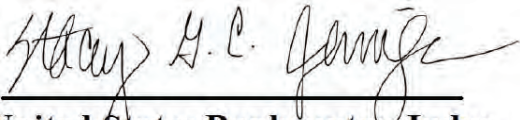
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 9, 2020


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF ORDER

EXHIBIT 10

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054 (SGJ)
)
Debtor.)
_____)

CERTIFICATE OF SERVICE

I, Alyssa Kim-Whittle, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On January 9, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A** and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Order Authorizing the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019** [Docket No. 334]
- **Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors** [Docket No. 336]
- **Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Co-Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to November 8, 2019** [Docket No. 337]
- **Stipulation in Support of Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course** [Docket No. 338]

[This space intentionally left blank.]

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



- **Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel [Docket No. 340]**

Dated: January 10, 2020

/s/ Alyssa Kim-Whittle
Alyssa Kim-Whittle
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A

Core/2002 List
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	lucian@blankrome.com; mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Proposed Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	jbain@joneswalker.com; aanderson@joneswalker.com; myoungjohn@joneswalker.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com

Exhibit A

Core/2002 List
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Description	CreditorName	CreditorNoticeName	Email
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfcm.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rjf.com; silveira@rjf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Jefferies	Sidley Austin LLP	Lee S. Attanasio, Esq.	Lattanasio@Sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Zillah.Frampton@state.de.us

Exhibit B

Case 1:21-cv-00001-1 Document 1-1 Filed 09/08/21 Entered 09/08/21 16:49:52 a

Exhibit B
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Description	CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vlid, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC Centralized Insolvency Operation	87 Railroad Place Ste 403			Saratoga Springs	NY	12866
IRS	Internal Revenue Service		PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	811 Main Street, Suite 2900			Houston	TX	77002
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611

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Exhibit B
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Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Creditor Equity Holders	Lynn Pinker Cox & Hurst, L.L.P. Mark K. Okada	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue	Ste 1100		New York	NY	10022
Bank	NexBank	John Danilowicz	2515 McKinney Ave			Dallas	TX	75201
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	100 F St NE			Washington	DC	20554
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reese	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Secured Creditor	Prime Brokerage Services	Jefferies LLC	520 Madison Avenue			New York	NY	10022
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street		Wilmington	DE	19801
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	1617 JFK Boulevard		Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelker	787 Seventh Avenue			New York	NY	10019
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Lee S. Altanasio, Esq.	787 Seventh Avenue			New York	NY	10019
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
DE Secretary of State	State of Delaware	Revenue Accounting Division - Bankruptcy Section Division of Corporations - Franchise Tax	PO Box 13258	PO Box 898		Austin	TX	78711
			401 Federal Street			Dover	DE	19903

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Exhibit B
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Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Equity Holders	Strand Advisors, Inc.	Bankruptcy-Collections Division	300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office		PO Box 12548			Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire 1500 Pennsylvania Avenue, NW	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel				Washington	DC	20220
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Hanwood Street, Suite 500			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

EXHIBIT 11

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
Debtor.	§	

**Response Deadline: July 10, 2020 at 5:00 p.m.
Hearing Date: July 14, 2020 at 1:30 p.m.**

**DEBTOR’S MOTION UNDER BANKRUPTCY CODE
SECTIONS 105(a) AND 363(b) FOR AUTHORIZATION TO
RETAIN JAMES P. SEERY, JR., AS CHIEF EXECUTIVE OFFICER,
CHIEF RESTRUCTURING OFFICER AND FOREIGN REPRESENTATIVE
*NUNC PRO TUNC TO MARCH 15, 2020***



The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves (the “Motion”) pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), authorizing the Debtor (a) (i) to retain James P. Seery, Jr. as the chief executive officer and chief restructuring officer of the Debtor, pursuant to the terms of the letter attached as Exhibit 1 to the Proposed Order (the “Agreement”) *nunc pro tunc* to March 15, 2020, and (ii) for Mr. Seery to replace the Debtor’s current chief restructuring officer as the Debtor’s foreign representative pursuant to 11 U.S.C. § 1505, and (b) granting related relief. In support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”).
4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court. On December 4, 2019,

the Delaware Bankruptcy Court entered an order transferring venue of the Debtor's chapter 11 case to this Court [Docket No. 186].¹

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

6. On December 4, 2019, the Debtor filed in the Delaware Bankruptcy Court its *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) To Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc, as of the Petition Date* [Docket No. 74] (the "CRO Motion"). The CRO Motion sought, among other things, to appoint Bradley Sharp as the Debtor's chief restructuring officer and for DSI to provide financial advisory services to the Debtor in support of Mr. Sharp.

7. On December 27, 2019, the Debtor filed the *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). The Settlement Motion sought approval of the settlement between the Debtor and the Committee and provided for, among other things, the creation of a new independent board of directors of Strand Advisors, Inc.² (the "New Board") consisting of

¹ All docket numbers refer to the docket maintained by this Court.

² Strand Advisors, Inc. ("Strand") is the general partner of the Debtor.

James P. Seery, Jr., John S. Dubel, and Russell Nelms (collectively, the “Independent Directors”).

8. The order granting the Settlement Motion authorized the Debtor to guarantee Strand’s obligations to indemnify each Independent Director pursuant to the terms of any indemnification agreements entered into by Strand with each of the Independent Directors (the “Indemnification Agreements”).

9. The Court entered orders approving the Settlement Motion on January 9, 2020³ and the DSI Approval Order on January 10, 2020.

10. The Settlement Order approved, among other things, a term sheet setting forth the agreement between the Debtor and the Committee. The final term sheet was attached to the *Notice of Final Term Sheet* filed in the Court on January 14, 2020 [Docket No. 354] (the “Final Term Sheet”). The Settlement Order also provided that no entity could commence or pursue a claim or cause of action against any Independent Director and/or his respective advisors and agents relating in any way to his role as an independent director of Strand unless authorized by this Court pursuant to the criteria set forth in the Settlement Order.⁴

11. The Settlement Motion and Final Term each provided that “[a]s soon as practicable after their appointments, the Independent Directors shall, in consultation with the

³ See *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and the Procedures for Operations in the Ordinary Course* [Docket No. 339] (the “Settlement Order”).

⁴ Specifically, paragraph 10 of the Settlement Order provides:

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Committee, determine whether a CEO should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as possible, which may be one of the Independent Directors.” Final Term Sheet, page 3; Settlement Motion, ¶ 13.

12. On February 18, 2020, the Court entered its *Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief* [Docket No. 461] (the “Foreign Representative Order”). The Foreign Representative Order authorized Mr. Sharp, as chief restructuring officer, to act as the Debtor’s foreign representative pursuant to section 1515 of the Bankruptcy Code (the “Foreign Representative”). The Foreign Representative specifically appointed Mr. Sharp to act as the Debtor’s foreign insolvency officeholder to seek appropriate relief in Bermuda pursuant to Bermudian common law (the “Bermuda Foreign Representative”) and the Cayman Islands pursuant to Section 241(1) of the Companies Law (2019 Revision) with respect to that British overseas territory (the “Cayman Foreign Representative”).

13. Since the appointment of the Independent Directors, it was apparent that it would be more efficient to have a traditional corporate management structure oversee the Debtor – i.e., a fully engaged chief executive officer supervised by the New Board – as contemplated by the Final Term Sheet. This need was driven by the complexity of the Debtor’s organization and business operations and the need for daily management and oversight of the Debtor’s personnel. The search for a chief executive officer, however, was delayed while the Independent Directors made initial efforts to learn the Debtor’s business and its day-to-day operations. It was further delayed with the onset of the COVID-19 global pandemic, which both had a serious impact on

the Debtor's operations and assets and limited the Independent Directors' ability to search for an appropriate chief executive officer.

14. During this time, however, Mr. Seery integrated himself into the daily operations of the Debtor and became essential in stabilizing the Debtor's assets and trading accounts during the economic distress caused by COVID-19. While Mr. Dubel and Mr. Nelms were each spending on average approximately 140 hours a month addressing the operational issues facing the Debtor and certain of its fund entities, Mr. Seery's workload was at least 180 hours a month.

15. As such, it was readily apparent to the Independent Directors who would be the best fit for the role: Mr. Seery. Mr. Seery had the appropriate skill set, extensive relevant background, and was already carrying the responsibility of the role. Mr. Seery had been functionally operating as the Debtor's de facto chief executive officer since at least early March and was already overseeing the Debtor's ordinary course operations, including managing the Debtor's personnel and the daily interactions with the Debtor's bankruptcy professionals

16. The Independent Directors subsequently appointed a compensation committee consisting of Messrs. Dubel and Nelms (the "Compensation Committee") to negotiate the terms and conditions of the Agreement on behalf of the Debtor. And, on June 23, 2020, the Compensation Committee approved the appointment of Mr. Seery to serve as both the Debtor's chief executive officer and chief restructuring officer concurrently with his role as one of the Independent Directors pursuant to the terms of the Agreement. Because Mr. Seery has been fulfilling the role since March 2020, the Compensation Committee determined that it was appropriate to make Mr. Seery's appointment as the Debtor's chief executive officer and chief

restructuring officer effective as of March 15, 2020.⁵ The Independent Directors also authorized the Debtor to file this Motion.

A. The Chief Executive Officer and Chief Restructuring Officer Positions

17. Mr. Seery has agreed to, among other things, provide daily leadership and direction to the Debtor's employees on business and restructuring matters relating to the Debtor's chapter 11 case. In that capacity, he will direct the Debtor's day-to-day ordinary course operations, oversee the Debtor's personnel, make management decisions with respect to the Debtor's trading operations, direct the Debtor's reorganization efforts, monetize the Debtor's assets, oversee the claims objection and resolution process, and lead the process toward the hopeful consensual confirmation of a plan in this chapter 11 case in the capacities as chief executive officer and chief restructuring officer positions. Mr. Seery would report directly to the New Board and would continue to serve as an Independent Director, as provided under the Settlement Order.

18. Mr. Seery has extensive management and restructuring experience. Mr. Seery recently served as a Senior Managing Director at Guggenheim Securities, LLC, where he was responsible for helping direct the development of a credit business. Prior to joining Guggenheim, Mr. Seery was the President and a senior investing partner of River Birch Capital, LLC, where he was responsible for originating, executing, and managing stressed and distressed credit investments. Mr. Seery is also a long-time attorney licensed to practice in New York who

⁵ The Committee has also agreed to Mr. Seery's appointment as chief executive officer and chief restructuring officer and to the amount of Mr. Seery's Base Compensation (as defined below). The Committee has not agreed, however, as to the amount and timing of the payment of the Restructuring Fee (defined below) and are continuing to discuss payment of the Restructuring Fee with the Compensation Committee.

has run corporate reorganization groups and numerous restructuring matters. He also served as a Commissioner of the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. Mr. Seery was also a Managing Director and the Global Head of Lehman Brothers' Fixed Income Loan business where he was responsible for managing the firm's investment grade and high yield loans business, including underwriting commitments, distribution, hedging, trading and sales (including CLO manager relationships), portfolio management and restructuring. From 2000 to 2004, Mr. Seery ran Lehman Brothers' restructuring and workout businesses with responsibility for the management of distressed corporate debt investments and was a key member of the small team that successfully sold Lehman Brothers to Barclays in 2008.

The Agreement

19. The Compensation Committee negotiated the Agreement with Mr. Seery at arm's length. The additional material economic terms of the Agreement are as follows:⁶

(a) Term: Commencing retroactively to March 15, 2020.

(b) Roles: Mr. Seery shall serve as the chief executive officer and chief restructuring officer of the Debtor and shall be responsible for the overall management of the business of the Debtor during its chapter 11 case, including: directing the Debtor's day-to-day ordinary course operations, overseeing the Debtor's personnel, making management decisions with respect to the Debtor's trading operations, directing the reorganization and restructuring of the Debtor, the monetization of the Debtor's assets, resolution of claims, the development and negotiation of a plan of reorganization or liquidation, and the implementation of such plan. Mr. Seery shall remain a full member of the New Board and shall be entitled to vote on matters other than on those in which he is conflicted. Mr. Seery shall devote as much time to the engagement as he determines is required to execute his responsibilities as chief executive officer and chief restructuring officer. Mr. Seery will have no specific on-site requirements in Dallas, Texas, but shall be

⁶ What follows is by way of summary only and is qualified in its entirety by reference to the Agreement, which controls. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

on site as much as he determines is necessary to execute his responsibilities as chief executive officer and chief restructuring officer, consistent with applicable COVID-19 orders, protocols and advice.

(c) Compensation for Services: Mr. Seery's compensation under the Agreement shall consist of the following:

(1) Base Compensation: \$150,000 per month, which shall be due and payable at the start of each calendar month; plus

(2) Bonus Compensation; Restructuring Fee:

Subject to separate Bankruptcy Court approval, the Compensation Committee and Mr. Seery have reached agreement on the payment of a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").⁷ The Committee has not yet agreed to the amount, composition, and timing of the Restructuring Fee. The Compensation Committee and Mr. Seery have agreed to defer Court consideration of the Restructuring Fee until further development in the Case. The Restructuring Fee agreed to by Mr. Seery and the Compensation Committee is as follows:

Case Resolution Restructuring Plan

On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):

\$1,000,000 on confirmation of the Case Resolution Plan;

\$500,000 on the effective date of the Case Resolution Plan; and

⁷ Although the Compensation Committee and Mr. Seery have agreed on the amount and timing of the Restructuring Fee, both the Compensation Committee and Mr. Seery understand that the Restructuring Fee is payable only upon order of this Court. The Compensation Committee is reserving the right to seek approval of the Restructuring Fee from this Court in connection with the confirmation hearing on a plan or as otherwise appropriate.

\$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

Debtor/Creditor Monetization Vehicle Restructuring Fee:

On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):

\$500,000 on confirmation of the Monetization Vehicle Plan;

\$250,000 on the effective date of the Monetization Vehicle Plan; and

A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

(e) Participation in Employee Benefit Plans: Mr. Seery shall act as an independent professional contractor and shall not be an employee of the Debtor. Mr. Seery will pay for his own benefits and will not participate under the Debtor's existing employee benefit plans.

(f) Expenses: Reimbursement of actual and reasonable out-of-pocket expenses in connection with the services provided under the Agreement. Expenses will be generally consistent with expenses incurred to date as a member of the New Board.

(g) Conflicts and Other Engagements. Mr. Seery is not aware of any potential conflicts of interest based on his understanding of the various parties involved in the Debtor's chapter 11 case to date. Mr. Seery shall not be precluded from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Debtor under the Agreement. Mr. Seery shall not undertake any engagements directly adverse to the Debtor during the term of his engagement.

(h) Termination. The Agreement may be terminated at any time by either the Debtor or by Mr. Seery upon two weeks advance written notice given to the other party. The termination of the Agreement shall not affect Mr. Seery's right to receive, and the Debtor's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of any termination notice; *provided however*, that (1) if the Agreement is terminated by Mr. Seery, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and Mr. Seery will return any Base Compensation received in excess of such amount, and (2) if the Agreement is terminated by the Debtor, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by Mr. Seery immediately upon his termination by the Debtor; *provided however*, Mr. Seery shall not be entitled to Bonus Compensation if: (A) the Debtor's chapter 11 case is converted to chapter 7 or dismissed; (B) a chapter 11 trustee is appointed in the Debtor's chapter 11 case; (C) Mr. Seery is terminated by the Debtor for Cause;⁸ or (D) Mr. Seery resigns prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section of the Agreement.

(j) Conditional Requirement to Seek Further Court Approval of Agreement. The Committee may, upon two weeks advance written notice to the Debtor, require the Debtor to file a motion with the Bankruptcy Court on normal notice seeking a continuation of the Agreement and if such motion is not filed, the Agreement will terminate at the expiration of such two week period. If the Debtor files such motion, Mr. Seery will be entitled to the Base Compensation through and including the date on which a final order is entered on such motion by this Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Debtor until a date which is more than ninety days following the date this Court enters an order approving the Agreement.

(j) Indemnification. the Debtor agrees (i) to indemnify and hold harmless Mr. Seery and any of his affiliates (the "Indemnified Party"), to the fullest extent lawful, from and against any and all

⁸ For purposes of the Agreement, "Cause" means any of the following grounds for termination of Mr. Seery's engagement, in each case as reasonably determined by the New Board within 60 days of the New Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on the part of Mr. Seery; (B) conviction of or the entry of a plea of *nolo contendere* by Mr. Seery for any felony; (C) the willful breach by Mr. Seery of any material term of the Agreement; or (D) the willful failure or refusal by Mr. Seery to perform his duties to the Debtor, which, if capable of being cured, is not cured on or before fifteen (15) days after Mr. Seery's receipt of written notice from the Debtor.

losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to the Agreement, Mr. Seery's engagement under the Agreement, or any actions taken or omitted to be taken by Mr. Seery or the Debtor in connection with the Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to the Agreement, or such engagement, or actions. However, the Debtor shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The Debtor has agreed to extend the indemnification and insurance currently covering Mr. Seery's role as a director to fully cover Mr. Seery in his roles as chief executive officer and chief restructuring officer. The Debtor is currently working to extend such coverage.

Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor.

Relief Requested

20. By this Motion, the Debtor seeks the entry of the Proposed Order authorizing the Debtor to retain Mr. Seery pursuant to the terms of the Agreement, *nunc pro tunc* to March 15, 2020. The Motion also seeks to amend the Foreign Representative Order to appoint Mr. Seery as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative in the stead of Mr. Sharp.

21. The Debtor believes that the Debtor's retention of a chief executive officer and chief restructuring officer constitutes an act in the ordinary course of business, and

consequently, is permissible under Bankruptcy Code section 363(c) without Court approval. However, out of an abundance of caution, the Debtor seeks this Court's approval of the Agreement under Bankruptcy Code section 363(b).

Basis For Relief

B. The Debtor's Entry Into the Agreement is a Valid Exercise of the Debtor's Business Judgment and the Proposed Compensation is Appropriate Under the Circumstances and Within the Range of Similar Market Transactions

22. The Compensation Committee's decision for the Debtor to retain Mr. Seery pursuant to the terms of the Agreement should be approved pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In addition, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

23. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code section 363(b) if it is supported by sound business justification. *See In re Montgomery Ward*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions"). Although established in the context of a proposed sale, the "business judgment" standard has been applied in non-sale situations. *See, e.g., Inst. Creditors of Cont'l Air Lines v. Cont'l Air Lines (In re Cont'l Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (applying the "business judgment" standard in context of proposed

“use” of estate property). Moreover, pursuant to section 105, this Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of a debtor’s assets. 11 U.S.C. § 105(a).

24. It is well established that courts are unwilling to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to “any rational business purpose.” *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) (citing *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971)). Whether or not there are sufficient business reasons to justify the use of assets of the estate depends upon the facts and circumstances of each case. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). In this case, the Debtor has ample justification to retain Mr. Seery as the Debtor’s chief executive officer and chief restructuring officer pursuant to the Agreement. The Final Term Sheet expressly contemplated that the New Board could appoint a chief executive officer and that the chief executive officer could also be one of the Independent Directors. Because Mr. Seery will also be serving as chief restructuring officer, it is not necessary to have two separate ranking chief restructuring officers, especially considering that Mr. Sharp (the current chief restructuring officer) and his firm has agreed to continue to provide financial advisory services on behalf of the Debtor.⁹ Mr. Seery is well- qualified to serve as the Debtor’s chief executive officer and chief restructuring officer.

⁹ *See Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc, to March 15, 2020* filed concurrently herewith

25. The Compensation Committee negotiated the Agreement in good faith and at arm's length. The Compensation Committee also worked with the Debtor's compensation consultant, Mercer (US) Inc., to determine the appropriate compensation for Mr. Seery as chief executive officer and chief restructuring officer. The Compensation Committee, therefore, believes that the terms of the Agreement are reasonable, are consistent with the market within the Debtor's industry, and are entirely appropriate given the scope of Mr. Seery's duties. Accordingly, entry into the Agreement is a sound exercise of the Debtor's business judgment.

26. Finally, the Debtor requests that the Court apply the same criteria by which parties in interest must first petition the Court prior to asserting claims against the Independent Director approved in the Settlement Order be extended to Mr. Seery in his capacity as chief executive officer and chief restructuring officer contemplated by this Motion. *See* Settlement Order, ¶ 10. The rationale for the Court to first determine whether or not a colorable claim or cause of action can be maintained against the Mr. Seery, as one of the Independent Directors, is equally applicable to Mr. Seery in his capacity as chief executive officer and chief restructuring officer, will further aid in the implementation of the Settlement Order, and discourage frivolous litigation. As was true in the Settlement Order with respect to the Independent Directors, no parties will be prejudiced by having to first apply to this Court to determine the propriety of any hypothetical claim that may be asserted against Mr. Seery in his officer capacities of the Debtor.

C. The Debtor Has Satisfied Bankruptcy Code Section 503(c)(3)

27. Bankruptcy Code section 503(c)(3) provides that "transfers or obligations that are outside the ordinary course of business . . . including transfers made to . . . consultants

hired after the date of the filing of the petition” are not allowed if they are “not justified by the facts and circumstances of the case.” 11 U.S.C. § 503(c)(3). Courts generally use a form of the “business judgment” and the “facts and circumstances” standard. *See In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 236-37 (Bankr. N.D. Tex. 2009) (citing *In re Dura Auto Sys., Inc.*, Case No. 06-11202 (Bankr. D. Del. June 29, 2007) and *In re Supplements LT, Inc.*, Case No. 08-10446 (KJC) (Bankr. D. Del. Apr. 14, 2008)). Specifically, the court examines first, whether the transaction meets the Debtor’s business judgment standard, and second, whether the facts and circumstances justify the transaction. *See In re Pilgrim’s Pride Corp.*, 401 B.R. at 237 (Bankr. N.D. Tex. 2009).

28. The Debtor submits that the proposed transaction is within the ordinary course of its business and thus that Bankruptcy Code section 503(c)(3) does not apply to the Agreement. Nevertheless, for the reasons stated above — the benefits from Mr. Seery’s leadership skills and industry experience — even if this were outside the ordinary course of business, entry into the Agreement is well within the Debtor’s business judgment as applied to the facts and circumstances of the Debtor. Further, the facts and circumstances of this case support entry into the relationship under the Agreement where the Debtor will benefit from the ability to retain Mr. Seery at a critical juncture to ongoing restructuring efforts.

29. For the reasons set forth above, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

D. The Proposed Chief Executive Officer and Chief Restructuring Officer Should Also Serve as the Debtor's Foreign Representative

30. Bankruptcy Code section 1505 provides that:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505.

31. The Debtor respectfully submits that Mr. Seery is qualified and capable of representing the Debtor's estate as the Foreign Representative. The Debtor believes it is appropriate for Mr. Seery, as an officer of the Debtor, to replace Mr. Sharp as Foreign Representative inasmuch as Mr. Sharp will no longer be an officer of the Debtor if the Motion is granted. In order to avoid any possible confusion or doubt regarding this authority and to comply with the requirements of Part XVII of the Cayman Law, the Debtor seeks entry of an order, pursuant to section 1505 of the Bankruptcy Code, explicitly substituting Mr. Seery in the place of Mr. Sharp as the Debtor's Foreign Representative, including specifically to serve as the Bermuda Foreign Representative and Cayman Foreign Representative.

32. For the reasons set forth in the Foreign Representative Motion, authorizing Mr. Seery to act as the Foreign Representative on behalf of the Debtor's estate in Bermuda, the Cayman Islands or any other foreign proceeding will allow coordination of this chapter 11 case and each of the foreign proceedings and provide an effective mechanism to protect and maximize the value of the Debtor's assets and estate. Courts have routinely granted relief similar to that requested herein in other large chapter 11 cases where a debtor has foreign assets or operations requiring a recognition proceeding. *See, e.g., In re CJ Holding Co.*, No. 16-33590 (Bankr. S.D.

Tex. July 21, 2016); ECF No. 59; *In re CHC Group Ltd.*, No. 16-31854 (Bankr. N.D. Tex. Sept. 20, 2016), ECF No. 884; *In re Ultra Petroleum Corp.*, No. 16-32202 (Bankr. S.D. Tex. May 3, 2016); *In re Digital Domain Media Grp., Inc.*, No. 12-12568 (BLS) (Bankr. D. Del. Sept. 12, 2012); ECF No. 82; *In re Probe Resources US Ltd.*, No. 10-40395 (Bankr. S.D. Tex. Mar. 21, 2011); ECF N. 320; *In re Bigler LP*, No. 09-38188 (Bankr. S.D. Tex. Jan. 12, 2010), ECF No. 159; *In re Horsehead Holdings Corp.*, No. 16-10287 (CSS) (Bankr. D. Del. Feb. 4, 2016); *In re Colt Holding Co. LLC*, No. 15-11296 (LSS) (Bankr. D. Del. June 16, 2015). The Debtor believes it is appropriate for one of its officers to serve as the Foreign Representative. In several jurisdictions, an officer or someone acting in a similar capacity is a prerequisite to serve as a Foreign Representative.¹⁰ As more fully explained in the Foreign Representative Motion, the Debtor has assets in jurisdictions other than the United States, including in Bermuda and the Cayman Islands. To the extent any disputes with respect to such assets arise, it is critical that the Foreign Representative be permitted to appear on behalf of the Debtor and its estate in any court in which a foreign proceeding may be pending.

Notice

33. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) the Debtor's principal secured

¹⁰ See e.g. Part XVII, Section 240 of the Companies Law (2018 Revision) of the Cayman Islands requiring that the foreign representative be "a trustee, liquidator or other official in respect of a debtor for the purposes of a foreign bankruptcy proceeding." In addition, and as more fully explained in the Foreign Representative Motion, Bermuda common law and conflict of laws principles will recognize the authority of a foreign insolvency officer appointed in proceedings in the jurisdiction of incorporation of a company (or, in the instant case, the jurisdiction of the establishment of a limited partnership) to act on behalf of and in the name of the company (or partnership) in Bermuda.

parties; (d)counsel to the Committee; and (e)parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 23, 2020

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
(admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084)
(admitted pro hac vice)
Gregory V. Demo (NY Bar No. 5371992)
(admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

-and-

/s/ Zachery Z. Annable

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	Re: Docket No. _____
	§	

**ORDER APPROVING DEBTOR’S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b)* for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020 (the “Motion”),¹ and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as Exhibit 1 and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

8. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

END OF ORDER

EXHIBIT A-1

Engagement Agreement

795 Columbus Ave., 12A
New York, New York 10025
631-804-2049
jpseeryjr@gmail.com

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
 - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
 - ii. Case Resolution Restructuring Plan
 1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
 - a. \$1,000,000 on confirmation of the Case Resolution Plan;
 - b. \$500,000 on the effective date of the Case Resolution Plan; and
 - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
 - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
 - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
 - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.
2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,


James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

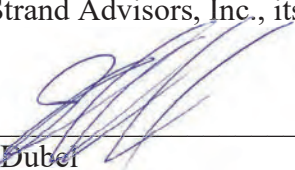
Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner



John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

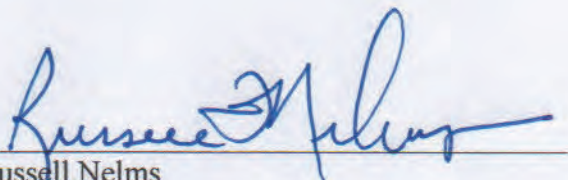
James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.

EXHIBIT 12

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

In re:)
) Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054 (SGJ)
)
Debtor.)
_____)

CERTIFICATE OF SERVICE

I, Hugo Alexander Maida, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On June 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC** [Docket No. 771]
- **Notice of Hearing Regarding Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC; to be Held on August 6, 2020 at 9:30 a.m. (Central Time)** [Docket No. 772]
- **Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020** [Docket No. 774]
- **Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services, Nunc Pro Tunc to March 15, 2020** [Docket No. 775]
- **Notice of Hearing Regarding Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020; Hearing to be Held on July 14, 2020 at 1:30 p.m.** [Docket No. 776]

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

- **Notice of Hearing Regarding Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services, Nunc Pro Tunc to March 15, 2020; Hearing to be Held on July 14, 2020 at 1:30 p.m.** [Docket No. 777]

Furthermore, on June 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit C**: and via First Class Mail upon the service list attached hereto as **Exhibit D**:

- **Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC** [Docket No. 771]
- **Notice of Hearing Regarding Objection to Proof of Claim of Acis Capital Management L.P. and Acis Capital Management GP, LLC; to be Held on August 6, 2020 at 9:30 a.m. (Central Time)** [Docket No. 772]

Furthermore, on June 23, 2020, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit E**: and via First Class Mail upon the service list attached hereto as **Exhibit F**:

- **Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020** [Docket No. 773]

Dated: June 24, 2020

/s/ Hugo Alexander Maida
Hugo Alexander Maida
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

Exhibit A

Exhibit A
 Core/2002
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jubiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq. Attn: Martin A. Sosland and Candice M. Carson	schristianson@buchalter.com martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel for UBS Securities	Butler Snow LLP	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Michael D. Warner, Esq.	mwarner@coleschotz.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	J. Seth Moore	smoore@ctstlaw.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Attn: Steve Elliot	selliott@frontier-ok.com
Secured Creditor	Frontier State Bank	Mark A. Platt	mplatt@fbtlaw.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Melissa S. Hayward, Zachery Z Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Debtor	Hayward & Associates PLLC	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
Equity Holders	Hunter Mountain Investment Trust	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
IRS	Internal Revenue Service	Michael S. Held	mheld@jw.com
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson, Megan Young-John	jbain@joneswalker.com; aanderson@joneswalker.com; myoungjohn@joneswalker.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com

Exhibit A
 Core/2002
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBG")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rif.com; silveira@rif.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltime Allinson LLC	William A. Hazeltime, Esq.	whazeltime@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

Exhibit B

Case 1:19-cv-00544-sjs Document 247-2 Filed 06/20/20 Page 16 of 16

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Exhibit B

Core/2002

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.	Bankruptcy-Collections Division	300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

Exhibit C

Exhibit C

Objection Parties
Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Acis Capital Management L.P. and Acis Capital Management GP, LLC	josh@shorewoodmgmt.com
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	achiarello@winstead.com

Exhibit D

Case 19-34054-sjs Document 27-2 Filed 08/20/21 Entered 08/20/21 16:49:52 Page 1 of 1

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Exhibit D

Objection Parties

Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Acis Capital Management L.P. and Acis Capital Management GP, LLC	3110 Webb Ave., Suite 203			Dallas	TX	75206
Acis Capital Management L.P. and Acis Capital Management GP, LLC	Attn Annmarie Chiarello	c/o Winstead PC	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201

Exhibit E

Exhibit E
 Fee App Notice Parties
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Debtor	Highland Capital Management	Attn: Isaac Leventon	ileventon@highlandcapital.com
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	jane.m.leafy@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

Exhibit F

Case 1:19-cv-01585-SSJ Document 27-2 Filed 08/24/21 Entered on FLSD Docket 08/24/21 3:43:49 PM Page 1 of 1

16

Exhibit F
 Fee App Notice Parties
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	787 Seventh Avenue			New York	NY	10019
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496

EXHIBIT 13




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed July 16, 2020


United States Bankruptcy Judge

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

In re:	§	
	§	
	§	Case No. 19-34054
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Re: Docket No. 774
Debtor.	§	

**ORDER APPROVING DEBTOR'S MOTION UNDER
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),¹ and the

¹ All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.



Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. The Motion is **GRANTED**.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

###END OF ORDER###

EXHIBIT 1

Engagement Agreement

[REDACTED]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the "Company")

Dear Fellow Board Members:

This letter agreement ("Agreement") sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. ("I", "me" or "my"), as Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"), effective as of March 15, 2020 (the "Commencement Date"), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the "Bankruptcy Case") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court").

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the "Board") or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
 - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
 - ii. Case Resolution Restructuring Plan
 1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
 - a. \$1,000,000 on confirmation of the Case Resolution Plan;
 - b. \$500,000 on the effective date of the Case Resolution Plan; and
 - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
 - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
 - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
 - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.

2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,


James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.

Russell Nelms
Director
Strand Advisors, Inc.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

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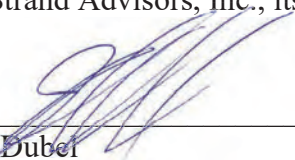
Very truly yours,

James. P. Seery, Jr.

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Very truly yours,

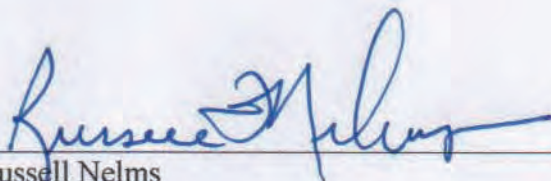
James. P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

John Dubel
Director
Strand Advisors, Inc.



Russell Nelms
Director
Strand Advisors, Inc.

EXHIBIT 14

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME,
GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "Acis" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "Administrative Expense Claim" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "Administrative Expense Claims Bar Date" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "Administrative Expense Claims Objection Deadline" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "Affiliate" ~~means of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii)~~ directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such ~~affiliate~~ Person. For the purposes of this definition, the term "control" (including, ~~without limitation~~, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction ~~in any respect~~ of the management ~~and/or~~ policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "Allowed" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

~~57. 56.~~ “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

~~58. 57.~~ “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

~~59. 58.~~ “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

~~60. 59.~~ “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

~~61. 60.~~ “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. ~~61.~~ “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. ~~62.~~ “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. ~~63.~~ “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. ~~64.~~ “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. ~~65.~~ “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. ~~66.~~ “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. ~~67.~~ “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

~~69. 68.~~ “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

~~70. 69.~~ “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

~~71. 70.~~ “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

~~72. 71.~~ “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

~~73. 72.~~ “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

~~74. 73.~~ “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

~~75. 74.~~ “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

~~76. 75.~~ “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

~~77. 76.~~ “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

~~78. 77.~~ “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

~~79. 78.~~ “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

~~80. 79.~~ “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

~~81. 80.~~ “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

~~82. 81.~~ “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

~~83. 82.~~ “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

~~84. 83.~~ “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

~~85. 84.~~ “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

~~86. 85.~~ “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

~~87. 86.~~ “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

~~88. 87.~~ “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

~~89. 88.~~ “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

~~90. 89.~~ “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

~~91. 90.~~ “*Petition Date*” means October 16, 2019.

~~92. 91.~~ “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93, ~~92~~.—“*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94, ~~93~~.—“*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95, ~~94~~.—“*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96, ~~95~~.—“*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97, ~~96~~.—“*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98, ~~97~~.—“*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99, ~~98~~.—“*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100, ~~99~~.—“*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. ~~100.~~ “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. ~~101.~~ “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. ~~102.~~ “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. ~~103.~~ “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. ~~104.~~ “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. ~~105.~~ “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. ~~106.~~ “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. ~~107.~~ “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be

cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. ~~108.~~ “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. ~~109.~~ “*Related Entity*” means, without duplication, (a) ~~James~~ Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including ~~any, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates,~~ including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, ~~and~~ (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. ~~110.~~ “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present ~~and, future, or~~ former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, ~~employees,~~ subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. ~~111.~~ “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. ~~112.~~ “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. ~~113.~~ “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. ~~114.~~ “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. ~~115.~~ “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. ~~116.~~ “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. ~~117.~~ “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. ~~118.~~ “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. ~~119.~~ “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. ~~120.~~ “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. ~~121.~~ “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. ~~122.~~ “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. ~~123.~~ “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. ~~124.~~ “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. ~~125.~~ “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. ~~126.~~ “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. ~~127.~~ “*Subordinated Claim*” means any Claim that ~~(i) is or may be~~ subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or ~~Final Order of order entered by~~ the Bankruptcy Court ~~or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.~~

130. ~~128.~~ “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. ~~129.~~ “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. ~~130.~~ “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. ~~131.~~ “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. ~~132.~~ “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. ~~133.~~ “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. ~~134.~~ “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. ~~135.~~ “*Voting Record Date*” means November 23, 2020.

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ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim

will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, ~~or (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code;~~ or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid,

released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

! *Classification:* Class 1 consists of the Jefferies Secured Claim.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.

! *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

! *Classification:* Class 2 consists of the Frontier Secured Claim.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

! *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

! *Classification:* Class 3 consists of the Other Secured Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

! *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

! *Classification:* Class 4 consists of the Priority Non-Tax Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

! *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

! *Classification:* Class 5 consists of the Retained Employee Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

! *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

! *Classification:* Class 6 consists of the PTO Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

! *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

! *Classification:* Class 7 consists of the Convenience Claims.

! *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

! *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

! *Classification:* Class 8 consists of the General Unsecured Claims.

! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

! *Classification:* Class 9 consists of the Subordinated Claims.

~~! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim the Effective Date, Holders of Subordinated Claims shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its~~ their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee ~~shall have agreed~~ may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated

Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- ! *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- ! *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- ! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- ! *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- ! *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- ! *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A

Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

! *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify; or to ~~seek to subordinate~~; any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust

Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. ~~In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.~~ The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable

expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan

will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant

Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to ~~a Final Order of the Bankruptcy Court entered~~ this Plan on or prior to the Effective Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Effective Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff

reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect ~~thereto, which shall be litigated to Final Order~~ to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other

than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- ! This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- ! The Confirmation Order shall have ~~been entered, not subject to stay pending appeal,~~ become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as

required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- ! All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- ! All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- ! The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- ! The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or

order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

~~C. Effect of Non-Occurrence of Conditions to Effectiveness~~

~~Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.~~

C. ~~D.~~ Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of

such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee

of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- ! sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- ! has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- ! (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the

Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all ~~holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons,~~ **Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all ~~Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are~~ Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to ~~such~~ any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, ~~directly or indirectly,~~ any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, ~~whether directly or indirectly,~~ any judgment, award, decree, or order against the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (iii) creating, perfecting, or otherwise enforcing in any manner, ~~directly or indirectly,~~ any security interest, lien or encumbrance of any kind against the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or the property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust,~~ (iv) asserting any right of setoff, directly or indirectly, against any obligation due ~~from~~ to the Debtor, ~~the Independent Directors, the Reorganized Debtor, or the Claimant Trust~~ or against property or interests in property of ~~any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust;~~ the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XILD, no ~~Entity~~ Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of ~~this~~ the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such ~~Entity~~ Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided,*

however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such EntitiesEmployee from the date of appointment of the Independent Directors through the Effective Date. ~~As set forth in ARTICLE XI, the~~ The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted, the underlying colorable claim or cause of action.

G. ~~Term~~Duration of Injunctions ~~or~~and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions ~~or~~and stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

~~H.H.~~—Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date ~~until the dissolution of each of the Claimant Trust and the Litigation Trust.~~

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

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ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- ! allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- ! grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- ! resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- ! make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- ! resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- ! if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- ! if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- ! resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ! ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- ! decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- ! enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- ! resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- ! issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- ! enforce the terms and conditions of this Plan and the Confirmation Order;
- ! resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- ! enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- ! resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- ! enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents

necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: ~~November 24, 2020~~ January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief
Restructuring Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)

Ira D. Kharasch (CA Bar No. 109084)

Gregory V. Demo (NY Bar No. 5371992)

10100 Santa Monica Boulevard, 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

Email: jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)

Zachery Z. Annable (TX Bar No. 24053075)

10501 N. Central Expy, Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: MHayward@HaywardFirm.com

ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

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Document 1 ID	PowerDocs://DOCS_NY/40509/36
Description	DOCS_NY-#40509-v36-Highland_-_Plan_of_Reorganization
Document 2 ID	PowerDocs://DOCS_NY/40509/39
Description	DOCS_NY-#40509-v39-Highland_-_Plan_of_Reorganization
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Deleted cell	
Moved cell	
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Padding cell	

Statistics:	
	Count
Insertions	210
Deletions	197
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	415

EXHIBIT 15



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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (I) CONFIRMING THE FIFTH AMENDED
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court² having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed³ pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;⁴ (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

⁴ The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.⁵ As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,⁶ and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

⁵ This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

⁶ See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.⁷ The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

⁷ See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation**

Objections. Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.’s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States’ (IRS) Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty’s Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty’s claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the “Plan Modifications”). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 18**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj1
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure

Statement Order. Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.⁸ Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)). All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)). The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

⁸ See *Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15th Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.⁹

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

⁹ The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots¹⁰ – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

¹⁰ As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.¹¹

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

¹¹ The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership

Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers¹² a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

¹² The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon.

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the

avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054-sgj11
Debtor.)	

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I. **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

ARTICLE II.

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF
CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV. **MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust²

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

² In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED AND DISPUTED CLAIMS**

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

**ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN**

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring
Officer

Prepared by:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC

Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

EXHIBIT 16

1 GRANT SCOTT - 1/21/2021

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

4	IN RE:)	
		)	Chapter 11
5	HIGHLAND CAPITAL MANAGEMENT,)	
	L.P.	)	Case No.
6		)	19-34054-sgj11
	Debtor.)	
7	-----)	
	HIGHLAND CAPITAL MANAGEMENT,)	
8	L.P.,)	
	Plaintiff,)	
9		)	Adversary
	vs.	)	Proceeding No.
10		)	21-03000-sgj
	HIGHLAND CAPITAL MANAGEMENT)	
11	FUND ADVISORS, L.P.; NEXPOINT)	
	ADVISORS, L.P.; HIGHLAND)	
12	INCOME FUND; NEXPOINT)	
	STRATEGIC OPPORTUNITIES FUND;)	
13	NEXPOINT CAPITAL, INC.; and)	
	CLO HoldCo, LTD.,)	
14)	
	Defendants.)	
15	-----)	

16
17 VIDEOCONFERENCE DEPOSITION OF Grant SCOTT
18 Thursday, 21st of January, 2021

19
20
21
22
23 Reported by: Lisa A. Wheeler, RPR, CRR

24 Job No: 188910

25

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1 GRANT SCOTT - 1/21/2021
2 choice.
3 Q. Okay. And do you recall who served
4 the subpoena on you? Actually, let me ask a
5 different question because I'm really not
6 interested in the -- in the details.
7 Did Mr. Dondero serve that subpoena
8 on you or did somebody else?
9 A. His counsel for his ex-wife.
10 Q. Mr. -- so -- so the lawyer acting on
11 behalf of Mr. Dondero's ex-wife served you with
12 the subpoena?
13 A. Correct.
14 Q. Okay. You're familiar with an
15 entity called CLO HoldCo Limited; is that
16 right?
17 A. Yes.
18 Q. Do you know what that entity is?
19 A. Yes.
20 Q. What -- what -- can you describe for
21 me what CLO HoldCo Limited is.
22 A. It's a holding company of assets
23 including collateralized loan obligation-type
24 assets. That's a portion of the overall
25 portfolio. It's an organization that is

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1 GRANT SCOTT - 1/21/2021
2 role of director of CLO HoldCo Limited, was
3 that entity already in existence?
4 A. I believe so. I'm not certain. I'm
5 not certain.
6 Q. What are your duties and
7 responsibilities as a director of CLO HoldCo
8 Limited?
9 A. Well, my day-to-day responsibilities
10 are to interface with -- with the manager of
11 the -- of the assets of CLO. I do have some
12 role in -- with respect to some of the entities
13 that are -- I -- I have a limited role with
14 respect to a subset of the charitable
15 foundations that receive money from the CLO
16 HoldCo structure, which is commonly referred to
17 as the DAF. There's -- sometimes those are
18 used interchangeably.
19 Q. What terms are used interchangeably?
20 A. Well, the DAF and CLO HoldCo are
21 frequently -- by -- by other people they're --
22 it's the short -- it's the -- I guess it's
23 easier to use the acronym DAF than CLO HoldCo
24 Limited, so I'm frequently having to -- there
25 is a DAF entity so -- that's above -- above CLO

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1 GRANT SCOTT - 1/21/2021
2 integrated with other entities as part of a
3 charitable -- loosely what we -- what we refer
4 to as a charitable foundation equivalent.
5 Yeah.
6 Q. All right. We'll -- we'll get into
7 some detail about the corporate structure in a
8 moment. Do you personally play any role at CLO
9 HoldCo Limited?
10 A. Yes. My technical title is
11 director, but I -- I don't necessarily know
12 specifically what that title means other than I
13 act, as I understand it, as -- as a trustee for
14 those -- for those assets.
15 Q. And where did you get that
16 understanding?
17 A. Approximately ten years ago from the
18 group that -- that set up the hierarchy.
19 Q. And which group set up the
20 hierarchy?
21 A. Employees at Jim Don- -- as I
22 understand it, employees of Highland along with
23 outside counsel, as I understand it, and also,
24 I guess, input from -- from Jim Dondero.
25 Q. At the time that you assumed the

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1 GRANT SCOTT - 1/21/2021
2 in terms of the management, and so it's
3 frequently confusing and I'm having to clarify
4 at times which entity we're talking about,
5 but -- but other parties frequently use those
6 terms interchangeably.
7 Q. Okay.
8 MR. MORRIS: Lisa, when we use the
9 phrase DAF, because you'll hear that a lot,
10 it's all caps, D-A-F.
11 BY MR. MORRIS:
12 Q. You mentioned that you interface
13 with the manager of assets of CLOs. Do I have
14 that right?
15 A. Well, of all the assets.
16 Q. Okay. Who is the manager of the
17 assets that you're referring to?
18 A. Highland Capital Management.
19 Q. Highland Capital Management manages
20 all of the assets -- withdrawn.
21 Is it your understanding that
22 Highland Capital Management manages all the
23 assets that are owned by CLO HoldCo Limited?
24 A. Yes.
25 Q. Who makes the investment decisions

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1 GRANT SCOTT - 1/21/2021
2 on behalf of CLO HoldCo Limited?
3 A. Highland -- those managers that you
4 mentioned.
5 Q. Okay. I didn't mention anybody in
6 particular.
7 A. Oh, I'm sorry. The -- the -- the
8 money manager -- could you repeat that
9 question? I'm sorry. I'm so sorry.
10 Q. Can you just -- can you just
11 identify for me the person who makes investment
12 decisions on behalf of CLO HoldCo Limited.
13 A. It's -- well, it's -- it's persons
14 as I understand it. I inter- -- interface with
15 a -- with a group, but it's -- it's Highland
16 Capital employee -- Highland Capital Management
17 employees.
18 Q. Okay. Can you just name any of
19 them, please.
20 A. Hunter Covitz, Jim Dondero. Mark
21 Okada's no longer there, but I believe he was
22 involved, and there are others that I interface
23 with.
24 Q. Can you -- can you recall the name
25 of anybody other than Mr. Okada and Mr. Dondero

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1 GRANT SCOTT - 1/21/2021
2 Q. Is it fair to say that you do not
3 make decisions, investment decisions, on behalf
4 of CLO HoldCo Limited?
5 A. Yes.
6 Q. Does CLO HoldCo Limited have any
7 employees that you know of?
8 A. No.
9 Q. Does CLO HoldCo have any --
10 withdrawn.
11 Does CLO HoldCo Limited have any
12 officers that you know of?
13 A. No.
14 Q. So am I correct that you're the only
15 representative in the world of CLO HoldCo in
16 terms of being a director, officer, or
17 employee?
18 A. Yes.
19 Q. Do you receive any compensation from
20 CLO HoldCo for your services as the director?
21 A. I do now.
22 Q. When did that begin?
23 A. I believe in the middle of 2012.
24 Q. Okay. And had you served as a
25 director prior to that time without

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1 GRANT SCOTT - 1/21/2021
2 and Mr. Covitz?
3 A. Yeah. Over the years I've worked
4 with Tim Cournoyer, Thomas Surgent, but I
5 think -- I think that's the core -- the core
6 group.
7 Q. All right. And is there anybody
8 within that core group who has the final
9 decision-making authority concerning the
10 investments in CLO HoldCo Limited?
11 A. I don't -- I don't know. I'm sorry.
12 Say that again. I just want to -- I'm sorry.
13 I'm trying to be -- I'm not trying to -- I'm
14 trying to be --
15 Q. I understand. And --
16 A. Sorry. If you could just repeat it.
17 Q. Sure. Is there any particular
18 person who has the final decision-making
19 authority for investments that are being made
20 on behalf of CLO HoldCo Limited?
21 A. Amongst that group I am -- I am not
22 sure.
23 Q. Okay. So are there any other
24 directors of CLO HoldCo besides yourself?
25 A. No.

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1 GRANT SCOTT - 1/21/2021
2 compensation?
3 A. Yes.
4 Q. And have you been the sole director
5 of CLO HoldCo Limited since the time of your
6 appointment approximately ten years ago?
7 A. Yes.
8 Q. Nobody else has served in that
9 capacity; is that right?
10 A. That is correct.
11 Q. There have been no employees or
12 officers of that entity during the time that
13 you've served as director, correct?
14 A. Yes.
15 Q. Do you know who formed CLO HoldCo
16 Limited?
17 A. I do not.
18 Q. Do you know why CLO HoldCo Limited
19 was formed?
20 A. I believe so.
21 Q. Can you explain to me why -- your
22 understanding as to why CLO HoldCo was formed.
23 A. So as I understand things, Jim
24 Dondero wanted to create a charitable
25 foundation-like entity or entities, and tax

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1 GRANT SCOTT - 1/21/2021
2 going well.
3 Q. And -- and I think you -- you
4 testified just now that there was kind of a
5 difference between prebankruptcy and
6 postbankruptcy. Do I have that right?
7 A. Yes.
8 Q. And can you tell me -- is it fair to
9 say that before the bankruptcy, you didn't
10 devote much time to CLO HoldCo, or do I have
11 that wrong?
12 A. Well, I -- just the time that --
13 that I mentioned just -- I'm sorry. The -- the
14 time I just mentioned now when you asked me,
15 that was the pre period. Excuse me. I haven't
16 talked about the postbankruptcy period.
17 Q. So are you -- are you -- are you
18 devoting more time or less time since the
19 bankruptcy?
20 A. Much more.
21 Q. Much more since the bankruptcy
22 filing?
23 A. Yes.
24 Q. And so why did the bankruptcy filing
25 cause you to spend more time as a director of

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1 GRANT SCOTT - 1/21/2021
2 A. It was various obligations that were
3 owed to -- to CLO, things that had been
4 previously donated or -- or agreements that had
5 been set up that transferred certain assets,
6 and it was basically the -- the -- the amounts
7 were derived from those sorts of transactions.
8 Q. Okay. You're a patent lawyer; is
9 that right?
10 A. I -- I'm exclusively a patent
11 attorney, yes.
12 Q. Have you been a patent lawyer on an
13 exclusive basis since the time you graduated
14 from law school?
15 A. From law school, yes.
16 Q. Can you just describe for me
17 generally your educational background.
18 A. So I'm an electrical engineer by
19 training. I graduated from the University of
20 Virginia in 1984. I then went to graduate
21 school at the University of Illinois. I
22 received my master's degree in 1986, and then I
23 immediately joined IBM Research at the Thomas
24 Watson Institute in New York where I was a --
25 my title was research scientist, but I was -- I

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1 GRANT SCOTT - 1/21/2021
2 CLO HoldCo Limited?
3 A. Well, initially, and this would
4 be -- this would be late 2019, it was --
5 aft- -- after the bankruptcy was -- was filed
6 and I obtained counsel, who are on the phone
7 now -- or in this deposition now, excuse me,
8 that was -- that transition occurred because
9 CLO was a debtor -- excuse me, a creditor to --
10 to the debtor and had to take steps to
11 establish its -- its claim. So if I understand
12 the -- things correctly, the -- the debtor
13 identified as part of the filing -- I don't
14 know how bankruptcy works, but if I under- --
15 if my recollection is correct, there's a
16 hierarchy from biggest to smallest, and we were
17 relatively high up. And when I say we or I,
18 I -- I just mean CLO was relatively high up.
19 And so initially, for the first period of so
20 many months, the -- the exclusive focus was on
21 our position as a creditor -- a creditor having
22 a certain claim against a debtor.
23 Q. Can you describe for me your
24 understanding of the nature of the claim
25 against the debtor.

Page 25

1 GRANT SCOTT - 1/21/2021
2 guess I was more of a research engineer, if
3 that matters. And I did that until I
4 transitioned -- or I began law school in the
5 fall of 1988, and then I graduated law school
6 in May of 1991.
7 Q. And where did you go to law school?
8 A. University of North Carolina.
9 Q. Do you have any formal training in
10 investing or finance?
11 A. I do not.
12 Q. Do you hold yourself out as an
13 expert in any field of investment?
14 A. None -- none at all.
15 Q. Have you had any formal training
16 with respect to compliance issues? You
17 mentioned compliance issues earlier.
18 A. No.
19 Q. Now, do you have any knowledge about
20 compliance rules or regulations?
21 A. Minimal that I've -- that have
22 occurred organically but -- but generally, no.
23 Q. You don't hold yourself out as an
24 expert in com- -- in the area of compliance,
25 correct?

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1 GRANT SCOTT - 1/21/2021

2 A. No. No. I'm -- no.

3 Q. Do you have any particular

4 investment philosophy or strategy?

5 MR. CLARK: I'm going to object to

6 the form of the question. And, John,

7 can -- can we get an agreement that -- I

8 know you were objecting just simply on the

9 form basis yesterday -- that objection to

10 form is sufficient today?

11 MR. MORRIS: Sure.

12 MR. CLARK: Okay. And I object to

13 form. Grant, you can answer to the extent

14 you can.

15 THE WITNESS: I forget the question

16 now that you interrupted. I'm sorry.

17 BY MR. MORRIS:

18 Q. So -- so -- and I'm going to ask a

19 different question because in hindsight, that's

20 a good objection.

21 In your capacity as the director

22 of -- withdrawn.

23 Do the employees of Highland that

24 you identified earlier, do they make investment

25 decisions on behalf of CLO HoldCo Limited

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1 GRANT SCOTT - 1/21/2021

2 don't recall.

3 Q. Okay. So -- withdrawn. I'll --

4 I'll go on.

5 How did you come to be the director

6 of CLO HoldCo?

7 A. I was asked either by Jim Dondero

8 or -- directly or indirectly by -- by Jim

9 Dondero.

10 Q. And who is Jim Dondero?

11 A. Well, at the time, he was the head

12 or one of the heads of Highland Capital

13 Management, a friend of mine.

14 Q. How long have you known Mr. Dondero?

15 A. Since high school so that -- 1976.

16 Q. Where did you and Mr. Dondero grow

17 up?

18 A. In northern New Jersey.

19 Q. Do you consider him among the

20 closest friends you have?

21 A. I think he is my closest friend.

22 Q. Did you two go to college together?

23 A. We actually -- for the last -- last

24 two years I was at UVA, University of Virginia,

25 excuse me, he and I were -- were at UVA. So we

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1 GRANT SCOTT - 1/21/2021

2 without your prior knowledge on occasion?

3 A. On occasion, they do.

4 Q. So there's no rule that your prior

5 approval is needed before investments are made,

6 right?

7 A. I don't know whether they have an

8 internal guideline as to the amount that

9 triggers when they get in touch with me or

10 whether it's a new -- a change, something new,

11 or -- versus recurring. So I don't -- I don't

12 know what they use internally for that metric.

13 Q. Okay. Are you aware of any

14 guideline that was ever used by the Highland

15 employees whereby they were required to obtain

16 your consent prior to effectuating transactions

17 on behalf of CLO HoldCo Limited?

18 A. I understand there was one or more,

19 but I do not know that.

20 Q. Okay. Did you ever see such a

21 policy or list of rules that would require your

22 prior consent before the Highland employees

23 effectuated transactions on behalf of CLO

24 HoldCo Limited?

25 A. Possibly some time ago, but I -- I

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1 GRANT SCOTT - 1/21/2021

2 did not start out at UVA initially, but -- but

3 we both transferred -- I transferred my

4 sophomore year. I was actually a chemical

5 engineer at the University of Delaware when I

6 transferred in, and then he transferred in his

7 junior year. So we were there at college for

8 two years.

9 Q. And -- and based on your

10 relationship with him, is it your understanding

11 that one of the reasons he chose to transfer to

12 UVA is -- is to -- because you were there?

13 A. Oh, no. He transferred -- he --

14 he -- he transferred there because of the -- so

15 he went to the University of -- he -- he went

16 to Virginia Tech University, which is more

17 known as being an engineering school, which I

18 might have wanted to go to, and less a finance

19 business school. And if I understand things

20 correctly, and I believe I do, he transferred

21 to UVA because of the well-known

22 business/finance program, accounting program.

23 Q. And did you -- did you and

24 Mr. Dondero become roommates at UVA?

25 A. We weren't roommates, but we lived

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1 GRANT SCOTT - 1/21/2021
2 in the -- we were housemates. I'm sorry. We
3 were housemates.
4 Q. So you shared a house together. How
5 would you describe your relationship with
6 Mr. Dondero today?
7 A. It's -- it's been strained a while,
8 for some time, but -- but generally, very good.
9 Good to very good.
10 Q. Without -- without getting personal
11 here, can you just generally identify the
12 source of the strain that you described.
13 A. This -- I think it would be fair to
14 say that this bankruptcy, particularly events
15 in 2020 so some months after the bankruptcy was
16 declared, things have become -- we -- we still
17 have a close friendship, but -- but things
18 are -- are a bit -- are a bit more difficult.
19 Q. Were you ever married?
20 A. I've never been married.
21 Q. Did you serve as Mr. Dondero's best
22 man at his wedding?
23 A. I did.
24 Q. Is it fair to say that -- that
25 Mr. Dondero trusts you?

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1 GRANT SCOTT - 1/21/2021
2 course of those 45 years, Mr. Dondero has
3 shared confidential information with you that
4 he didn't want you to reveal publicly to other
5 people?
6 A. Yes.
7 Q. And is it your understanding that
8 because of the nature of your relationship with
9 him, he asked you to serve as the director of
10 CLO HoldCo Limited?
11 A. Yes. I believe it's because he --
12 he trusted -- trusted me with -- with assets
13 relating to his charitable vision. I -- I --
14 yeah. Yes.
15 Q. And is it your understanding that he
16 thought you would help him execute his
17 charitable vision?
18 A. That was the point of attraction
19 initially. It wasn't for money. I wasn't
20 being paid. That was -- the charitable mission
21 was the attraction.
22 Q. Does Mr. Dondero play any role in
23 the management of the CLO HoldCo Limited asset
24 pool?
25 MR. CLARK: Objection, form.

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1 GRANT SCOTT - 1/21/2021
2 MR. CLARK: Objection, form.
3 BY MR. MORRIS:
4 Q. Withdrawn.
5 Do you believe that Mr. Dondero
6 trusts you?
7 A. I do.
8 Q. Over the years, is it fair to say
9 that Mr. Dondero has confided in you?
10 MR. CLARK: Objection, form.
11 BY MR. MORRIS:
12 Q. You can answer if you understand it.
13 A. I think so.
14 Q. I -- I -- what's your answer? You
15 think so?
16 A. Maybe you can de- -- I think of
17 confide as -- could you define confide, please.
18 Q. Sure. Is it -- is it fair to say
19 that over the -- let me -- you've known
20 Mr. Dondero for almost 45 years, right?
21 A. Yes.
22 Q. And you consider him to be your
23 closest friend in the world, right?
24 A. Yes.
25 Q. And is it fair to say over the

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1 GRANT SCOTT - 1/21/2021
2 A. I'm sorry. Could you repeat that?
3 My -- my screen went small and then big again.
4 I was distracted.
5 Q. What role does Mr. Dondero play with
6 respect to the management of the CLO HoldCo
7 Limited asset pool?
8 MR. CLARK: Objection, form.
9 A. He is with the company that manages
10 that asset pool. He's one of the people I
11 named previously as managing those assets.
12 Q. He is -- he -- he is the -- do you
13 understand that he has the final
14 decision-making power with respect to the
15 management of the assets that are held by CLO
16 HoldCo Limited?
17 MR. CLARK: Objection, form.
18 A. I believe I ansel -- answered that
19 previously. I -- I don't know who has -- for
20 certainty I do not know who has that within
21 that company. I don't. If -- if -- I -- I
22 don't know, consistent with my prior answer.
23 Q. Did you ever ask anybody who had the
24 final decision-making authority for investments
25 on behalf of CLO HoldCo Limited?

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1 GRANT SCOTT - 1/21/2021
2 A. I -- I did not.
3 Q. Did you ever make a decision on
4 behalf of -- withdrawn.
5 In your capacity as a director --
6 withdrawn.
7 In your capacity as the sole
8 director of CLO HoldCo Limited, can you think
9 of any decision that you've ever made that
10 Mr. Dondero disagreed with?
11 A. Since -- prior to the bankruptcy,
12 no, not that I'm aware of.
13 Q. And since the bankruptcy?
14 A. There are decisions that I've made
15 that he's disagreed with.
16 Q. Can you identify them?
17 A. Yes.
18 Q. Please do so.
19 A. Okay. So the reason I'm pausing is
20 I'm trying to put these in chronological order
21 and, at the same time, identify maybe some of
22 the more important ones versus the lesser
23 important ones. One of the decisions I made
24 related to a request that I received from the
25 independent board of Highland. I don't know

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1 GRANT SCOTT - 1/21/2021
2 A. I don't know when he became aware of
3 that decision. I'm not sure I ever volunteered
4 that the decision was even made, but at some
5 point, it became an issue because he found out
6 through -- if I understand the sequence of
7 events correctly, he found out possibly through
8 his counsel because there was ultimately
9 litigation about that issue. It became known
10 to everyone at some point what I had done, I --
11 I think. And subsequent to that, it became an
12 issue because of CLO HoldCo having fairly
13 significant cash flow issues with respect to
14 its expenses and obligations, including payment
15 of management fees as well as some of the
16 scheduled charitable giving that was -- that
17 was by contract already predefined. My
18 decision to tuck that money -- or to agree
19 to -- my agreement to let that money be tucked
20 away created some -- created some -- created
21 some problems --
22 Q. And -- and --
23 A. -- for CLO HoldCo.
24 Q. Okay. And I just want you to focus
25 specifically on my question, and that is, what

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1 GRANT SCOTT - 1/21/2021
2 how the request was transmitted to me, but I
3 believe the way it played out is as follows: I
4 believe I was asked to call Jim Seery, and the
5 other -- and Russell Nelms, and the third
6 independent director, I believe his name is
7 John. I -- I forget right now what his last
8 name is. They were in New York, said they were
9 in a conference room. I called in. They were
10 very pleasant. They identified who they were,
11 and they had a request, and the request was
12 that I agree to a transfer -- or that I -- that
13 I agree to allow certain assets that were not
14 Highland's assets but they were CLO's as- --
15 assets -- apparently, there was no dispute
16 about that at any point in time, but that I
17 agree to allow certain assets that were due CLO
18 to be transferred to the registry of the
19 bankruptcy court. And either on that call I
20 immediately agreed or ended the call, called my
21 attorney, and then immediately agreed. It was
22 a very -- I accommodated the request quickly.
23 Q. Okay. And can you just tell me at
24 what point in time you spoke with Mr. Dondero,
25 and what did he say that you recall?

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1 GRANT SCOTT - 1/21/2021
2 did Mr. Dondero say to you that -- that causes
3 you to testify as you did, that this is one
4 issue that he didn't agree with?
5 A. I believe his concern was that
6 because it was money that was undisputably to
7 flow to CLO HoldCo that -- which had many, many
8 other nonliquid assets -- this was a form of a
9 liquid asset. It was cash in effect, proceeds.
10 -- that the money should have been allowed to
11 flow to be available for obligations. He
12 didn't under- -- I -- I -- I don't know what he
13 was thinking, but the -- the issue was that the
14 decision to put it into escrow was -- was --
15 was in- -- incorrect, that there was no basis
16 for it.
17 Q. That -- that's an issue where after
18 learning of your decision, he didn't agree with
19 it; is that fair?
20 A. That's right.
21 Q. Okay. Can you think of any decision
22 that you've ever made on behalf of CLO HoldCo
23 Limited where Mr. Dondero had advance knowledge
24 of what you were going to do and he objected to
25 it, but you nevertheless overruled his

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1 GRANT SCOTT - 1/21/2021
2 objection and went ahead and did what -- did
3 what you thought was right?
4 A. Okay. Let me -- let me -- I have --
5 I'm sorry.
6 Q. We're here.
7 A. Oh, I'm sorry. I'm having some
8 issues with my screen. So that may have
9 occurred with respect to the original proof of
10 claim. Then there was a subsequent amendment
11 to the proof of claim, and I -- I believe it --
12 I believe that he might have been aware of both
13 of those and was in disagreement with -- with
14 those. But after working with my attorney, we
15 just -- you know, we did what we thought was
16 right, and I still think what we did was right.
17 There was an issue with respect to Har- --
18 HarbourVest that occurred relatively recently
19 where he objected to a decision that I had
20 made. As I understand it, I could have
21 contacted my attorney and changed the decision,
22 but I didn't, and I still think that was the
23 right decision.
24 We have filed plan objections. I
25 can't say if he has any -- in that regard, I --

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1 GRANT SCOTT - 1/21/2021
2 A. So we had to interface with Highland
3 employees at some point to get information to
4 support our proof of claim, and my guess, and
5 it's just a guess, is that he was aware of
6 those inquiries. I -- I'm sorry. I shouldn't
7 speculate. I don't know. But he -- with
8 respect to the original proof of claim, I'm --
9 I'm not aware of what specifically he was
10 objecting to or was -- thought should have been
11 different, but the -- with respect to the
12 amended proof of claim, which reduced the
13 original proof of claim to zero, I think that's
14 where he had a -- an issue.
15 Q. And did you speak with him about
16 that topic prior to the time the amended claim
17 was filed, or did you only speak with him after
18 it was filed?
19 A. I'm not sure the timing of that.
20 Q. And with respect to HarbourVest, did
21 he ask you to object to the settlement on
22 behalf of CLO HoldCo Limited, and is that
23 something that you declined to do?
24 MR. CLARK: Objection, form.
25 A. I'm -- I'm sorry. I was confused

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1 GRANT SCOTT - 1/21/2021
2 I -- I don't know what his thoughts are on
3 objections. They would not have been
4 communicated with -- by me to him, but my
5 attorney might have consulted with his
6 attorney, and there -- they may know what that
7 difference is, but I -- that was just another
8 big decision. I -- I -- maybe that --
9 Q. All right. Let me see if I can --
10 let me see if I can summarize this. So two
11 proofs of claim. Is it fair to say that
12 Mr. Dondero saw those proofs of claim before
13 they were filed?
14 MR. CLARK: Objection, form.
15 BY MR. MORRIS:
16 Q. Withdrawn.
17 A. It --
18 Q. Do -- do you know whether
19 Mr. Dondero saw the proofs of claim before they
20 were filed?
21 A. I don't believe he did.
22 Q. What -- what steps in filing the
23 proofs of claim did he object to that you
24 overruled? Did he think there was -- something
25 should be different about them?

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1 GRANT SCOTT - 1/21/2021
2 with the word. Could you please repeat that?
3 Q. Yes. You mentioned HarbourVest
4 before, right?
5 A. Yes.
6 Q. And you mentioned that there was an
7 issue with Mr. Dondero and you concerning
8 HarbourVest; is that right?
9 A. Yes.
10 Q. And did that have to do with whether
11 or not CLO HoldCo Limited would -- would object
12 to the debtor's motion to get the HarbourVest
13 settlement approved?
14 A. Would -- would get the
15 HarbourVest --
16 Q. Settlement approved by the court.
17 A. I'm not trying to be difficult.
18 I'm -- I'm -- could you just repeat that one
19 more time? I'm --
20 Q. What was -- what was --
21 A. There was --
22 Q. Let me try again.
23 A. Okay.
24 Q. What was the issue with respect to
25 HarbourVest that he objected to and -- and you

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1 GRANT SCOTT - 1/21/2021
2 overrode his objection and did what you thought
3 was right anyway?
4 A. Okay. Okay. That's -- that's
5 easier for me to understand. I'm sorry. So I
6 had worked with my attorney or he did the work
7 and consulted with -- we consulted, but we had
8 filed an objection, motion objecting to the
9 settlement, if I understand the terminology and
10 nomenclature correctly. Okay. He had -- we
11 had come to an agreement that we had a very
12 valid argument. That argument was evidenced
13 by, I guess it was, our motion that was
14 submitted to the court. On the day of the
15 hearing to resolve this issue, we pulled our
16 request, and that was because I believed it did
17 not have a good-faith basis in law to move
18 forward on.
19 Q. And did you discuss that issue with
20 Mr. Dondero before informing the court that CLO
21 HoldCo Limited was withdrawing its objection,
22 or did he learn about that for the first time
23 during the hearing --
24 MR. CLARK: Objection, form.
25 BY MR. MORRIS:

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1 GRANT SCOTT - 1/21/2021
2 A. -- thought, okay?
3 THE REPORTER: I didn't --
4 A. Okay. So he --
5 Q. It was a recommendation.
6 A. Yeah. So he -- he called me with a
7 recommendation. It was highly urgent. You
8 know, I was coming out of the men's room, had
9 my phone with me. I got the call.
10 MR. CLARK: Hey, Grant, I -- Grant,
11 I just want to caution you not to -- to --
12 and I don't think counsel is looking for
13 this but not to disclose the -- the
14 substance of any of your communications
15 with counsel, okay?
16 THE WITNESS: Thank you.
17 A. So --
18 THE WITNESS: Thank you. I'm -- I'm
19 sorry.
20 BY MR. MORRIS:
21 Q. It's -- it's really a very simple
22 question. Do you recall --
23 A. He made a recommendation. I -- I --
24 I think I can answer your question without
25 going off tangent. I'm sorry. So he -- my

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1 GRANT SCOTT - 1/21/2021
2 Q. -- if you know?
3 A. I -- I understand that he learned it
4 during the hearing. I don't know the -- I -- I
5 don't know the -- whether there was any -- I --
6 I don't know for certain on the second half of
7 your question.
8 Q. Let me -- let me try it -- let me
9 try it this way: Did you speak with
10 Mr. Dondero about your decision to withdraw the
11 objection to the HarbourVest settlement prior
12 to the time your counsel made the announcement
13 in court?
14 A. I don't -- I don't believe so. No.
15 No. No. I'm sorry. No.
16 Q. And did --
17 A. Okay. No. Here -- here's where
18 I'm -- I can clarify, okay? I'm sorry. I can
19 clarify.
20 Q. That's all right.
21 A. I gave the decision to my
22 attorney -- I -- I agreed with the
23 recommendation of my attorney, okay? It wasn't
24 my --
25 Q. Did you have a good --

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1 GRANT SCOTT - 1/21/2021
2 attorney made a recommendation. I agreed with
3 it. We with- -- I -- I told him to withdraw --
4 or I authorized him to withdraw.
5 Q. Okay.
6 A. Then I received a communication, and
7 I -- I guess the most likely scenario is the
8 motion had been withdrawn by the time Jim
9 Dondero found out.
10 Q. And -- and did he write to you, or
11 did he call you? Did he send you a text?
12 A. He called me.
13 Q. What did he say?
14 A. He was asking why, and I explained,
15 and I said I agreed with the decision and I was
16 sticking with the decision.
17 Q. Let's just -- let's just move on to
18 a new topic, and let's talk about the structure
19 of -- of CLO HoldCo. Are you generally
20 familiar with the ownership structure of CLO
21 HoldCo?
22 A. Yeah. I mean, in terms --
23 Q. Are -- are you -- are you generally
24 familiar with it? It's not a test. I'm just
25 asking do you have a general familiarity --

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1 GRANT SCOTT - 1/21/2021
2 A. With CLO HoldCo or the entities
3 associated with CLO HoldCo?
4 Q. The latter.
5 A. Yes, I believe so.
6 Q. All right. I've prepared what's
7 called a demonstrative exhibit. It's just --
8 A. Yes.
9 Q. -- just -- it's a document that, I
10 think, reflects facts, but I want to ask you
11 about it.
12 MR. MORRIS: La Asia, can we please
13 put up Exhibit 1.
14 (SCOTT EXHIBIT 1, Organizational
15 Structure: CLO HoldCo, Ltd., was marked
16 for identification.)
17 BY MR. MORRIS:
18 Q. Okay. Can you see that, Mr. Scott?
19 A. Yes, I can.
20 Q. Okay. So I think I took the
21 information from resolutions that were attached
22 to the CLO HoldCo proof of claim, and that's
23 why you got that little footnote there at the
24 bottom of the page. But let's start in the
25 lower right-hand corner and see if this chart

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1 GRANT SCOTT - 1/21/2021
2 particular structure, to the best of your
3 knowledge?
4 A. I -- I didn't -- I'm sorry. I
5 didn't hear you very well.
6 Q. To the best of your knowledge, did
7 Mr. Dondero make the decisions to establish the
8 structure that's reflected on this page?
9 A. Oh, I don't know if he made the
10 decision to establish this structure, although
11 it's -- it's -- I'm sorry. Strike that. I --
12 if -- if what you're saying is did he approve
13 of this structure, to my knowledge, yes.
14 Q. Okay. Do you hold any position with
15 respect to Charitable DAF Fund, L.P.?
16 A. I -- I -- your chart says no. I --
17 I -- I thought I had a role there, too.
18 Q. I don't know. I don't have
19 information on that. That's why I'm asking the
20 question.
21 A. I -- I -- I believe -- yes, I
22 believe I have the same role as I do in -- in
23 CLO HoldCo.
24 Q. And that would be director?
25 A. Yes.

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1 GRANT SCOTT - 1/21/2021
2 comports with your understanding of the facts.
3 Do you know that CLO HoldCo Limited
4 was formed in the Cayman Islands?
5 A. Yes.
6 Q. And to the best of your knowledge,
7 is CLO HoldCo Limited 100 percent owned by the
8 Charitable DAF Fund, L.P.? If you're not sure,
9 just say you're not sure if you don't know.
10 It's not a test.
11 A. So the -- the -- the familiarity
12 I -- I'm -- I'm familiar with the different --
13 I'm confused with the arrangement of the boxes
14 and the ownership interest versus managerial
15 interest. I believe that's -- that's right.
16 Q. Okay. And -- and you're the sole
17 director of CLO HoldCo Limited, right?
18 A. Yes.
19 Q. And this whole structure was -- the
20 idea for this structure, to the best of your
21 knowledge, was to implement Mr. Dondero's plan
22 for charitable giving; is that fair?
23 A. Yes. Ultimately, yes.
24 Q. And is it fair to say then that
25 he -- he made the decision to establish this

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2 Q. And to the best of your knowledge,
3 is the Charitable DAF GP, LLC, the general
4 partner of Charitable DAF Fund, L.P.?
5 A. Yes.
6 Q. And is it your understanding that
7 you are the managing member of Charitable DAF
8 GP, LLC?
9 A. Yes.
10 Q. Does Charitable DAF GP, LLC, have
11 any employees?
12 A. No.
13 Q. Does Charitable DAF GP, LLC, have
14 any officers or directors?
15 A. No.
16 Q. Are you the only person affiliated
17 with Charitable DAF GP, LLC, to the best of
18 your --
19 A. I believe so.
20 Q. Do you receive any compensation for
21 serving as the managing member of Charitable
22 DAF GP, LLC?
23 A. No. The -- I don't interact with it
24 very often. It's -- no, I don't receive any
25 compensation.

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2 Q. Can you tell me in your capacity as

3 the managing member of Charitable DAF GP, LLC,

4 what's the nature of that entity's business?

5 A. It -- it doesn't perform any

6 day-to-day operations. My understanding is --

7 is that it's -- it's there for purposes of

8 compliance. I can't recall the last time I had

9 any activity with respect to that.

10 Q. How about the Charitable DAF Fund,

11 L.P.? I apologize if I've asked you these

12 questions.

13 A. It -- it's the same. I -- I -- my

14 activity is almost exclusively CLO HoldCo.

15 Q. All right. Let me just ask the

16 questions nevertheless. Does Charitable DAF

17 Fund, L.P., have any employees?

18 A. Employees? No.

19 Q. Does it have any officers and

20 directors?

21 A. No.

22 Q. Are you the sole director of

23 Charitable DAF Fund, L.P.?

24 A. Yes, I believe so.

25 Q. So if we -- if we put under

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1 GRANT SCOTT - 1/21/2021

2 Q. And did Mr. Dondero ask you to serve

3 as the director of Charitable DAF, L.P. --

4 withdrawn.

5 Did Mr. Dondero ask you to serve as

6 director of Charitable DAF Fund, L.P.?

7 A. Yes.

8 Q. To the best of your knowledge, does

9 Charitable DAF HoldCo Limited own 99 percent of

10 the limited partnership interests in Charitable

11 DAF Fund, L.P.?

12 A. Yes. The -- the feed -- the -- the

13 feeds -- the -- the three horizontal blocks

14 there that identify Highland Dallas Foundation,

15 Kansas City, Santa Barbara -- there's a fourth

16 of -- relatively de minimus in terms of

17 participation. There's a fourth entity that's

18 missing. It's Dallas -- I forget the name.

19 That -- that -- that structure is -- is a bit

20 dated --

21 Q. Okay.

22 A. -- as it -- as is shown.

23 Q. Okay. So I will tell you and we can

24 look the documents if you want, but attached to

25 CLO HoldCo Limited's claim are a number of

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1 GRANT SCOTT - 1/21/2021

2 Charitable DAF Fund, L.P., Grant Scott,

3 director, and we put under CLO HoldCo Limited

4 Grant Scott, director, would everything on the

5 right side of that page be accurate, to the

6 best of your --

7 A. I believe so.

8 Q. Well, let's move to the left side of

9 the page. Have you heard of the entity

10 Charitable DAF HoldCo Limited?

11 A. Yes.

12 Q. Are you the sole director of

13 Charitable DAF HoldCo Limited?

14 A. Yes.

15 Q. How did you become -- how did you

16 come to be the char- -- the sole director of

17 Charitable DAF HoldCo Limited?

18 A. That was when it was established.

19 Q. And did Mr. Dondero ask you to serve

20 in that capacity?

21 A. Yes.

22 Q. And did Mr. Dondero ask you to serve

23 as the managing member of Charitable DA- -- DAF

24 GP, LLC?

25 A. Yes.

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2 resolutions, and there's one that I have in

3 mind that shows Charitable DAF HoldCo Limited

4 holding 99 percent of the limited partnership

5 interests of Charitable DAF Fund, L.P., and

6 there's another that shows it being a hundred

7 percent. Do you -- do you know which is

8 accurate at least at this time?

9 A. There's a 1 percent/99 percent

10 division, and I am -- I believe it's the 99

11 percent, but I'm -- I'm getting confused by

12 the -- by the arrangement. I'm so used to

13 another arrangement. I -- I believe the 99

14 percent is correct.

15 Q. Okay. Do you have any understanding

16 as to who owns the other 1 percent of the

17 limited partnership interests of Charitable DAF

18 Fund, L.P.?

19 A. No. This -- this is confusing to

20 me. No.

21 Q. Okay. There are, at least on this

22 page, three foundations that I think you've

23 identified. Are those three foundations

24 together with the fourth that you mentioned the

25 owners of the Charitable DAF HoldCo Limited?

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1 GRANT SCOTT - 1/21/2021
2 A. Owners?
3 Q. Yes.
4 MR. CLARK: Objection, form.
5 A. They -- they only participate in the
6 money that flows up to them.
7 Q. And what does that mean exactly?
8 A. What's that?
9 Q. What does that -- what do you mean
10 by that? Do the foundations fund Charitable
11 DAF Fund HoldCo Limited?
12 A. Initially. Initially, as I
13 understand it, the money flows downward into
14 the Charitable DAF HoldCo Limited before it
15 ultimately makes its way to CLO HoldCo, and
16 then each of those three entities, the various
17 foundations, obtain participation interest in
18 the money that flows back to them.
19 Q. And -- and is that par- -- are those
20 participation interests in Charitable -- you
21 know what, let -- let me just pull up one
22 document and see if that helps.
23 MR. MORRIS: Can we put up -- I
24 think it's Exhibit Number 5.
25 (SCOTT EXHIBIT 2, Unanimous Written

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2 Dallas Foundation?
3 A. Yes, selected by them.
4 Q. Selected by whom?
5 A. By that foundation.
6 Q. Are you -- are you a director of all
7 of the four foundations that feed into the
8 Charitable DAF HoldCo Limited entities that --
9 A. No.
10 Q. Which of the four foundations are
11 you a director of?
12 A. This and the Santa Barbara -- I'm
13 sorry, Santa Barbara and Kansas City.
14 Q. So is -- there's one that you're not
15 a director of; is that right?
16 A. Yes.
17 Q. And which one is that?
18 A. The -- could you go back to the --
19 Q. Yeah.
20 MR. MORRIS: Go back to the
21 demonstrative.
22 A. It's the Highland Dallas Foundation
23 and Santa Barbara Foundation.
24 Q. Those are the two that you're a
25 director of?

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2 Consent of Directors In Lieu of Meeting,
3 was marked for identification.)
4 MR. MORRIS: I apologize. Let's go
5 to --
6 MS. CANTY: I'm sorry, John. I
7 can't hear you. Was that not the exhibit?
8 MR. MORRIS: 4.
9 MS. CANTY: Okay.
10 THE REPORTER: And Mr. Morris, you
11 are -- Mr. Morris, you are breaking up just
12 a little bit at the end of your questions.
13 BY MR. MORRIS:
14 Q. Okay. Do you see the document on
15 the screen, sir?
16 A. Yes, I do.
17 Q. Okay. And so this is a unanimous
18 written consent of the directors of the
19 Highland Dallas Foundation. That's one of the
20 entities that was on the chart.
21 MR. MORRIS: Can we scroll down to
22 the -- the bottom of the document where the
23 signature lines are. Right there.
24 BY MR. MORRIS:
25 Q. Are you a director of the Highland

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1 GRANT SCOTT - 1/21/2021
2 A. Yes.
3 Q. To the best of your knowledge, does
4 Mr. Dondero serve as the president for each of
5 the foundations that we're talking about?
6 A. Yes.
7 Q. To the best of your knowledge, is
8 Mr. Dondero a director of each of the
9 foundations that we're talking about?
10 A. Say that again. I'm sorry.
11 Q. Is he also a director of each of the
12 foundations?
13 A. Yes.
14 Q. Do you know whether any of the
15 foundations has any employees?
16 A. I believe they do, but I -- I -- I
17 can't say for certain.
18 Q. Does -- withdrawn.
19 Do you know if there are any
20 officers of any of the four foundations other
21 than Mr. Dondero's service as president?
22 A. I'm sorry. Say that one more time,
23 please.
24 Q. Yes. Do you know whether any of the
25 four foundations has any officers other than

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1 GRANT SCOTT - 1/21/2021
2 Mr. Dondero's service as president?
3 A. No.
4 Q. You don't know, or they do not?
5 A. I -- I don't believe anyone else
6 has. I -- actually, I should say I don't -- I
7 don't recall. I -- I don't know. I don't -- I
8 don't know.
9 Q. As a director of the Dallas and
10 Santa Barbara foundations, are you aware of any
11 officers serving for either of those
12 foundations other than Mr. Dondero?
13 A. No.
14 Q. Do you know who the beneficial owner
15 of the Charitable DAF HoldCo Limited entity is?
16 A. The beneficial owner?
17 Q. Correct.
18 A. The various -- various trusts that
19 were used to -- that were the vehicles by which
20 the money originally was established within --
21 within -- within CLO HoldCo.
22 Q. Would that be -- would one of them
23 be the Get Good Nonexempt Trust?
24 A. Yes.
25 Q. And you're a trustee of the Get Good

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1 GRANT SCOTT - 1/21/2021
2 one of the trusts that has an interest in
3 Charitable DAF HoldCo Limited?
4 A. Yes.
5 Q. Are you a trustee of the Dugaboy
6 Investment Trust?
7 A. I am not.
8 Q. Do you know who is?
9 A. I believe it's his sister.
10 Q. And is that -- you're referring to
11 Mr. Dondero's sister?
12 A. I'm sorry. Yes.
13 Q. And what's the basis for your
14 understanding that Mr. Dondero's sive -- sister
15 serves as the trustee of the Dugaboy Investment
16 Trust?
17 A. Many years ago there was a -- there
18 was a clerical error that identified me as the
19 trustee of the Dugaboy. That error was present
20 for approximately two weeks or a week and a
21 half before it was detected and corrected, and
22 so I know from that correction that it's Nancy
23 Dondero.
24 Q. Are there any other trusts that have
25 an interest in Charitable DAF HoldCo Limited

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2 Nonexempt Trust, right?
3 A. Yes.
4 Q. When did you become a trustee of the
5 Get Good Nonexempt Trust?
6 A. Many years ago. I -- I don't
7 remember.
8 Q. Are there any other trustees of the
9 Get Good Nonexempt Trust?
10 A. No.
11 Q. Does the Get Good Nonexempt Trust
12 have any officers, directors, or employees?
13 A. No.
14 MR. CLARK: Objection, form. Sorry.
15 BY MR. MORRIS:
16 Q. Withdrawn.
17 Do you know whether the Get Good
18 Nonexempt Trust has any officers, directors, or
19 employees?
20 A. It does not.
21 Q. And I apologize if I asked this, but
22 are you the only trustee of the Get Good
23 Nonexempt Trust?
24 A. Yes.
25 Q. Is the Dugaboy Investment Trust also

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1 GRANT SCOTT - 1/21/2021
2 besides those trusts, to the best of your
3 knowledge?
4 A. No.
5 Q. Is it your understanding based on
6 what we've just talked about that the Get Good
7 Nonexempt Trust and the Dugaboy Investment
8 Trust are the indirect beneficiaries of CLO
9 HoldCo Limited?
10 A. Yes.
11 Q. Can you tell me who the
12 beneficiaries are of the Get Good trust?
13 A. I mean, Jim Dondero.
14 Q. And -- and what is that -- is that
15 based on the trust agreement -- your knowledge
16 of the trust agreement?
17 A. Yes.
18 Q. Do you have an understanding of who
19 the beneficiary is of the Dugaboy Investment
20 Trust?
21 A. I don't know anything about that
22 trust.
23 MR. MORRIS: Okay. All right.
24 Let's take a short break and reconvene at
25 3:30 Eastern Time. We've been going for a

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1 GRANT SCOTT - 1/21/2021
2 while.
3 MR. CLARK: Thank you.
4 MR. MORRIS: Okay. Thank you.
5 (Whereupon, there was a recess in
6 the proceedings from 3:20 p.m. to
7 3:31 p.m.)
8 BY MR. MORRIS:
9 Q. Mr. Scott, earlier I think you
10 testified that you interfaced with the folks at
11 Highland in connection with your duties as the
12 director of CLO HoldCo Limited, right?
13 A. Yes.
14 Q. Are you aware of any written
15 agreement between Highland Capital Management
16 and CLO HoldCo Limited?
17 A. Yes, the various servicer
18 agreements.
19 Q. Okay. Are you aware that
20 Mr. Dondero resigned from his position at
21 Highland Capital Management sometime in
22 October?
23 A. No.
24 Q. Have you communicated with anybody
25 at Highland Capital Management about the

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1 GRANT SCOTT - 1/21/2021
2 Do you recall the subject matter of
3 your discussions with Mr. Throckmorton?
4 MR. CLARK: Objection, form.
5 BY MR. MORRIS:
6 Q. Withdrawn.
7 Do you recall your -- the subject
8 matter of your communications with
9 Mr. Throckmorton?
10 MR. CLARK: Objection, form.
11 BY MR. MORRIS:
12 Q. You can answer.
13 A. I -- I regularly interface with
14 Mr. Throckmorton regarding approvals of
15 expenses, and he's my sort of -- he's my point
16 person for approving wire transfers and things
17 of that nature.
18 Q. How about Mr. Patrick, what -- what
19 area of responsibility does he have with
20 respect to CLO HoldCo Limited?
21 A. He -- he doesn't, to my knowledge.
22 Q. Do you recall the nature of the
23 substance of any communications that you've had
24 with Mr. Patrick since -- you know, the last
25 two or three months?

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1 GRANT SCOTT - 1/21/2021
2 affairs of CLO HoldCo Limited at any time since
3 October?
4 A. Yes.
5 Q. Anybody other than Jim Seery?
6 A. Yes.
7 Q. Okay. Let's start with Mr. Seery.
8 You've spoken with him before, right?
9 A. Yes.
10 Q. Do you have his phone number?
11 A. Yes.
12 Q. How many times have you spoken with
13 Mr. Seery, to the best of your recollection,
14 just generally? It's not a test.
15 A. Three, maybe four times.
16 Q. Okay. Can you identify by name
17 anybody else at Highland that you've spoken
18 with since -- in the last two or three months?
19 A. I spoke to Jim Dondero. I've spoken
20 with Mike Throckmorton. The usual suspects, so
21 to speak. Mark Patrick, Mel- -- Melissa
22 Schroth.
23 Q. Can you recall anybody else?
24 A. No. No. Sorry.
25 Q. Did you -- did you -- withdrawn.

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1 GRANT SCOTT - 1/21/2021
2 A. Yes. Or -- yes.
3 Q. And what -- what are the nature of
4 those conversations or the substance?
5 A. He was -- he was one of the
6 individuals that helped to establish the
7 hierarchy for the -- what I keep referring to
8 as the charitable foundation.
9 Q. And -- and do you recall why you
10 spoke to him in the last -- or -- withdrawn.
11 Do you recall the nature of your
12 communications in the last two or three months
13 with Mr. Patrick?
14 A. I --
15 MR. CLARK: And hold on, Grant. I'm
16 going to caution -- my understanding -- I
17 believe Mr. Patrick's an attorney, and so
18 I'm going to caution you that you shouldn't
19 disclose the substance of -- of those
20 communications based on the attorney-client
21 privilege.
22 MR. MORRIS: Well, I'm -- I -- I am
23 the lawyer for the company so -- I guess
24 there are other people on the phone and I
25 appreciate that, but let's see if we can --

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1 GRANT SCOTT - 1/21/2021
2 I don't mean to be contentious here, so it
3 wouldn't -- I -- I'd be part of the
4 privilege anyway.
5 BY MR. MORRIS:
6 Q. But in any event, can you tell me
7 generally -- I'm just looking for general
8 subject matter of your conversations with
9 Mr. Patrick.
10 A. I asked him how I would go about
11 re- -- resigning my position.
12 Q. And when did that conversation take
13 place?
14 A. Within the last two weeks.
15 Q. Have you made a decision to resign?
16 A. No.
17 Q. I think you mentioned Melissa
18 Schroth. Do I have that right?
19 A. Yes.
20 Q. Can you describe generally the
21 communications you had with Ms. Schroth in the
22 last few months.
23 A. They -- she has e-mailed me certain
24 documents that I needed to sign. I had a
25 conversation with her about -- about some

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1 GRANT SCOTT - 1/21/2021
2 A. No.
3 Q. In your discussions with Mr. Seery,
4 did you ever tell him that you thought Highland
5 Capital Management was in default under any
6 agreement in relation to the CLOs?
7 A. No.
8 Q. I want to focus in particular on the
9 shared services agreement. In -- in your
10 discussions with Mr. Seery, did you ever tell
11 him that you believed that Highland Capital
12 Management was in default or in breach of its
13 shared services agreement with CLO HoldCo
14 Limited?
15 A. No.
16 Q. In your communications with
17 Mr. Seery, did you ever indicate any concern on
18 the part of CLO HoldCo Limited with respect to
19 Highland Capital's Man- -- Highland Capital
20 Management's performance under the shared
21 services agreement?
22 A. No.
23 Q. As you sit here today, do you have
24 any reason to believe that Highland Capital
25 Management has done anything wrong in

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1 GRANT SCOTT - 1/21/2021
2 home -- home improvements, home construction
3 with respect to Jim Dondero's home in Colorado,
4 and that's -- I -- I think that's -- that's it.
5 Q. Okay. Do you recall communicating
6 with anybody at Highland in the last three
7 months other than Mr. Dondero,
8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?
9 A. I -- I spoke with Jim Seery this
10 week.
11 Q. Anybody else?
12 A. I don't -- I don't know.
13 Q. Okay.
14 A. I don't think so.
15 Q. In your communications with
16 Mr. Seery, did you two ever discuss his reasons
17 for making any trade on behalf of any CLO?
18 A. No.
19 Q. In your discussions with Mr. Seery,
20 did you ever tell him that you believed that
21 Highland Capital Management had breached any
22 agreement in relation to any CLO?
23 A. Have I had that discussion with Jim
24 Seery?
25 Q. Yes.

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1 GRANT SCOTT - 1/21/2021
2 connection with its performance as the
3 portfolio manager of the CLOs in which CLO
4 HoldCo Limited has invested?
5 MR. CLARK: Object to form.
6 A. In terms of the -- are you saying --
7 please say that again. I'm sorry.
8 Q. That's okay. I ask long questions
9 sometimes so forgive me, but I'm trying to
10 get -- I'm trying to be precise so that's why
11 it's difficult sometimes. But let me try
12 again.
13 Does CLO HoldCo Limited contend that
14 Highland Capital Management has done anything
15 wrong in the performance of its duties as
16 portfolio manager of the CLOs in which CLO
17 HoldCo has invested?
18 MR. CLARK: Objection, form.
19 A. Yes. It's -- it's outlined in our
20 objections to -- to the plan.
21 Q. Okay. Any -- are you aware of
22 anything that's not contained within CLO HoldCo
23 Limited's objection to the plan?
24 MR. CLARK: Objection, form.
25 A. I don't know if this is responsive

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1 GRANT SCOTT - 1/21/2021
2 to your quest -- request, but two -- two
3 issues, I believe, also pose an in- -- a
4 problem for CLO HoldCo. One is we are paying
5 for services. I think I referred to the
6 services as being soup to nuts, but we are not
7 getting the full services. We haven't been for
8 some time. So we're likely overpaying. There
9 was a Highland Select Equity issue, 11-month
10 payment that was delayed which I was unaware of
11 was due. Normally, I would have interfaced
12 with someone at Highland about that, but my
13 attorney -- but my -- my attorney had to make a
14 request for payment, and that payment was
15 ultimately made. I -- other than that, I -- I
16 don't -- I don't know. I don't believe so.
17 Q. I want to distinguish between the
18 shared services agreement between Highland
19 Capital Management and CLO HoldCo Limited on
20 the one hand and on the other hand the
21 management agreements pursuant to which
22 Highland Capital Management manages certain
23 CLOs that CLO HoldCo invests in.
24 You understand the distinction that
25 I'm making?

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1 GRANT SCOTT - 1/21/2021
2 Q. I'll try again.
3 A. I'm just -- I'm sorry. I was
4 distracted and -- and I -- I'm sorry for asking
5 you to repeat it again. Please --
6 Q. Okay.
7 A. Please re- --
8 Q. Are you aware that CLO HoldCo
9 Limited has made investments in certain CLOs?
10 A. Oh, yes, certainly.
11 Q. And are you aware that those CLOs
12 are managed by Highland Capital Management?
13 A. Yes. As the -- as the servicer,
14 yes.
15 Q. Okay. Have you ever seen any of the
16 agreements pursuant to which Highland Capital
17 Management acts as a servicer?
18 A. I've seen a few, yes.
19 Q. Does CLO HoldCo Limited contend that
20 it is a party to any agreement between Highland
21 Capital Management and the CLOs?
22 MR. CLARK: Object to form. And I
23 just want to note for the record that
24 Mr. Scott is here testifying in his
25 individual capacity, I believe, not as a

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1 GRANT SCOTT - 1/21/2021
2 A. Now I do. I'm sorry. I didn't
3 appreciate that.
4 Q. Okay. So let's just take each of
5 those pieces one at a time. You mentioned your
6 concern about services. That's a concern that
7 arises under the shared services agreement,
8 right?
9 A. Yes.
10 Q. And you mentioned something about a
11 delayed payment having to do with Highland
12 Select. Do I have that generally right?
13 A. Correct.
14 Q. And is that a concern that you have
15 that arises under the shared services
16 agreement?
17 A. It's not the agreement with respect
18 to the CLOs as I understand it.
19 Q. Okay. So then let's turn to that
20 second bucket. You were aware -- you are
21 aware, are you not, that Highland Capital
22 Management has certain agreements with CLOs
23 pursuant to which it manages the assets that
24 are owned by the CLOs?
25 A. I'm so sorry. Could you please --

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1 GRANT SCOTT - 1/21/2021
2 corporate representative.
3 MR. MORRIS: Fair enough. But he is
4 the only representative so...
5 MR. CLARK: Fair enough. I just
6 want that made -- stated for the record,
7 but I also object as to form.
8 MR. MORRIS: Got it.
9 A. It's a third-party beneficiary under
10 the agreements.
11 Q. And is that because of something you
12 read in the document, or is that just your
13 belief and understanding?
14 A. My belief and understanding.
15 Q. And is that belief and understanding
16 based on anything other than conversations with
17 counsel?
18 A. In -- in -- recently it has, but I
19 don't recall from previous interactions over
20 the years how we discussed that or how I came
21 to -- to understand that.
22 Q. Does HCLO [sic] HoldCo -- did -- in
23 your capacity as the sole director of HCLO
24 HoldCo Limited, are you aware of anything that
25 Highland Capital Management has done wrong in

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1 GRANT SCOTT - 1/21/2021
2 connection with the services provided under the
3 CLO management agreements?
4 MR. CLARK: Objection, form.
5 A. I -- I don't -- I don't -- I
6 don't -- your answer's no.
7 Q. In your capacity as the director of
8 CLO HoldCo Limited, are you aware of any
9 default or breach under the CLO management
10 agreements that -- that Highland Capital
11 Management has caused?
12 MR. CLARK: Objection, form.
13 A. We have raised the issue about
14 ongoing sales in various -- I'm not sure
15 whether they represent a technical breach,
16 though.
17 Q. Okay. Are you aware of any
18 technical breach?
19 MR. CLARK: Objection, form.
20 A. No.
21 Q. I'm sorry. You said, no, sir?
22 A. My answer's no.
23 Q. Thank you. Do you know who made the
24 decision to cause the CLO HoldCo Limited entity
25 to invest in the CLOs that are managed by

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1 GRANT SCOTT - 1/21/2021
2 making an investment in a CLO that wasn't
3 managed by Highland?
4 A. No.
5 Q. Is there any particular reason why
6 you haven't given that any consideration?
7 A. That hasn't been my role. That's
8 not my expertise. That's been something
9 Highland has done and, quite frankly, over the
10 years brilliantly so, no.
11 Q. You're aware that HCM, L.P., has
12 filed for bankruptcy, right?
13 A. Yes.
14 Q. When did you learn that Highland had
15 filed for bankruptcy?
16 A. After the fact sometime in late --
17 late 2019.
18 Q. Since the bankruptcy filing, have
19 you made any attempt to sell CLO HoldCo
20 Limited's position in any of the CLOs that are
21 managed by Highland?
22 A. No.
23 Q. So notwithstanding the bankruptcy
24 filing, you as the director haven't made any
25 attempt to transfer out of the CLOs that are

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1 GRANT SCOTT - 1/21/2021
2 Highland Capital?
3 A. The select -- ultimately, I had to.
4 Q. I thought you testified earlier that
5 you didn't make decisions as to investment. Do
6 I have that wrong?
7 A. The selection.
8 Q. Okay.
9 A. I -- I'm --
10 Q. So -- so explain to me --
11 A. I have to approve -- I have to
12 approve the selection. I'm sorry. But the
13 people making -- I was putting that in the camp
14 of the people that make the selection.
15 Q. Okay. Do you know if -- do you know
16 if there are CLOs in the world that exist that
17 aren't managed by Highland Capital Management?
18 MR. CLARK: Objection, form.
19 A. Are there CLOs in the -- in the
20 world that are not --
21 Q. Yes.
22 A. Yes. It's -- it's a well-known --
23 it's a well-known --
24 Q. In your capacity as the director of
25 CLO HoldCo Limited, did you ever consider

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1 GRANT SCOTT - 1/21/2021
2 managed by Highland, correct?
3 A. Correct.
4 Q. Did you ever give any thought to
5 exiting the CLO vehicles that were managed by
6 Highland in light of its bankruptcy filing?
7 A. No.
8 Q. Have you ever discussed with
9 Mr. Seery anything having to do with the
10 management -- withdrawn.
11 Have you ever discussed with
12 Mr. Seery any aspect of the debtor's management
13 of the CLOs in which CLO HoldCo Limited is
14 invested?
15 A. No.
16 Q. You mentioned earlier a request to
17 stop trading. Do I have that right?
18 A. Yes.
19 Q. Okay. And are you aware that a
20 letter was written purportedly on behalf of CLO
21 HoldCo Limited in which a request to stop
22 trading was made?
23 A. As a cos- -- yeah. Yes.
24 Q. Okay. Have you ever seen that
25 letter before?

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1 GRANT SCOTT - 1/21/2021

2 Q. How did you form your opinion that

3 the debtor doesn't have the expertise to

4 execute trades on behalf of the CLOs today?

5 What's the basis for that belief?

6 A. I -- as I understood it, the -- the

7 people historically making that decision were

8 no longer making that decision.

9 Q. Who besides Mr. Dondero --

10 withdrawn.

11 Who are you referring to?

12 A. Well, Mr. Dondero is one. I don't

13 know the names, but I -- I understood it to

14 mean that the group previously responsible, for

15 exam- -- for example, Hunter Covitz, including

16 Hun- -- him, were no longer involved in the

17 decision-making process, but...

18 Q. How did you -- how -- how -- who

19 gave you the information that led you to

20 conclude that Hunter Covitz was no longer

21 involved in the decision-making process?

22 A. Specifically him and that name being

23 mentioned, I -- I -- I wasn't informed of his

24 speci- -- him -- him being removed. I was

25 under the impression that the team that had

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1 GRANT SCOTT - 1/21/2021

2 updated my contacts to -- to add his name so

3 now I have his name. And during that

4 conversation he informed me that he did have

5 that expertise --

6 Q. And --

7 A. -- without me making any inquiry.

8 He volunteered that.

9 Q. But you hadn't made any inquiry

10 prior to the time that you authorized the

11 sending of this letter; is that fair?

12 A. That's correct.

13 Q. Do you know whether Mr. Seery, in

14 fact, engaged in transactions on behalf of the

15 debtor since he was appointed back in January?

16 A. I do not.

17 Q. Did you ask that question prior to

18 the time you authorized the sending of this

19 letter?

20 A. I did not.

21 Q. Can you identify a single

22 transaction that Jim Seery has ever made that

23 you disagree with?

24 A. No.

25 Q. Can you identify any transaction

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1 GRANT SCOTT - 1/21/2021

2 previously been doing that was no longer doing

3 it.

4 Q. And what gave you that impression?

5 A. Was communications I had with my

6 attorney.

7 Q. Okay. Is there any source for your

8 information that led you to conclude that the

9 team was no longer there that was able to

10 engage in the trades on behalf of the CLOs

11 other than your attorneys?

12 A. Well, this -- this letter -- I -- I

13 think the answer is no.

14 Q. Thank you. Do you know if Jim -- do

15 you have an opinion or a view as to whether Jim

16 Seery is qualified to make trades?

17 A. This --

18 MR. CLARK: Objection, form.

19 A. I don't know -- I spoke to Jim Seery

20 earlier this week. You -- you asked me whether

21 I had his number. I said I did. That's only

22 because he called me. My phone rang with his

23 number. It was a number I did not recognize,

24 it was not in my contacts, but he left me a

25 voice mail so I called him back. Then I

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1 GRANT SCOTT - 1/21/2021

2 that the debtor made on behalf of any of the

3 CLOs since the time that you understand

4 Mr. Dondero left Highland that you disagree

5 with?

6 A. No.

7 Q. Did you have any discussion with any

8 representative of any of the entities listed on

9 this document where they told you they believe

10 Jim Seery didn't have the expertise to engage

11 in transactions on behalf of the whole -- of

12 the CLOs?

13 A. You -- your question -- I'm -- I'm

14 sorry. I'm trying to be -- I'm trying to be a

15 hundred perc- -- I'm trying to be accurate

16 here.

17 Q. Let me interrupt you and just say,

18 I'm very grateful for your testimony. I know

19 this is not easy, and I do believe that you're

20 earnestly and honestly trying to answer the

21 questions the best you can. So no apologies

22 necessary anymore. If you need me to repeat

23 the question or rephrase it, just say that,

24 okay?

25 A. Please -- yes.

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1 GRANT SCOTT - 1/21/2021

2 Q. Okay.

3 A. Please -- please repeat that.

4 Q. Did you ever communicate with any

5 employee, officer, director, representative of

6 any of the entities that are on this page

7 concerning the debtor's ability to service the

8 CLOs?

9 A. I believe so.

10 Q. And can you identify the person or

11 persons?

12 A. I think it's Jim Dondero.

13 Q. Anybody else other than Mr. Dondero?

14 A. No.

15 Q. When did you have that conversation

16 or those conversations with Mr. Dondero?

17 A. This letter is dated the 22nd --

18 Q. Correct.

19 A. -- right?

20 Q. Yes.

21 A. I believe that's the Tuesday before

22 Christmas, and this would have been on the

23 21st, the Monday.

24 Q. What do you recall about your

25 conversation on the 21st regarding the

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1 GRANT SCOTT - 1/21/2021

2 there.

3 BY MR. MORRIS:

4 Q. Do you see the request that's in the

5 last sentence?

6 A. Yes.

7 Q. Is that the same thing that

8 Mr. Dondero told you should happen, that --

9 that there should be no further CLO

10 transactions at least until the issues raised

11 and addressed by the debtor's plan were

12 resolved substantively?

13 A. Yes.

14 Q. Is there anything that he said

15 that's inconsistent with the request that's

16 made here?

17 MR. CLARK: Objection, form.

18 A. This -- and can you -- can you show

19 me earlier parts?

20 Q. Of course. You know what, I'll

21 withdraw the question.

22 And let me see if I can do it this

23 way: In your discussion with Mr. Dondero, did

24 he indicate that he had seen a draft of this

25 letter?

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1 GRANT SCOTT - 1/21/2021

2 substance of this particular letter?

3 A. Jim Dondero described why he

4 believed sales being made on an ongoing basis

5 after a request was made to stop was im- --

6 improper.

7 Q. Do you -- do you rely on what

8 Mr. Dondero said to you during that phone call

9 on December 21st in -- in deciding to join in

10 this particular letter?

11 A. No.

12 Q. Did you only then rely on the

13 information you obtained from counsel?

14 A. Yes. I -- I -- I -- I considered

15 this letter to be nearly the most gentle

16 request imaginable amongst lawyers to maintain

17 the status quo.

18 Q. And the request that's made in this

19 letter is perfectly consistent with what

20 Mr. Dondero told you on the 21st of December,

21 correct?

22 A. I don't -- no.

23 Q. How --

24 MR. MORRIS: Can we go to the end of

25 this letter, please. All right. Right

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1 GRANT SCOTT - 1/21/2021

2 A. No. And I didn't -- I didn't have a

3 discussion with him. I -- I merely listened to

4 him. There was no -- I -- I had no input to

5 the conversation.

6 Q. Okay. I -- I did -- I didn't --

7 I -- I appreciate that. So he called you; is

8 that right?

9 A. We -- we called in.

10 Q. Oh, was it --

11 A. I --

12 Q. Was it --

13 A. I don't know --

14 Q. Was it --

15 A. I don't know the sequence of the

16 calls. I'm sorry.

17 Q. Was there anybody on the call other

18 than you and Mr. Dondero, the call that you're

19 describing on December 21st?

20 A. Yes, my attorney and an attorney --

21 I believe the attorney that signed this letter.

22 Q. Okay. And I just want to focus on

23 what Mr. Dondero said. Did he -- did he say

24 during the call that Highland should not be

25 engaging in any further CLO transactions?

EXHIBIT 17

1 Grant Scott

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

5 In Re: Case No.
6 HIGHLAND CAPITAL MANAGEMENT L.P., 19-34054
7 Debtor, Chapter 11

8 _____
9 HIGHLAND CAPITAL MANAGEMENT, Adversary No.
10 L.P., 21-03003-sgi

11 Plaintiff,

12 Vs.

13 JAMES D. DONDERO,
14 Defendant.

15
16 Virtual Zoom Deposition of Grant Scott

17 Tuesday, June 1, 2021

18 At 2:00 p.m.

19
20
21
22
23 Reported by LeShaunda Cass-Byrd, CSR, RPR

24 TSG Job No. 194692

25

Page 6

1 Grant Scott
2 GRANT SCOTT,
3 having been first duly sworn, was examined and
4 testified as follows:
5 EXAMINATION
6 BY MR. MORRIS:
7 Q. Good afternoon, Mr. Scott.
8 A. Good afternoon, John.
9 Q. Okay. As you recall, my name is John
10 Morris. I'm an attorney with Pachulski Stang Ziehl &
11 Jones. We represent Highland Capital Management LP, a
12 debtor in a bankruptcy case that is pending in the
13 Northern District of Texas.
14 Do you recall any of that?
15 A. Yes.
16 Q. Okay. And we are here today for your
17 deposition, and I appreciate your compliance with the
18 subpoena. Just a few ground rules to remind you, I'm
19 going to ask you a series of questions, and it's
20 important that you allow me to finish my question
21 before you begin your answer; is that fair?
22 A. Yes.
23 Q. And I will attempt to give you the same
24 courtesy, but if for some reason I step on your words,
25 just let me know that because I don't mean to cut you

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1 Grant Scott
2 A. Yes.
3 Q. So today's deposition concerns a particular
4 motion that the debtor filed recently where the debtor
5 is seeking to hold certain individuals and entities in
6 contempt of court. Have you seen or reviewed the
7 debtor's motion that was filed?
8 A. I have seen the e-mails which I kept, but I
9 have not read them.
10 Q. Okay. I want to just begin with some
11 background.
12 MR. MORRIS: And then I would ask Ms.
13 Cauty to put up what we will mark as
14 Exhibit -- you know, let's pick up the
15 numbering from this morning, La Asia. Did
16 we use 7 this morning?
17 Actually, this is going to be Exhibit
18 1. It's the same document that we had this
19 morning.
20 MS. CAUTY: Yes.
21 MR. MORRIS: We will call it Exhibit
22 1, and it's an organizational chart. If we
23 can just put that on the screen.
24 (Deposition Exhibit 1 was marked for
25 identification.)

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1 Grant Scott
2 off. Okay?
3 A. Okay.
4 Q. If there's anything that I ask you that you
5 do not understand, will you let me know?
6 A. Yes, sir.
7 Q. If you need a break at any time, will you
8 let me know?
9 A. Yes.
10 Q. Okay. Because this deposition is being
11 conducted remotely, we are going to be putting
12 documents on the screen. I'm not attempting to trick
13 you in any way. If you believe there is any of
14 portion of a document that you need to see, either to
15 put something in context or to refresh your
16 recollection, I encourage to let me know that, and I
17 will be happy to accommodate you. Okay?
18 A. Okay.
19 Q. Okay. Have you seen the subpoena that the
20 debtors served on your lawyer in this case?
21 A. The one relating to my deposition?
22 Q. Correct.
23 A. Yes.
24 Q. And are you here today pursuant to that
25 subpoena?

Page 9

1 Grant Scott
2 BY MR. MORRIS:
3 Q. Okay. Have you seen this before,
4 Mr. Scott?
5 A. Yes.
6 Q. Do you know what it is?
7 A. It's the -- yes. The DAF CLO HoldCo
8 structure chart.
9 Q. And this is structure chart that you
10 produced in response to the subpoena; is that right?
11 A. Correct.
12 Q. You are familiar with the gentleman named
13 Mark Patrick; is that right?
14 A. Yes.
15 Q. Is it your understanding that Mr. Patrick
16 was one of the individuals that helped establish the
17 hierarchy that is depicted on Exhibit 1?
18 A. Yes.
19 Q. And what is the basis for that
20 understanding?
21 A. That goes back many years to the
22 origination of my role.
23 Q. Okay. And do you recall that you assumed
24 your role in or around 2012?
25 A. Yes.

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1 Grant Scott

2 Q. Okay. Did you know Mr. Patrick prior to

3 the time that you assumed your role?

4 A. I did not.

5 Q. Okay. Do you know -- withdrawn.

6 Do you have any knowledge as to whether

7 anybody other than Mr. Patrick helped establish the

8 hierarchy that is depicted on Exhibit 1?

9 A. There was a law firm name that came to

10 mind, and there was an expert, I gather, a lawyer that

11 was familiar with charitable entities that I believe

12 was involved.

13 Q. Can you identify any -- withdrawn.

14 At the time that you understood Mr. Patrick

15 had helped to create this hierarchy, did you

16 understand who employed Mr. Patrick?

17 A. Yes. I believe so.

18 Q. Who did you believe Mr. Patrick worked for

19 at that time?

20 A. Highland Capital Management.

21 Q. Can you identify any other person at

22 Highland Capital Management who was involved in the

23 creation of this hierarchy?

24 A. No.

25 Q. Okay. Now for looking at the hierarchy

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1 Grant Scott

2 members of some of those organizations.

3 Q. And would they be the ones that are

4 labelled as third parties or as supporting

5 organizations?

6 A. The -- the third party organizations.

7 And -- and possibly the supporting organizations.

8 Q. Do you know what the difference is between

9 a third party and a supporting organization as those

10 phrases are used on Exhibit 1?

11 A. I don't recall anymore what the delineation

12 is between those two.

13 Q. Okay. Do you hold any position today with

14 any of the entities that are depicted on Exhibit 1?

15 A. I do not -- I do not believe so. Well, I

16 believe technically, I'm still -- I may still be a

17 director of CLO HoldCo, but I -- I'm not certain of

18 the status as of today.

19 Q. Is there a particular reason why you may

20 remain today as a director of CLO HoldCo Limited?

21 A. I don't know if the -- I don't know if the

22 transfer after my resignation has been completely

23 finalized, and I haven't -- yeah. I don't know how

24 close it is to being completely finalized. I'm not --

25 I'm not sure.

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1 Grant Scott

2 here, for the period for approximately 10 years prior

3 to March 24th, 2021, you served as the managing member

4 of the charitable DAF GP, LLC, correct?

5 A. Correct.

6 Q. And for approximately 10 years prior to

7 March 30 -- 20 -- withdrawn.

8 For approximately 10 years prior to March

9 24th, 2021, you were the sole director of charitable

10 DAF HoldCo, LTD, correct?

11 A. Correct.

12 Q. And for approximately 10 years prior to

13 March 24th, 2021, you were the sole director of

14 charitable DAF Fund LP, correct?

15 A. I believe that is correct.

16 Q. And for approximately 10 years prior to

17 March 24, 2021, you served as the sole director of CLO

18 HoldCo Limited, correct?

19 A. Yes. That is correct.

20 Q. Did you serve in any capacity for any other

21 entity that is depicted on this sheet at any time

22 prior to March 24th, 2021?

23 A. If you go -- if you look at the top of that

24 chart where it's directed at the charitable giving

25 components, I had some involvement with various

Page 13

1 Grant Scott

2 Q. But your intent is to resign as the

3 director of CLO HoldCo Limited; is that right?

4 A. Yes.

5 Q. And the only reason that that hasn't

6 happened yet, is it fair to say, is for administrative

7 reasons?

8 MR. BRIDGES: Objection. Assumes

9 facts not in evidence.

10 BY MR. MORRIS:

11 Q. You can answer.

12 A. I --

13 Q. Withdrawn. I will ask a different

14 question.

15 Do you know why your intended resignation

16 from CLO HoldCo Limited has not yet become effective?

17 MR. BRIDGES: The same objection.

18 Facts not in evidence.

19 BY MR. MORRIS:

20 Q. You can go ahead.

21 MR. KANE: I object to form, also.

22 Grant, go ahead.

23 THE WITNESS: I do not.

24 BY MR. MORRIS:

25 Q. Okay. Do you hold any positions of any

Page 14

1 Grant Scott
2 kind today with any entity that you believe is either
3 directly or indirectly owned or controlled by
4 Mr. Dondero?
5 A. I don't believe so.
6 Q. Do you have -- I'm just going to explore
7 that for a little bit.
8 Do you know have -- do you know whether you
9 continue to HoldCo any position with any NexBank
10 entity?
11 A. I'm not in -- no, I don't have any
12 involvement with NexBank.
13 Q. Okay.
14 MR. KANE: Hey, John, can you shed a
15 little light on why that is relevant?
16 MR. MORRIS: I'm just trying to find
17 connections between Mr. Scott and
18 Mr. Dondero because I -- I just -- I
19 think -- I think the purpose of the
20 deposition is to try to -- to try to deduce
21 facts that are related to whether or not
22 Mr. Dondero is going to be a responsible
23 party under the contempt motion. So I'm
24 just looking for --
25 MR. KANE: I understand. I'm just

Page 16

1 Grant Scott
2 ahead, Grant.
3 (Reporter clarification.)
4 THE WITNESS: I believe so.
5 BY MR. MORRIS:
6 Q. And is it your understanding that Mr. Mark
7 Patrick replaced you in those capacities on or about
8 March 24th, 2021?
9 A. It's my understanding that on March 24th,
10 the management shares that I had previously -- that
11 had been in my name were transferred to him. I am not
12 sure how that impacts the current status in the
13 various other entities.
14 Q. Okay. During the time that you served as
15 the managing member of the charitable DAF GP LLC, that
16 entity had no officers or employees, correct?
17 A. I believe that is correct.
18 MR. KANE: Object to the form.
19 BY MR. MORRIS:
20 Q. And you served as the sole director of that
21 entity during the time that you served as the
22 director, correct?
23 A. I believe that is correct.
24 Q. And during the period of time that you
25 served as a director of charitable DAF HoldCo Limited,

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1 Grant Scott
2 trying to figure out Grant's -- you know,
3 whether he has a --
4 MR. MORRIS: That is all right. I'm
5 moving on anyway.
6 MR. KANE: Appreciate it.
7 BY MR. MORRIS:
8 Q. Now looking at the chart, Mr. Scott, I
9 believe you testified that you were either the
10 managing member or a director of each of the DAF
11 entities and CLO HoldCo Limited.
12 Do I have that right?
13 A. I believe that is correct.
14 Q. All right. Is it your understanding that
15 Mr. --
16 A. Excuse me. I am sorry. Currently or was?
17 Q. Was. Up until March 24th.
18 A. Okay. Correct.
19 Q. All right. Let me ask the question again
20 so it's clean.
21 Did you serve as either the managing member
22 or the director for each of the charitable DAF
23 entities and the CLO HoldCo Limited entity for
24 approximately 10 years prior to March 24th, 2021?
25 MR. KANE: Objection. Form. Go

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1 Grant Scott
2 you were the only person to serve in that capacity; is
3 that correct?
4 A. I believe so.
5 Q. And during the period that you served as
6 director of charitable DAF HoldCo Limited, that entity
7 had no officers or employees, correct?
8 A. I believe that is correct.
9 Q. During the time that you served as a
10 director of charitable DAF Fund LP, you were the sole
11 director of that entity, correct?
12 A. Correct.
13 Q. And during the time that you served as the
14 sole director of charitable DAF Fund LP, that entity
15 had no officers or employees, correct?
16 A. I believe that is correct.
17 Q. You served as the sole director of CLO
18 HoldCo Limited; is that right?
19 A. Yes. That is correct.
20 Q. And during the period that you served as
21 the sole director of CLO HoldCo Limited, that entity
22 had no officers or employees, correct?
23 A. That is correct.
24 Q. Is that why the DAF had certain agreements
25 with Highland Capital Management LP pursuant to which

Page 18

1 Grant Scott

2 HCMLP provided back office and advisory and investment

3 services?

4 MR. KANE: Objection. Form.

5 THE WITNESS: I think that is

6 correct.

7 BY MR. MORRIS:

8 Q. Do you recall that that DAF had agreements

9 with Highland Capital Management that were amended and

10 restated in 2014?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I understand there were

13 various agreements over the years that had

14 been restated. I'm not entirely sure

15 anymore of the dates that we received

16 that --

17 MR. MORRIS: Okay. Let's mark --

18 THE WITNESS: I'm sorry?

19 MR. MORRIS: Let's mark as Exhibit

20 8 --

21 MR. BRIDGES: Objection. Objection.

22 Please let the witness answer his question.

23 MR. MORRIS: Let's mark this --

24 MR. BRIDGES: No. Please allow the

25 witness to continue his answer.

Page 20

1 Grant Scott

2 BY MR. MORRIS:

3 Q. Okay. Do you see that Mrs. Kim sends you

4 an e-mail on August 26th, 2014?

5 A. Yes. I see that.

6 Q. And do you see that she had attached for

7 your review and execution, drafts of an amended and

8 restated service agreement and amended and restated

9 advisory agreement and GP resolutions?

10 A. I do see that.

11 Q. Okay. Do you have any recollection as to

12 whose idea it was to amend and restate those

13 agreements at that moment in time?

14 A. I do not.

15 Q. Do you have any recollection as to why

16 those agreements were amended and restated at that

17 time?

18 A. No, I do not.

19 Q. Okay. Let's just scroll down and just show

20 Mr. Scott the agreements. I'm not going to ask

21 anything substantive about it. But do you see here is

22 the -- if we can stop right there -- the Amended and

23 Restated Service Agreement that is dated from the

24 first day of July, 2014, and it's between the DAF

25 Fund -- the charitable DAF Fund LP, the charitable DAF

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. Grant, do you have anything else to add?

4 A. You had asked me -- you asked about a

5 specific date, I think, 2014. I just -- I don't know

6 what the dates are or were.

7 Q. That is what I heard you say. Is there

8 anything else that you have to add?

9 A. No, I don't -- I don't think so.

10 Q. I didn't think so either.

11 MR. MORRIS: Let's go to Exhibit 8,

12 please, the next document.

13 (Deposition Exhibit 8 was marked for

14 identification.)

15 MR. MORRIS: Okay. If we could just

16 scroll down a little bit. Just to the

17 e-mail.

18 BY MR. MORRIS:

19 Q. All right. Were you familiar with Caitlin

20 Nelson and Helen Kim and Thomas Surgent and David Klos

21 in and around August 2004?

22 A. I believe they were all Highland employees.

23 Q. Okay.

24 MR. MORRIS: Can we just scroll up to

25 the next e-mail, please?

Page 21

1 Grant Scott

2 GP LLC, as well as Highland Capital Management LP.

3 Do you see that?

4 A. I do see that.

5 Q. Do you recall that the entity that is

6 commonly referred to as the DAF had a service

7 agreement with Highland Capital Management LP?

8 A. I believe that is correct. Yes.

9 Q. Do you recall whether -- whether the

10 service agreement was ever the subject of any

11 negotiations?

12 A. I don't know.

13 Q. Did you participate in any negotiations

14 concerning the service agreement that was entered --

15 entered in between the entity known as the DAF and

16 Highland Capital Management LP?

17 MR. KANE: Objection to form.

18 John, will you clarify the time

19 period?

20 BY MR. MORRIS:

21 Q. Right here. 2014.

22 A. Sir, I don't recall anything about this

23 with respect to 2014.

24 Q. Do you know if -- if the agreement was ever

25 amended at any time after 2014? And when I use the

Page 22

1 Grant Scott

2 phrase "agreement," I'm specifically referring to the

3 Amended and Restated Service Agreement that we are

4 looking at.

5 A. I believe -- I think there was a further

6 amended and restated agreement.

7 Q. Okay. Did you participate in any

8 negotiations concerning that further amended and

9 restated agreement?

10 A. I don't remember.

11 Q. Do you remember offering any comments

12 concerning any subsequent amendment or restatement?

13 A. I don't -- I don't remember.

14 Q. Did you ever hire outside counsel to assist

15 you in the negotiation of any service agreements with

16 Highland Capital Management LP?

17 A. I did not.

18 Q. Do you -- do you recall who prepared each

19 of the service agreements to which the DAF was a

20 party?

21 A. I don't remember.

22 Q. To the best of your recollection, would it

23 have been inhouse counsel at Highland Capital

24 Management?

25 MR. KANE: Objection. Form.

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1 Grant Scott

2 A. I believe so.

3 Q. And the agreements that you signed on

4 behalf of that entity, were any of them -- were there

5 multiple drafts of any such agreement?

6 A. There were frequently multiple drafts or

7 agreements. But I just don't remember them.

8 Q. Do you remember whether you personally ever

9 provided any comments to any particular draft?

10 A. I do not.

11 Q. Let me ask you this: Are you familiar with

12 the phrase "arm's length negotiations"?

13 A. Yes.

14 Q. And can you tell me what your understanding

15 is of an arm's length negotiation?

16 A. Well, it would depend on the nature of the

17 parties. For example, a -- two strangers would

18 have -- arm's length would differ from the nature of

19 an agreement between parties maybe having fiduciary or

20 related obligations.

21 Q. Let me ask you this --

22 A. I don't know what the black -- I don't know

23 what the blackball definition is to that term.

24 Q. Would you agree that arm's length

25 negotiations take place between two parties that are

Page 23

1 Grant Scott

2 THE WITNESS: I don't -- I don't

3 know.

4 BY MR. MORRIS:

5 Q. Can you recall the name of any law firm

6 that was involved in the drafting or the negotiation

7 of any service agreement between the entity known as

8 the DAF and Highland Capital Management LP?

9 MR. KANE: Objection. Form.

10 THE WITNESS: I don't remember any.

11 BY MR. MORRIS:

12 Q. Can you recall during your tenure as the

13 managing member of the DAF GP LLC, whether there was

14 any particular term or provision in any service

15 agreement that was the subject of negotiation or even

16 discussion?

17 A. I don't remember those -- any of those

18 discussions.

19 Q. Do you know if they took place or you just

20 can't remember them?

21 A. I just can't remember them.

22 Q. Do you recall ever seeing multiple drafts

23 of any service agreement that you -- withdrawn.

24 Did you personally sign service agreements

25 on behalf of the entity known as the DAF?

Page 25

1 Grant Scott

2 acting out of their own self interest?

3 MR. KANE: Objection.

4 MR. BRIDGES: Objection to form and

5 foundation.

6 BY MR. MORRIS:

7 Q. Withdrawn. Withdrawn.

8 MR. BRIDGES: Calls for a legal

9 opinion.

10 BY MR. MORRIS:

11 Q. Mr. Scott, do you believe that the service

12 agreements between the entity known as the DAF and

13 the -- and Highland Capital Management LP were arm's

14 length agreements?

15 MR. BRIDGES: Objection. Again, lack

16 of foundation, calls for a legal opinion.

17 MR. MORRIS: Okay. I'm not asking

18 for a legal opinion. I'm asking for

19 Mr. Scott's view of it, so I will try one

20 more time.

21 BY MR. MORRIS:

22 Q. Mr. Scott, do you believe that the service

23 agreements between the DAF and HCMLP were the subject

24 and result of arm's length negotiations?

25 MR. BRIDGES: Objection. Foundation,

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1 Grant Scott

2 A. Why did I send it at the end of January?

3 Q. What caused you to send this e-mail at that

4 moment in time?

5 A. Well, I mean, there are a couple of

6 reasons. It was -- it was necessary that I do it, and

7 the time seemed right in view of the events in

8 January. It was like a good transition point from my

9 perspective.

10 Q. And why was it necessary at that time?

11 A. Well, there was --

12 MR. BRIDGES: Objection. Assumes

13 facts not in evidence.

14 BY MR. MORRIS:

15 Q. You can answer.

16 A. I previously testified during this

17 deposition that throughout 2020, the desire -- or,

18 rather, the appropriateness of my wanting to resign

19 was expanding, and based on what had happened in

20 January and December as well, but mostly January, I

21 basically just did a critical mass on whether I could

22 sustain my role, given my commitments to my existing

23 firm and given my discussions with the managing

24 members of my existing firm.

25 And it -- there was just no way I could

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1 Grant Scott

2 John Kane.

3 THE WITNESS: Yes. I didn't know who

4 best to inform my decision.

5 BY MR. MORRIS:

6 Q. And why did you think that Mr. Dondero

7 would know?

8 MR. BRIDGES: Objection. Asked and

9 answered.

10 THE WITNESS: He knows a lot more

11 about the workings of -- I mean, it was --

12 CLO HoldCo and the charitable admission was

13 something that he worked to develop with

14 others 10 years ago, and he was committed

15 to the charity and he knew all of the

16 players and I just -- I guess I just

17 assumed he would know where to direct it.

18 BY MR. MORRIS:

19 Q. Did you ever ask?

20 A. He knew how to effectuate -- he knew how to

21 effectuate -- or I thought he knew how to effectuate

22 my resignation by directing it to the appropriate

23 personnel.

24 Q. Did you ever ask him who it should be

25 directed to?

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1 Grant Scott

2 continue with the time commitment required. I had

3 made various promises and representations to my firm

4 throughout 2020 that the bankruptcy would be handled

5 relatively efficiently and wouldn't require a great

6 deal of time commitment. And then I guess the straw

7 that broke the camel's back was the second lawsuit,

8 meaning me personally, and it just -- from a personal

9 standpoint, the most significant factor was just my --

10 my being overwhelmed, trying to sustain my career and

11 engage in what seem like the 2021 that was going to

12 involve my having to defend two lawsuits. And I felt

13 like I got CLO HoldCo through the bankruptcy and then

14 that was a good jumping off point.

15 Q. What -- why did you send this e-mail to

16 Mr. Dondero?

17 A. I knew, or at least I reasonably believed

18 he would know where to who to send it to because I

19 wasn't exactly sure.

20 Q. So you were the managing member of the

21 general partnership and the director of the other DAF

22 entities and CLO HoldCo Limited, and you were not sure

23 who to send your notice of resignation to.

24 Do I have that right?

25 MR. KANE: Objection. Form. That's

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1 Grant Scott

2 A. No.

3 Q. Looking at the third paragraph, it says,

4 quote, my resignation will not be effective until I

5 approve of the indemnification provisions and obtain

6 any and all releases.

7 Do you see that?

8 A. Yes.

9 Q. Why did you condition the effectiveness of

10 your resignation on those things?

11 A. Well, although I'm a patent attorney and

12 basically just a technical writer that doesn't deal

13 with legal issues all of the time, it seemed like

14 appropriate language.

15 I have a number of outstanding litigations

16 where I am named personally, and the actions that I

17 took which resulted in my being sued were actions I

18 took on behalf of CLO HoldCo solely in that position,

19 and so I thought just to have the appropriate notice

20 that I would like indemnification to help -- to help

21 deal with those litigation matters. That is all.

22 Q. Did anybody suggest to you at any time

23 prior to the time that you sent this e-mail, that any

24 of the DAF entities or CLO HoldCo Limited might have

25 claims against you?

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1 Grant Scott

2 A. No. No.

3 Q. Were you concerned that Mr. Dondero or

4 anyone acting on his behalf might sue you?

5 A. No.

6 Q. Did Mr. Dondero ever threaten to sue you?

7 A. No.

8 Q. Did you ever obtain the Indemnity provision

9 and any and all necessary releases that you asked for

10 in this e-mail?

11 A. Not yet.

12 Q. And what does that mean?

13 A. I understand that those provisions are --

14 indemnification proposals are in the works, I think.

15 Q. And do you know who is negotiating --

16 withdrawn.

17 Is somebody negotiating those

18 indemnification and release provisions on your behalf?

19 A. My -- my attorney would be.

20 Q. And do you know if your attorney is

21 negotiating with anybody concerning potential

22 indemnification and release provisions for you?

23 A. I don't know specifically, no.

24 Q. Do you know if he is -- if -- from whom do

25 you want to obtain releases?

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1 Grant Scott

2 A. I would like to, yes.

3 Q. Did you ever have any discussion with

4 Mr. Dondero about the releases that you wanted?

5 A. No.

6 Q. Have you communicated with Mr. Dondero

7 since -- since you sent this e-mail?

8 A. Yes.

9 Q. Other than the birth date text that he sent

10 to you, have you spoken with him?

11 A. In February.

12 Q. So you haven't spoken to him since then?

13 A. That is correct.

14 Q. What did you speak to him about in

15 February?

16 A. He called me to ask me if I knew anything

17 about in particular -- I think it might have been an

18 asset of CLO HoldCo, if I was aware of whether it had

19 been purchased or sold, and I just told them I didn't

20 know what he was -- I didn't know what -- I didn't

21 know what he was referring to. That was the last

22 conversation that we had.

23 Q. Can I refer to the period from the date of

24 this --

25 MR. MORRIS: Actually, let's look

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1 Grant Scott

2 MR. BRIDGES: Objection. Facts not

3 in evidence.

4 BY MR. MORRIS:

5 Q. Withdrawn.

6 When you refer to any and all necessary

7 releases, who did you want to obtain releases from?

8 A. CLO HoldCo.

9 Q. Anybody else?

10 A. Well, I mean, and -- and the related

11 entities in that structure chart that you showed.

12 I'm -- I'm -- understand that to me, that is just

13 boilerplate legal language to put in a resignation,

14 you know, just to cross the T's, dot the I's, so to

15 speak. I'm not anticipating that will be -- that will

16 be a problem. I am sorry.

17 Q. You asked for this more than three months

18 ago now, right?

19 A. Correct.

20 Q. Do you know why you haven't gotten what you

21 asked for more than three months ago?

22 MR. BRIDGES: Objection. Form.

23 THE WITNESS: I -- I don't.

24 BY MR. MORRIS:

25 Q. But you still want the releases, right?

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1 Grant Scott

2 at -- let's scroll up a little bit, please.

3 BY MR. MORRIS:

4 Q. Did Mr. Dondero ever try to talk you out of

5 resigning?

6 A. No.

7 MR. MORRIS: Can you scroll up?

8 THE WITNESS: I -- I am sorry. I

9 need to correct that. I had conversations

10 with him where I had expressed, not so much

11 a desire to resign, but a belief that it --

12 it made strategic sense or was appropriate.

13 And it had to do with this issue of my

14 independence, and he suggested that family

15 members and friends are not precluded from

16 occupying positions of trust like trustees

17 and things like that, and that there was

18 nothing per se wrong with my -- my activity

19 with CLO HoldCo by virtue of being a friend

20 of his. So in that sense, he was trying to

21 talk me out of that, I guess.

22 BY MR. MORRIS:

23 Q. When did that conversation take place?

24 A. We had a number of those in 2020 and

25 January of 2021.

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1 Grant Scott

2 MR. MORRIS: Can we scroll up just a

3 little bit on this e-mail, please?

4 MR. BRIDGES: May I ask what exhibit

5 number this is? I've lost track. I am

6 sorry.

7 MS. CANTY: This is Exhibit 5 from

8 earlier. We are continuing the numbers.

9 So this was marked as Exhibit 5 in this

10 morning's deposition.

11 MR. BRIDGES: Thank you so much.

12 BY MR. MORRIS:

13 Q. Do you see where Mr. Dondero wrote to

14 you -- it's just of above the yellow highlighting

15 at -- 9:57 a.m. This is the next day. Quote, you

16 need to tell me ASAP that you have no intent to divest

17 assets.

18 Do you see that?

19 A. Yes.

20 Q. Did Mr. -- do you have any understanding as

21 to why he said that to you?

22 A. I know that he was mistaken in that

23 statement.

24 Q. Right. Do you have any understanding as to

25 whether Mr. Dondero had the ability to stop you from

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1 Grant Scott

2 being sold?

3 MR. BRIDGES: Objection to form.

4 MR. KANE: Objection. Asked and

5 answered.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. No. I had -- I had no idea what he was --

9 Q. Okay. Let's -- let's -- can we -- can we

10 call the period of time between the time you sent this

11 notice of your intent to resign in March 24, 2021 as

12 the interim period?

13 A. Sure.

14 Q. And that's the period during which you had

15 expressed your intent to resign, but your resignation

16 had not yet become effective; is that fair?

17 A. I guess it was the period of time when --

18 yes. I guess that is correct.

19 Q. Okay. Is it fair to say that there were

20 certain things you needed to do during the interim

21 period on behalf of CLO HoldCo and the DAF entities

22 before -- even before your resignation became

23 effective?

24 A. Yes.

25 Q. Okay. Was someone designated to act as

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1 Grant Scott

2 selling assets?

3 A. No. It wasn't -- it was a misunderstanding

4 about what the word "divest" meant in the subject

5 line.

6 Q. And did you understand that until you

7 corrected him, he was concerned and he expressed the

8 concern to you not to sell any assets?

9 MR. KANE: Objection to form.

10 THE WITNESS: No. It had -- I am

11 sorry. There -- the term "divest" was

12 maybe not a term I should have used.

13 However, my understanding was that my -- my

14 status at CLO HoldCo had a property related

15 aspect to it. And I used that term to

16 emphasize that I would need to -- that that

17 property aspect would need to be

18 transferred, meaning to the next entity or

19 person. He mistook it as something being

20 sold. It had nothing to do with that.

21 That is all.

22 BY MR. MORRIS:

23 Q. I understand that. But did you

24 understand -- did you have any understanding as to

25 what interest he had and whether or not assets were

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1 Grant Scott

2 your liaison with respect to matters concerning the --

3 the DAF entities and the CLO HoldCo during the interim

4 period?

5 MR. KANE: Objection. Form.

6 THE WITNESS: I had conversations

7 with Mark Patrick in February when I came

8 to -- to believe he -- he would be director

9 elect, so to speak, in terms -- in terms of

10 moving forward.

11 BY MR. MORRIS:

12 Q. During the interim period, did you have any

13 understanding as to whether Mr. Patrick had any

14 authority to act on behalf of any of the DAF entities

15 or CLO HoldCo?

16 MR. KANE: Objection. Form.

17 THE WITNESS: I came to believe he

18 did, upon signing the management shared

19 transfer agreement.

20 BY MR. MORRIS:

21 Q. Okay. So that was -- that was on or about

22 March 24th, 2021, right?

23 A. Correct.

24 Q. So I'm asking just about the interim period

25 between January 31st, 2021 when you sent your notice

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1 Grant Scott
2 of intent to resign, and March 24th. That is what I
3 am defining as the interim period.
4 So with that understanding, did you have
5 any reason to believe that Mr. Patrick had any
6 authority to act on behalf of any of the DAF entities
7 or CLO HoldCo during the interim period?
8 A. Well, it was -- he was part of a group of
9 entity -- a group of individuals that were with an
10 entity that had taken over from -- from Highland, and
11 so in -- certainly in that capacity, he -- as -- as
12 occurred for 10 years or more prior, that -- in that
13 role, you certainly had rights to -- to perform or to
14 act on CLO's behalf here.
15 Q. And what entity are you referring to?
16 A. I think it's the Highgate Consulting Group,
17 the Highland employees that took over -- or that
18 created that entity.
19 Q. And did the -- do you have an understanding
20 as to whether the Highgate Employment Group succeeded
21 to Highland Capital Management LP in the shared
22 services capacity or in the investment advisory
23 capacity or something else?
24 MR. BRIDGES: Object to form.
25 (Reporter clarification.)

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1 Grant Scott
2 A. They were conversations about the workings
3 with outside counsel to arrange the -- to arrange the
4 transfer of my responsibilities to another person or
5 entity at first, and then I came to learn that that
6 person was -- was -- would be Mark.
7 Q. Do you know who selected mark?
8 A. I do not.
9 Q. Do you know how Mark was selected?
10 A. I -- I do not.
11 Q. Did you ever ask Mark how he was selected?
12 A. I did not.
13 Q. Did you ever ask Mark who selected him?
14 A. I did not.
15 Q. Did you ever ask anybody at any time how
16 Mr. Patrick was selected to succeed you?
17 A. No, I did not.
18 Q. Did you ask anybody at any time as to who
19 made the decision to select Mr. Patrick to succeed
20 you?
21 A. No, I did not.
22 MR. BRIDGES: Objection. Facts not
23 in evidence and foundation.
24 BY MR. MORRIS:
25 Q. Okay. Do you have any understanding today,

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1 Grant Scott
2 THE WITNESS: I'm not entirely sure
3 of that.
4 BY MR. MORRIS:
5 Q. So is --
6 A. But he -- but --
7 Q. I am sorry. Did you finish your answer?
8 A. I'm not -- I'm not sure of the delineation
9 between the two.
10 Q. So on what basis did you believe that
11 Mr. Patrick had the authority to act on behalf of the
12 DAF entities and CLO HoldCo during the interim period?
13 MR. BRIDGES: Objection. Asked and
14 answered.
15 THE WITNESS: We had -- we had had a
16 number of conversations. And over the
17 course of a number of weeks, I came to -- I
18 came to understand that he would be the
19 director going forward. So...
20 BY MR. MORRIS:
21 Q. How did you come to that understanding?
22 A. Through the conversations that we had had,
23 I guess.
24 Q. What conversations did you have with Mr. --
25 were these conversations with Mr. Patrick?

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1 Grant Scott
2 as to who has the authority to select your --
3 withdrawn.
4 Do you have any understanding today, as to
5 who had the authority to select your replacement?
6 A. I do not.
7 MR. MORRIS: All right. Let's take a
8 short break. And I am certainly -- I'm
9 closer to the end than the beginning. It's
10 3:22 Eastern Time. Let's come back at
11 3:35, please, and hopefully I will be
12 finished by about 4, 4:15.
13 (Recess taken.)
14 BY MR. MORRIS:
15 Q. I want to go back, Mr. Scott, to the time
16 that you became appointed the managing member of the
17 general partnership and to the director of the other
18 DAF entities and CLO HoldCo. Do you remember how that
19 came to be?
20 A. My recollection is that various law firms
21 and Mark Patrick had a role in its creation and
22 configuration following some -- it's -- I believe it's
23 modeled after some expert -- expert in the field. I
24 am sorry. I don't know if I answered your question.
25 Q. You did not. So let me try it again. Do

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1 Grant Scott
2 you recall how it came to be that you assumed those
3 positions?
4 A. Ten years ago I accepted that role.
5 Q. And who offered the role to you?
6 A. Jim Dondero.
7 Q. Did -- did you communicate with anybody
8 other than Mr. Dondero concerning the opportunity that
9 he presented to you to assume these roles prior to the
10 time you accepted the position?
11 MR. KANE: Objection. Form.
12 BY MR. MORRIS:
13 Q. Withdrawn.
14 A. Possibly or --
15 Q. Withdrawn. Let me ask -- let me ask --
16 it's a good objection.
17 Mr. Scott, prior to the time that you
18 assumed your positions with the DAF entities and
19 CLO HoldCo, did you speak with anybody other than
20 Mr. Dondero, about the duties and responsibilities of
21 those positions?
22 MR. KANE: Objection to form.
23 THE WITNESS: The only thing that
24 comes to mind is Hunton & Williams. But
25 I -- I'm not sure. I don't know.

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1 Grant Scott
2 Do you see that?
3 A. Yes.
4 Q. And do you see that it's effective January
5 1, 2012?
6 And if we could go to the last page. And
7 is that your signature, sir?
8 A. That is correct.
9 Q. And is this the document that you signed on
10 March 12th, 2012, pursuant to which you became the
11 general partner of the DAF GP?
12 MR. KANE: Objection. Form.
13 THE WITNESS: It's not March 12th.
14 It's dated as March 21st, just to clarify,
15 but I believe so.
16 BY MR. MORRIS:
17 Q. I appreciate that. I'm going to ask the
18 question again, just because I was wrong and I want to
19 get it right.
20 Is this the document you signed on or about
21 March 21, 2012, pursuant to which you became the
22 managing member of the DAF GP, LLC?
23 A. I believe so.
24 Q. Okay. And you replaced Mr. Dondero in that
25 capacity; is that right?

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1 Grant Scott
2 BY MR. MORRIS:
3 Q. Do you have any memory of interviewing with
4 anybody?
5 A. I don't have any recollection of that, no.
6 Q. Did you submit a resume of any kind?
7 A. Possibly a CV. But I -- I just don't
8 remember anymore.
9 Q. Do you know who made the decision to select
10 you to serve in those capacities?
11 MR. KANE: Objection. Form.
12 THE WITNESS: I don't know.
13 BY MR. MORRIS:
14 Q. Did anybody -- withdrawn.
15 Did you meet with Patrick before or after
16 you assumed these roles?
17 A. It's going back 10 years. I -- I'm not
18 sure.
19 MR. MORRIS: Can we put up on the
20 screen a document that we marked this
21 morning. I believe it's Exhibit 2.
22 BY MR. MORRIS:
23 Q. And this is a document titled An Amended
24 and Restated Limited Liability Company Agreement of
25 Charitable DAF GP LLC.

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1 Grant Scott
2 A. Yes.
3 Q. And your recollection is that Mr. Dondero
4 presented the opportunity to you; is that right?
5 MR. KANE: Objection. Form.
6 THE WITNESS: Yes. I guess you could
7 call it an opportunity.
8 BY MR. MORRIS:
9 Q. And do you have any recollection as to
10 whether or not anybody else was involved in the
11 decision to offer the opportunity to you?
12 A. I -- I don't recall.
13 Q. Okay. We can take that down, please.
14 Do you recall whether Mr. Patrick was
15 involved in your selection as the replacement
16 management member of the DAF GP, LLC in 2012?
17 A. I have no recollection.
18 MR. KANE: Objection to form.
19 Yes. Okay.
20 BY MR. MORRIS:
21 Q. I want to go back to what we had defined
22 earlier as the interim period, and that was the period
23 between January 31st, 2021, when you sent in that
24 notice and March 24, 2021, when you transferred the
25 shares. That is what we were calling the interim

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1 Grant Scott

2 period, right?

3 A. Yes.

4 Q. Okay. Is it fair to say that Mr. Patrick

5 served as your primary contact with respect to matters

6 concerning CLO HoldCo and the DAF during the interim

7 period?

8 A. Yes.

9 Q. Okay. And, in fact, Mr. Patrick gave you

10 instructions on what to do for the DAF and the

11 CLO HoldCo on certain matters during the interim

12 period, correct?

13 MR. KANE: Objection to form.

14 THE WITNESS: Periodically, yes.

15 BY MR. MORRIS:

16 Q. I am sorry. What is the answer?

17 A. Periodically, yes.

18 Q. Okay. Did somebody ever tell you that you

19 should follow Mr. Patrick's instructions?

20 A. No, I don't believe so.

21 Q. And, Mr. Patrick, to the best of your

22 knowledge, didn't HoldCo any positions with any of the

23 DAF entities or CLO HoldCo Limited, correct?

24 MR. KANE: Objection to form.

25 MR. BRIDGES: Object to foundation.

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1 Grant Scott

2 Q. Did you sign any agreement on behalf of any

3 of the DAF entities or CLO HoldCo with the entity that

4 you are referring to as Highgate?

5 A. I'm not sure.

6 Q. Do you have any recollection at all of ever

7 signing any agreements in your capacity as the

8 authorized representative of any of the DAF entities

9 or CLO HoldCo and Highgate?

10 MR. KANE: Objection. Form.

11 THE WITNESS: I -- I don't recall.

12 BY MR. MORRIS:

13 Q. And I may have asked you this already. If

14 I have, I'm sure there will be an objection. But do

15 you recall if Highgate was providing services

16 equivalent to the shared services that Highland

17 previously provided, or was it providing investment

18 advisory services of the type Highland previously

19 provided?

20 MR. KANE: Objection to form.

21 MR. BRIDGES: Objection.

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know the delineation of the

25 services they were providing.

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. You can answer.

4 A. During the interim period?

5 Q. Correct.

6 A. I do not believe so.

7 Q. If Mr. Patrick didn't hold any positions,

8 why did you follow his instructions?

9 MR. BRIDGES: Objection.

10 MR. KANE: Objection. Go ahead,

11 sorry.

12 MR. BRIDGES: Facts not in evidence.

13 MR. KANE: And objection to form.

14 BY MR. MORRIS:

15 Q. You can answer, sir.

16 A. Yes. Well, there -- I mean, there was a

17 lot of activity that was required to transfer over

18 from how things had been handled under Highland, to

19 how they would now be handled under -- with the

20 services being provided by Highgate, and he was a

21 member, and he was the point person, I guess, and he

22 was my main interface to get those large numbers of

23 issues resolved.

24 There was -- you know, it was a very busy,

25 challenging time.

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1 Grant Scott

2 Q. Do you know whether during the interim

3 period, any entity other than Highgate was providing

4 services on behalf of any of the DAF entities or

5 CLO HoldCo?

6 A. Well, I knew from various wires that were

7 approved, that various entities were providing

8 services. Law firms, for example.

9 Q. But was there any -- any entity other than

10 Highgate that was providing any of the services that

11 had previously been provided by Highland?

12 A. Well, Highland provided a lot of legal

13 services. I don't know that Highgate had the same

14 capability. So I don't know how to answer that.

15 Q. All right. I'm going to try a different

16 way.

17 Before -- before 2021, the DAF entities had

18 both a shared services arrangement and an investment

19 advisory arrangement with Highland.

20 Do I have that right?

21 A. Yes.

22 Q. During the interim period, Highland was no

23 longer providing any of those services, correct?

24 A. That's what I understand, yes.

25 Q. Did anybody replace Highland in the

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1 Grant Scott
2 provision of those services during the interim period?
3 MR. BRIDGES: Objection, asked and
4 answered.
5 BY MR. MORRIS:
6 Q. You can answer, sir.
7 A. I mean, besides the services Highgate
8 were -- was -- were providing, I'm not sure.
9 Q. And -- and I do know that I've asked this
10 before, but now with that context: Do you know
11 whether Highgate was providing services of the shared
12 services type, or the investment advisory type, or you
13 just don't know?
14 MR. BRIDGES: Objection to the form.
15 THE WITNESS: At least I would think
16 mostly the shared services type.
17 BY MR. MORRIS:
18 Q. Okay. Is it your understanding that under
19 the shared services agreement, that Highgate had the
20 ability to make decisions on behalf of any of the DAF
21 entities or CLO HoldCo?
22 MR. BRIDGES: Objection.
23 MR. KANE: Objection to form.
24 MR. BRIDGES: Misstates testimony.
25 THE WITNESS: Yeah, my prior

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1 Grant Scott
2 fact, to be clear. I'm not asking for any legal
3 conclusions. I'm asking for your understanding as the
4 authorized representative of the DAF entities and
5 CLO HoldCo during the interim period.
6 So with that -- with that background as the
7 authorized entity, that -- withdrawn.
8 As the authorized representative during the
9 interim period, did you have any understanding as to
10 whether Mr. Patrick had the authority to bind any of
11 the DAF entities or CLO HoldCo during that time?
12 MR. KANE: Objection.
13 MR. BRIDGES: Objection. Calls for
14 legal conclusion. Also, objection as to
15 vagueness of the question.
16 BY MR. MORRIS:
17 Q. I'm sorry, Mr. Scott, did you answer?
18 A. I did not. No, I have not. I --
19 Q. I apologize.
20 A. I don't know what the status of his legal
21 authorization was.
22 Q. Do you recall that in early March, you
23 bought a couple of events to Mr. Patrick's attention?
24 A. I know that I forwarded documents to his
25 attention, yes.

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1 Grant Scott
2 testimony was I didn't see the agreements,
3 so I don't know.
4 BY MR. MORRIS:
5 Q. You haven't seen any agreement with
6 Highgate; is that right?
7 A. I don't recall that I have.
8 Q. Do you have any understanding as to whether
9 Highgate had the authority to bind any of the DAF
10 entities or CLO HoldCo during the interim period?
11 MR. BRIDGES: Objection. Calls for a
12 legal conclusion.
13 THE WITNESS: I don't know.
14 BY MR. MORRIS:
15 Q. Do you have any understanding as to whether
16 Mark Patrick had the ability as an individual to bind
17 any of the DAF entities or CLO HoldCo during the
18 interim period?
19 MR. BRIDGES: Objection. Calls for a
20 legal conclusion.
21 MR. KANE: Objection. Calls for a
22 legal conclusion.
23 THE WITNESS: I don't know.
24 BY MR. MORRIS:
25 Q. Okay. And I'm just asking as a matter of

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1 Grant Scott
2 Q. And why did you forward documents to
3 Mr. Patrick's attention during the interim period?
4 A. Because I was resigning, and I understood
5 that he was essentially going to be, or was the
6 director elect, and I just thought it appropriate to
7 bring such things to his attention.
8 Q. And when did you -- when did you learn that
9 he was doing to be the director elect?
10 A. I -- I believe it was February. Sometime
11 in February.
12 Q. Do you recall how you learned that he was
13 going to become the director elect?
14 A. I can't point to a specific conversation.
15 I can't -- I can't point to the specific conversation.
16 At some point, it went from being some future third
17 party, and I came to believe it would be him. I'm
18 not -- I'm not sure of the timing.
19 Q. Okay. Do you know from whom you learned
20 that he was going to be the director elect?
21 A. I believe it was him.
22 Q. Okay. So he told you that he was going to
23 replace you; is that right?
24 A. I don't know that he said it specifically.
25 I don't remember our conversations.

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1 Grant Scott

2 Q. Did you ever do anything to confirm with

3 anybody that Mark Patrick was going to be the director

4 elect, or did you just take his word for it?

5 A. I did not independently confirm it, no.

6 Q. Did you ever ask Mr. Dondero if -- if he

7 approved of the selection of Mr. Patrick as your

8 successor?

9 A. I did not.

10 Q. Did you ever discuss with Mr. Dondero, the

11 topic of who would be your successor?

12 A. Going back. Prior to the interim period, I

13 had recommended him, Mark.

14 Q. Did you -- did you discuss Mr. Patrick's

15 selection as your successor with anybody in the world

16 at any time other than Mr. Patrick?

17 A. I talked with my attorney about it. But I

18 don't think so. No.

19 Q. Did you talk with anybody that you believed

20 was authorized to make the decision on behalf of the

21 DAF entities and CLO HoldCo about your successor?

22 A. No, I did not.

23 MR. MORRIS: Can we put up the

24 document that was marked, La Asia, on Page

25 7, as Bates number 80.

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1 Grant Scott

2 Q. Yeah. And was the first lawsuit, the one

3 that you settled, before you gave notice?

4 A. No. The -- no, both lawsuits are pending.

5 Q. Okay. Do you know when the -- who's the

6 plaintiff in the first one?

7 A. Acis.

8 (Reporter clarification.)

9 THE WITNESS: Acis, A-C-I-S.

10 BY MR. MORRIS:

11 Q. So the debtor never sued you personally; is

12 that right?

13 A. Not yet.

14 Q. And is it right that Mr. Patrick told you

15 that -- that the successor will respond to the

16 complaint?

17 A. Yes.

18 Q. Now, he's not referring to himself yet, is

19 he?

20 A. That appears correct, yes.

21 Q. Does that refresh your recollection that

22 you had not known yet as of March 2nd who the

23 successor would be?

24 A. I guess it does.

25 MR. MORRIS: Can we put up the next

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1 Grant Scott

2 (Deposition Exhibit 10 was marked for

3 identification.)

4 BY MR. MORRIS:

5 Q. Do you see that -- if you scroll just down

6 a little bit. I guess not.

7 Mr. Patrick wrote an e-mail to you and

8 said, "The successor will respond to this complaint,"

9 and at the top you wrote "understood" --

10 A. Yes.

11 Q. -- or the top of the e-mail.

12 Do you recall that in early March, you

13 received a new complaint in which CLO HoldCo was named

14 the defendant?

15 A. I believe this -- this was the unsecured

16 creditors' committee complaint; is that correct?

17 Q. I think so, but it's your testimony. I'm

18 just asking you if you recall that in early March,

19 CLO HoldCo was sued?

20 A. Yes. I think this was the second lawsuit

21 that I was referring to personally.

22 Q. Okay. And so this -- this actually

23 occurred after the time you had already given notice,

24 right?

25 A. Yes.

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1 Grant Scott

2 exhibit, please, the one ending in -- the

3 one Bates number 85. And please remind us,

4 La Asia, what exhibit number are we up to?

5 MS. CANTY: We're up to 10, but the

6 one I'm about to put up is Exhibit 6 from

7 earlier today.

8 MR. MORRIS: Thank you very much.

9 BY MR. MORRIS:

10 Q. Now, if we can just scroll down a little

11 bit. Do you remember something called an Adherence

12 Agreement being discussed in March of 2021?

13 A. A what agreement?

14 Q. Adherence Agreement.

15 A. I see that. Was it directed to me?

16 Q. Yeah. If we can just scroll up.

17 Okay. So right there, do you see that

18 Thomas Surgent sends it to Mr. Kane? The subject is

19 'Adherence Agreement.'

20 A. Yes.

21 Q. And you do see that you forwarded that

22 e-mail to Mr. Patrick on the same day, March 2nd?

23 A. Yes.

24 Q. And it says "This relates to the second

25 issue from the debtor."

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1 Grant Scott
2 MR. BRIDGES: Objection.
3 MR. MORRIS: Withdrawn. Withdrawn.
4 BY MR. MORRIS:
5 Q. You didn't provide a substantive response
6 to Elysium; is that right?
7 MR. KANE: Objection. Assumes facts
8 not in evidence.
9 MR. MORRIS: That is why I'm asking
10 the question.
11 BY MR. MORRIS:
12 Q. Go ahead, Mr. Scott. You can answer.
13 A. I did not provide a substantive response to
14 their inquiry.
15 Q. Okay. Thank you.
16 Can we go to the top. In fact -- in fact,
17 you were instructed by Mr. Patrick to do nothing,
18 correct?
19 MR. BRIDGES: Objection. Misstates
20 the testimony.
21 THE WITNESS: No.
22 BY MR. MORRIS?
23 Q. Sir, the e-mail says "Do nothing," correct?
24 A. That is correct, and they were handling it,
25 not me.

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1 Grant Scott
2 Q. Did you sign this document?
3 A. Yes, sir.
4 Q. Okay. Do you know what this document is?
5 A. I believe it's the Management Share
6 Transfer Agreement.
7 Q. Okay. And do you know who prepared it?
8 A. I do not.
9 Q. Did you assign something pursuant to this
10 document?
11 A. Yes. The -- the -- the management shares.
12 MR. MORRIS: Okay. Can we go to the
13 first page, please?
14 BY MR. MORRIS:
15 Q. And do you see in paragraph 1, there is a
16 description of the assignment and assumption of the
17 signed interest?
18 A. Yes, I see that.
19 Q. Okay. Does that paragraph describe
20 everything that you assigned to Mr. Patrick?
21 A. In this agreement. Yes.
22 MR. BRIDGES: Objection. Calls --
23 objection. Calls for a legal conclusion.
24 MR. KANE: I join the objection.
25 BY MR. MORRIS:

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1 Grant Scott
2 Q. Okay. Now, did you resign on or about
3 March 24th, 2021?
4 A. Yes. That's -- that's when the transfer --
5 share of transfer.
6 Q. Okay.
7 MR. MORRIS: Can we put the next
8 exhibit up, please. It's the one at the
9 top at page 10. It's file 3, document 5.
10 MR. BRIDGES: Mr. Morris, can I ask
11 you how it is for time because you told us
12 earlier -- you teased us with a 4:15 end
13 time, potentially.
14 MR. MORRIS: Yeah, I'm just on the
15 last couple of documents.
16 MR. BRIDGES: Thank you.
17 MR. MORRIS: You bet.
18 BY MR. MORRIS:
19 Q. Do you see this is a document called an
20 Assignment and Assumption of Membership Interest
21 Agreement?
22 A. Yes.
23 MR. MORRIS: And if we can scroll
24 down.
25 BY MR. MORRIS:

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1 Grant Scott
2 Q. You can answer, sir.
3 A. Yes. I mean, it says what it says. But
4 yes, that is what I was transferring.
5 Q. And can you identify for me anything that
6 you know that you ever assigned to Mr. Patrick that is
7 not set forth in paragraph 1?
8 MR. BRIDGES: Objection. Form.
9 THE WITNESS: I'm unaware of
10 anything.
11 BY MR. MORRIS:
12 Q. Do you know if -- if the items and assets
13 that are set forth in paragraph 1 had any value?
14 MR. KANE: Objection. Form.
15 THE WITNESS: They had value, maybe
16 not monetary.
17 BY MR. MORRIS:
18 Q. And what value did they have?
19 A. I believe they had the property interest
20 that I referred to previously.
21 Q. And what property interest are you
22 referring to?
23 MR. KANE: Objection. Form. Calls
24 for a legal conclusion.
25 BY MR. MORRIS:

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1 Grant Scott

2 Q. You can answer. Sir, it's your words we

3 need.

4 A. The shares were the -- these management

5 shares were the -- I was treating as property.

6 Q. Do you have any understanding as to what

7 the value of the management shares was at the time you

8 entered into this agreement?

9 A. I did not.

10 Q. Did you have any understanding as to

11 whether those management shares held any particular

12 rights at the time you entered into this agreement?

13 MR. KANE: Objection to form.

14 THE WITNESS: My understanding was

15 they had my rights previously. Ultimately.

16 BY MR. MORRIS:

17 Q. And what rights did you believe flowed from

18 the management shares?

19 A. The controlling rights that flowed down to

20 the various entities.

21 Q. Did you receive anything in return in

22 exchange for your assignment of these property

23 interests and the other assets set forth in paragraph

24 1?

25 A. It allowed me to finally resign. That is

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1 Grant Scott

2 legal conclusion.

3 MR. KANE: I join the objection.

4 THE WITNESS: I didn't make -- I did

5 not make an assessment of that.

6 BY MR. MORRIS:

7 Q. Do you know -- withdrawn.

8 Do you have any understanding as to whether

9 there were any restrictions on the transferability of

10 the interests that you assigned pursuant to this

11 agreement?

12 MR. KANE: Objection. Calls for a

13 legal conclusion.

14 THE WITNESS: I did not.

15 BY MR. MORRIS:

16 Q. Did you let anybody know that you were

17 willing to assign the interests that are described in

18 paragraph 1 other than Mr. Patrick?

19 A. Anyone that I -- conceivably, anyone that I

20 let know that was at all familiar with the structure,

21 anyone that was informed of my desire to resign would

22 have arguably have known that.

23 Q. Okay. I'm not asking you to put yourself

24 in the shoes of anybody else. I'm asking for what you

25 recall telling people.

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1 Grant Scott

2 what I received. I mean, it ended my -- it ended my

3 role as a -- maybe as an agent, or an employee or

4 whatever. Those are my substantive rights, as I

5 understood it.

6 Q. Okay. So you -- you surrendered the

7 substantive rights in an exchange -- you no longer had

8 your substantive rights?

9 MR. BRIDGES: Objection. Asked and

10 answered.

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. You can answer, sir. Did you get anything

14 other than -- withdrawn.

15 Did you get anything other than what you

16 already described?

17 A. Relief. Yes.

18 Q. Excellent. Did you ever consider assigning

19 these interests or assets to anybody other than

20 Mr. Patrick?

21 A. I did not.

22 Q. Did you ever consider -- did you have any

23 belief as to whether the interests that were assigned

24 were freely tradeable?

25 MR. BRIDGES: Objection. Calls for a

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1 Grant Scott

2 Did you ever tell anybody at any time that

3 you were ready, willing and able to transfer and

4 assign the interests that are in this document other

5 than Mr. Patrick and your lawyers?

6 A. I am sorry. I misunderstood your question.

7 The answer is no.

8 Q. Did you ever think to try to assign these

9 interests for a profit?

10 A. Good grief, no.

11 (Reporter clarification.)

12 A. No.

13 Q. Did you -- was anybody, other than

14 Mr. Patrick, ever identified as a potential assignee

15 of the interests that are described in paragraph 1?

16 MR. KANE: Objection to form.

17 THE WITNESS: I was unaware of any.

18 BY MR. MORRIS:

19 Q. Okay. Did you make any effort to identify

20 anybody other than Mr. Patrick as a potential assignee

21 for the interests that are set forth in paragraph 1?

22 A. No, I did not.

23 Q. Did any -- did anybody acting on your

24 behalf, to the best of your knowledge, ever make any

25 efforts to identify any potential assignee other than

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1 Grant Scott

2 Mr. Patrick for the interests set forth in paragraph

3 1?

4 MR. BRIDGES: Objection. Foundation.

5 THE WITNESS: I don't have that

6 knowledge. No.

7 MR. MORRIS: Can we go to the next

8 exhibit, please?

9 (Deposition Exhibit 14 was marked for

10 identification.)

11 BY MR. MORRIS:

12 Q. Okay. And do you see that these are

13 written resolutions dated the next day, March 25th?

14 A. Yes.

15 Q. And these resolutions provide for the

16 shared transfer described in the document?

17 A. It appears so, yes.

18 Q. And are these the management shares that

19 you were referring to earlier?

20 A. I believe so.

21 Q. Did you believe at the time that you owned

22 all of the management shares of charitable DAF HoldCo

23 Limited?

24 A. That was my understanding.

25 Q. How did you acquire those shares?

Page 96

1 Grant Scott

2 Q. Were you paid anything of value for your

3 services as the, either the managing member of the DAF

4 GP, or as a director of any of the other DAF or

5 CLO HoldCo Limited entities at any time?

6 A. For a majority of the years, yes, I

7 received a monthly statement.

8 Q. And is that -- how much was the monthly

9 statement?

10 A. I believe it was \$5,000.

11 Q. Did it ever increase to an amount more than

12 \$5,000?

13 A. No.

14 Q. Did you receive anything else of value for

15 your service to the DAF entities and CLO HoldCo

16 Limited other than the \$5,000 monthly stipend that you

17 just described?

18 A. I did not.

19 Q. Do you recall that after you resigned, you

20 got reappointed, and then subsequently replaced again

21 by Mr. Patrick?

22 MR. KANE: Objection to form.

23 (Reporter clarification.)

24 THE WITNESS: Can you repeat -- did

25 you say -- it went away, and then it came

Page 95

1 Grant Scott

2 A. I'm not sure the exact timing, but I

3 believe that was all established when I became

4 involved.

5 Q. Did you pay anything of value for the

6 shares at the time that you acquired them?

7 A. I am -- I don't believe so, no.

8 Q. Did you need to obtain anybody's approval

9 before you could transfer the shares?

10 A. No. I don't believe so.

11 Q. Did you make any effort to obtain anybody's

12 approval before you transferred the shares?

13 A. I did not.

14 Q. Did you have any reason to believe that

15 Mr. Dondero approved of the transfer of the management

16 shares to Mr. Patrick?

17 A. I -- I don't know that.

18 Q. Did you testify earlier, that you had

19 discussed with Mr. Dondero in January, Mark Patrick

20 succeeding you?

21 MR. BRIDGES: Objection. Misstates

22 prior testimony.

23 BY MR. MORRIS:

24 Q. You can answer, sir.

25 A. I believe it was prior to that.

Page 97

1 Grant Scott

2 back. I don't understand the question. I

3 am sorry.

4 BY MR. MORRIS:

5 Q. That is okay. I just saw this in the

6 documents, and I thought it was odd. But let me put

7 the documents up and see if you can shed any light.

8 MR. MORRIS: Let's start with the

9 next exhibit, Patrick File 3, Document 9.

10 (Deposition Exhibit 15 was marked for

11 identification.)

12 BY MR. MORRIS:

13 Q. And do you see in the resolutions, if we

14 can go up just a bit, dated March 24th, and it was

15 resolved that you were removed as a director of the

16 company and Mr. Patrick was appointed as your

17 replacement, if that is a fair characterization?

18 Do you see that?

19 A. I see that.

20 MR. MORRIS: And now if we can put up

21 the next document.

22 (Deposition Exhibit 16 was marked for

23 identification.)

24 BY MR. MORRIS:

25 Q. So this is a week later. It's March 31st.

Page 98

1 Grant Scott
2 MR. MORRIS: And if we can just
3 scroll down and see if it's signed.
4 BY MR. MORRIS:
5 Q. Do you see that Mr. Patrick was removed as
6 the director and you were reappointed?
7 A. Yes, I do see that.
8 Q. Do you have any understanding as to why
9 Mr. Patrick resigned and reappointed you as the
10 director a week later?
11 A. I don't have -- I don't -- I don't know.
12 Q. Did you even know this happened?
13 A. Is my signature on that agreement?
14 Q. No.
15 A. I'm not sure.
16 Q. Do you have any -- do you have any
17 recollection as -- as to whether or not you were ever
18 reappointed as the director of the company on or about
19 March 31st, 2021?
20 A. I don't know if I have received any
21 communication about this or not.
22 Q. Okay.
23 MR. MORRIS: Can we go to the next
24 document, please?
25 (Deposition Exhibit 17 was marked for

Page 100

1 Grant Scott
2 Q. Did anybody ever describe for you or
3 explain to you what error had been made?
4 A. I am sorry. I'm not familiar with these
5 documents.
6 Q. Okay. Is it fair to say that -- well, I
7 will just leave it at that.
8 So nobody ever informed you that there was
9 a mistake that had to be corrected; is that right?
10 MR. BRIDGES: Objection. Asked and
11 answered.
12 BY MR. MORRIS:
13 Q. You can answer.
14 A. I don't know that there was this -- this
15 may have -- I don't know that there was a mistake.
16 Q. You have no knowledge of --
17 A. I have no knowledge of this. I was in a
18 very complex process. I think there...
19 Q. And nobody ever asked -- nobody ever asked
20 your consent to be reappointed as the director of the
21 company, correct?
22 MR. BRIDGES: Objection. Asked and
23 answered.
24 THE WITNESS: I didn't receive any
25 communications about this.

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1 Grant Scott
2 identification.)
3 MR. KANE: Mr. Morris, can you help
4 me with the exhibit numbers? Was that 16,
5 or are we still on 15, additional portions
6 of it?
7 MS. CANTY: That was 16 but not going
8 to 17.
9 MR. KANE: Thank you. I apologize.
10 MR. MORRIS: That is okay, Jonathan.
11 We will get to everything and clear up any
12 confusion.
13 BY MR. MORRIS:
14 Q. So if you go to the bottom of that
15 document, can you see that it was signed?
16 All right. Do you see Mr. Patrick signed
17 this document?
18 A. Yes, I see that.
19 Q. Do you see that it's dated -- if we can go
20 back up to the top. It's April 2nd, and do you see
21 that you are -- pursuant to these resolutions, you
22 were removed as the director again and replaced by
23 Mr. Patrick?
24 A. Yes, I see that. And they seem to be
25 correcting an error of some sort.

Page 101

1 Grant Scott
2 BY MR. MORRIS:
3 Q. And so you didn't provide your consent to
4 be reappointed as the director of the company,
5 correct?
6 MR. BRIDGES: Objection. Asked and
7 answered.
8 THE WITNESS: That's correct.
9 BY MR. MORRIS:
10 Q. Okay. Did you become aware that after you
11 resigned, that DAF and CLO HoldCo started a lawsuit
12 against the debtor and some other defendants related
13 to the HarbourVest settlement?
14 A. I did become aware of it, yes.
15 Q. And were you aware of the lawsuit -- were
16 you aware that DAF and CLO HoldCo were considering
17 filing the lawsuit before it was actually commenced?
18 A. No.
19 Q. Did you have any communications with
20 anybody at any time about the possibility that the DAF
21 and CLO HoldCo would commence a lawsuit against the
22 debtor and others relating to the HarbourVest
23 settlement prior to the time that the lawsuit was
24 commenced?
25 A. I did not.

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1 Grant Scott

2 Q. So is it fair to say that you did not

3 provide any information to anybody at any time to

4 support the claim -- the complaint that was filed

5 against the debtor and the other defendants in the

6 lawsuit that was brought by the DAF and CLO HoldCo?

7 MR. BRIDGES: Objection. Foundation.

8 THE WITNESS: I didn't provide

9 anything with respect to the litigation

10 that was filed.

11 BY MR. MORRIS:

12 Q. And did anybody ever ask you for

13 information relating to potential claims against the

14 debtor and others?

15 A. No.

16 Q. Did you ever have any discussions with

17 anybody at any time as to whether Jim Seery should be

18 named as a defendant in the lawsuit that was bought by

19 the DAF and CLO HoldCo against the debtor and others?

20 A. No.

21 MR. MORRIS: I have no further

22 questions. Thank you, Mr. Scott.

23 MR. BRIDGES: I don't have any

24 questions.

25 MR. KANE: Can I -- I've got a couple

Page 104

1 Grant Scott

2 Q. And did you read that transcript?

3 A. I believe we discussed it. I'm not -- I'm

4 not sure.

5 Q. Did you have a recollection that Judge

6 Jernigan made a comment or comments about you and

7 Jim Dondero during her ruling?

8 A. Yes.

9 Q. Do you believe that Judge Jernigan's

10 comments were inaccurate?

11 MR. MORRIS: Objection to the form of

12 the question. No foundation. Leading.

13 BY MR. KANE:

14 Q. I will rephrase. I will rephrase.

15 I will ask it -- a different question.

16 Mr. Scott, do you believe that you acted

17 independently during the bankruptcy case?

18 A. Yes.

19 Q. Do you believe you acted in the best

20 interests of CLO HoldCo?

21 A. Yes, I do.

22 MR. KANE: I'm done.

23 MR. MORRIS: Just some follow-up

24 questions, Mr. Scott.

25

Page 103

1 Grant Scott

2 just follow-up for clarification purposes.

3 EXAMINATION

4 BY MR. KANE:

5 Q. Grant, earlier you were testifying about

6 resigning and noted -- I believe your testimony was

7 one of the reasons was an issue of independence. Can

8 you clarify what you meant by issue of independence?

9 A. I came to believe that there was a

10 perception, and my friendship with Jim Dondero

11 precluded my -- my independence.

12 Q. Perception by whom?

13 A. The judge in the case.

14 (Reporter clarification.)

15 A. The judge in the bankruptcy case.

16 Q. Was there a specific reason or instance

17 that caused you to have that belief?

18 A. Yes. When I spoke with you about the --

19 Q. Well, I don't want to go into any

20 attorney-client communications.

21 A. I am sorry.

22 Q. So let me ask you a different question.

23 Were you provided a transcript of the Court's ruling

24 on the escrow hearing for the registry dispute?

25 A. I believe so.

Page 105

1 Grant Scott

2 EXAMINATION

3 BY MR. MORRIS:

4 Q. Did you ever testify before Judge Jernigan?

5 A. I have not.

6 Q. So is it fair to say that you had no reason

7 to believe that she could ever access your credibility

8 as a witness?

9 MR. BRIDGES: I'm going to object.

10 That calls for a legal conclusion.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. From -- from what I understand from the

14 transcript of that hearing, a number of comments were

15 made by the judge regarding my independence, that sort

16 of thing, that made me -- that made me think that

17 maybe I could just remove that as an issue in the case

18 by resigning. That is essentially, what my conclusion

19 was from that hearing.

20 Q. But you didn't resign at the time that the

21 judge made those statements, did you?

22 MR. BRIDGES: Objection.

23 Argumentative.

24 BY MR. MORRIS:

25 Q. You can answer.

Page 106

1 Grant Scott

2 A. I did not at that time.

3 Q. In fact, you didn't resign for probably

4 seven months after, correct?

5 MR. BRIDGES: Objection. Asked and

6 answered. Really?

7 THE WITNESS: Yes.

8 BY MR. MORRIS:

9 Q. And you continued to actively participate

10 in the bankruptcy case, correct?

11 A. That is correct.

12 Q. And months later, you made the decision to

13 amend CLO HoldCo's proof of claim, correct?

14 A. Correct.

15 Q. And months later, you made the decision to

16 file an objection to the HarbourVest settlement,

17 correct?

18 A. Correct.

19 Q. And months after this hearing, you made the

20 decision to withdraw that objection, correct?

21 MR. BRIDGES: Objection to repeating

22 the same questions from the last two hours

23 over and over again. Are we going to keep

24 going all the way to the end.

25 BY MR. MORRIS:

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1 Grant Scott

2 you is -- let's just be clear here since I think the

3 point is -- is being missed. The issue of when I

4 wanted to resign or when I first thought about

5 resigning has been raised. It was raised during my

6 first deposition with you as well. And what I'm

7 saying is -- is that after I heard about the hearing,

8 and what was said, I don't remember the exact

9 language. My first reflection was, hey, maybe that

10 is -- maybe that is -- if I'm going to be in this

11 court having to make a claim, maybe it would be best

12 if it wasn't being made by me. That is all.

13 Q. And I appreciate that. And I am just

14 trying to test the credibility of that statement.

15 Okay?

16 MR. BRIDGES: Objection to the

17 sidebar.

18 BY MR. MORRIS:

19 Q. Did Judge Jernigan ever issue a ruling

20 against you personally?

21 MR. BRIDGES: Asked and answered.

22 Objection.

23 MR. MORRIS: It is not asked and

24 answered.

25 BY MR. MORRIS:

Page 107

1 Grant Scott

2 Q. Only -- only if people keep opening the

3 door.

4 Can you please answer my question?

5 A. Yes, I removed the objection.

6 Q. And -- and you remained in the case, and

7 you remained active in the case, and you filed on

8 behalf of your -- withdrawn.

9 You stayed in the case even after

10 CLO HoldCo was sued by the debtor, correct?

11 A. Yes.

12 Q. And you stayed in the case long enough to

13 negotiate a settlement on behalf of CLO HoldCo with

14 the debtor, correct?

15 A. Correct.

16 Q. And you can't identify anything that the

17 judge said following the escrow hearing that had

18 anything to do with you personally, correct?

19 MR. KANE: Objection. Form.

20 MR. MORRIS: Withdrawn.

21 BY MR. MORRIS:

22 Q. Can you identify anything that the judge

23 said following the escrow hearing that had to do with

24 your independence?

25 A. I don't remember -- I'm -- what I'm telling

Page 109

1 Grant Scott

2 Q. But go ahead, sir.

3 A. Not against me personally.

4 Q. Did Judge Jernigan ever issue a ruling

5 against CLO HoldCo Limited?

6 A. Well, to my --

7 MR. BRIDGES: Objection. Objection.

8 Calls for legal conclusion as to the

9 meaning of "against."

10 (Reporter clarification.)

11 THE WITNESS: The denial of the

12 escrow motion created a fairly big headache

13 for CLO HoldCo in the remainder of 2020.

14 So I believe that was a ruling

15 against CLO HoldCo, to answer your

16 question.

17 BY MR. MORRIS:

18 Q. Okay. Are you aware of any others?

19 MR. BRIDGES: Objection. Calls for a

20 legal conclusion as to the meaning of

21 "against."

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know that she's made any other

25 rulings except to approve the settlement.

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1 Grant Scott

2 Q. Which settlement are you referring to?

3 A. The -- the TRO settlement.

4 Q. And were you on the -- did you listen in to

5 the hearing during that hearing when -- when the judge

6 approved the settlement?

7 A. I did not.

8 Q. Did you read the transcript?

9 A. I did not.

10 Q. Did anybody ever tell you that the judge

11 said anything during that hearing to question your

12 independence?

13 MR. KANE: Objection to the extent it

14 calls for attorney/client privileged

15 information.

16 THE WITNESS: No. No, I think you

17 misunderstand. I had one data point to go

18 on, and that's what made me start the

19 process of thinking of resigning. That's

20 all.

21 BY MR. MORRIS:

22 Q. I appreciate that.

23 A. The issue -- the issue has been raised

24 repeatedly, whether it was my idea or somebody else's

25 idea, that's all I'm saying. If you can, it was my

Page 112

1 Grant Scott

2 REPORTER'S CERTIFICATE

3 I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR,

4 Registered Professional Reporter, certify that the

5 foregoing proceedings were taken before me at the time

6 and place therein set forth, at which time the witness

7 was put under oath by me;

8 That the testimony of the witness, the questions

9 propounded, and all objections and statements made at

10 the time of the examination were recorded

11 stenographically by me and were thereafter

12 transcribed;

13 That the foregoing is a true and correct

14 transcript of my shorthand notes to taken.

15 I further certify that I am not a relative or employee

16 of any attorney or the parties, nor financially

17 interested in the action.

18 I declare under penalty of perjury under the laws

19 of North Carolina that the foregoing is true and

20 correct.

21 Dated this June 1, 2021.

22

23 *Lashaunda Byrd*

24 LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

25

Page 111

1 Grant Scott

2 idea.

3 Q. Okay. And I'm asking you if you have any

4 other data points after that hearing to support the

5 notion that Judge Jernigan questioned your

6 independence?

7 A. No.

8 MR. MORRIS: I have no further

9 questions.

10 MR. BRIDGES: Me either.

11 MR. KANE: I'm done. Thank you.

12 Mr. Scott.

13 (Deposition adjourned at 4:42 p.m.)

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	6 No.	7 Now Reads	8 Should Read	9 Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
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18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____

21 _____

22 Signature of Deponent

23 SUBSCRIBED AND SWORN BEFORE ME

24 THIS ____ DAY OF _____, 2021.

25 (Notary Public) MY COMMISSION EXPIRES: _____

EXHIBIT 16

Dondero - 6-1-2021

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

4	In Re:)	
)	
5	HIGHLAND CAPITAL	)	Case No.
	MANAGEMENT, LP,	)	19-34054 L.P.
6		)	Chapter 11
	Debtor,)	
7	-----))	
	HIGHLAND CAPITAL MANAGEMENT,)	
8	LP,)	
)	
9	Plaintiff,	)	Adversary No.
		)	21-03003-sgi
10	vs.)	
)	
11	JAMES D. DONDERO,)	
)	
12	Defendant.)	

REMOTE DEPOSITION OF

JAMES DONDERO

Volume 3

Pages 283 - 385

Dallas, Texas

Tuesday, 1st day of June, 2021

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 194691

1 Dondero - 6-1-2021

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7 1st day of June, 2021

8 9:34 a.m. - 12:01 p.m.

9

10

11 Remote Deposition of JAMES DONDERO,
12 located in Dallas, Texas before Daniel J.
13 Skur, Notary Public and Certified Shorthand
14 Reporter in and for the State of Texas
15 located in Waxahachie, Texas.

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1 Dondero - 6-1-2021

2 R E M O T E A P P E A R A N C E S:

3 Pachulski Stang Ziehl & Jones
4 Attorney(s) for Debtor
5 780 Third Avenue

6 New York, New York 10017

7 BY: John Morris, Esq.

8 Gregory Demo, Esq.

9 Sidley Austin
10 Attorney(s) for The Committee
11 2021 McKinney Avenue

12 Dallas, Texas 75201

13 BY: Paige Montgomery, Esq.

14 Juliana Hoffman, Esq.

15 Matthew Clemente, Esq.

16 Alyssa Russell, Esq.

17 Kelly Hart & Pitre
18 Attorney(s) for Mark Patrick
19 400 Poydras Street

20 New Orleans, Louisiana 70130

21 BY: Amelia Hurt, Esq.

22 Bonds Ellis Eppich Schafer Jones
23 Attorney(s) for The Witness
24 420 Throckmorton Street

25 Fort Worth, Texas 76102

BY: Clay Taylor, Esq.

1 Dondero - 6-1-2021

2

3 R E M O T E A P P E A R A N C E S (continued)

4 Sbaiti & Company
5 Attorney(s) for Charitable DAF, CLO HoldCo
6 and Sbaiti & Company
7 2200 Ross Avenue

8 Dallas, Texas 75201

9 BY: Mazin Sbaiti, Esq.

10

11

12

13 ALSO PRESENT:

14 La Asia Canty, Paralegal

15 Debra Dandeneau, Baker & McKenzie

16 J. Pomerantz

17 Lauren Drawhorn, Wick Phillips

18 Mark Patrick

19

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1 Dondero - 6-1-2021

2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the respective
4 parties herein, that filing and sealing be and
5 the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to and
12 signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.

16 - oOo -

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1 Dondero - 6-1-2021

2 P R O C E E D I N G S

3 REMOTE ORAL DEPOSITION OF

4 JAMES DONDERO

5 (REPORTER NOTE: This deposition is
6 being conducted remotely in accordance with
7 the Current Emergency Order regarding the
8 COVID-19 State of Disaster.

9 Today's date is the 1st day of
10 June, 2021. The time is 9:34 a.m. Daylight
11 Savings Time. The witness is located in
12 Dallas, Texas.)

13 JAMES DONDERO,

14 having been duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, testified as follows:

17 (9:33 A.M.)

18 EXAMINATION

19 BY MR. MORRIS:

20 Q. Good morning, Mr. Dondero. Can you
21 hear me?

22 A. Yes.

23 Q. Your microphone is a little soft as
24 well.

25 Can you tell me where you're located

1 Dondero - 6-1-2021

2 right now?

3 A. 4940 Chase Tower.

4 (Interruption by reporter.)

5 (Pause.)

6 BY MR. MORRIS:

7 Q. Good morning, Mr. Dondero.

8 (Audio distortion.)

9 (Interruption by reporter.)

00:-01

10 BY MR. MORRIS:

00:-01

11 Q. Good morning, Mr. Dondero.

12 Can you hear me now?

13 A. Yes.

14 Q. You understand we're here today for

15 your deposition in connection with next week's

16 contempt proceeding; is that right?

17 A. Yes.

18 Q. Okay. We have a few documents to

19 put up on the screen today; and as usual, if

20 there's anything that you need to see, will you

21 let me know that?

22 A. Yes.

23 Q. All right. I want to start with

24 some background.

25 MR. MORRIS: Can we please put up

1 Dondero - 6-1-2021

2 the first exhibit, the organizational
3 chart?

4 MR. TAYLOR: John, before we start,
5 I just wanted to note that this is going to
6 be limited to two hours.

7 MR. MORRIS: I'm not sure where you
8 get that from, but let's just proceed.

9 MR. TAYLOR: You specifically asked
10 for two hours of time, and I told you we'd
11 give two hours of time, and so we're
12 limiting it to two hours.

13 MR. MORRIS: You do whatever you
14 need to do, Clay.

15 (Exhibit 1 introduced.)

16 BY MR. MORRIS:

17 Q. Mr. Dondero, have you seen this
18 document before, sir?

19 A. Yes.

20 Q. Do you know what it is?

21 A. It's the org chart of the DAF and
22 CLO HoldCo.

23 Q. Do you know why this structure was
24 set up the way it was?

25 MR. TAYLOR: Objection, form.

1 Dondero - 6-1-2021

2 A. Only generally.

3 BY MR. MORRIS:

4 Q. Can you tell me your general
5 understanding of why this structure was set up
6 the way it was?

7 A. To be compliant for tax purposes.

8 Q. Was this structure set up at your
9 request?

10 MR. TAYLOR: Objection, form.

11 A. Set up at my request. No.

12 BY MR. MORRIS:

13 Q. Who decided to set up this
14 structure; do you know?

15 A. Mark Patrick.

16 Q. And do you know if anybody asked
17 Mark Patrick to set up this structure?

18 A. The -- he was tasked with setting up
19 a charitable entity for Highland at that time,
20 for Highland and my -- for Highland and the
21 partners to -- to foster charitable giving and
22 provide the appropriate tax deductions for
23 such.

24 Q. And who gave him that task, if you
25 know?

1 Dondero - 6-1-2021

2 A. I believe I did.

3 Q. Okay. So, you tasked Mr. Patrick
4 with setting up an organizational structure to
5 carry out the charitable giving on behalf of
6 Highland Capital Management, L.P., and its
7 partners?

8 Do I have that right?

9 A. Yes.

10 Q. Okay. Looking at the top line, do
11 you see that there's four foundations that are
12 identified as third parties?

13 A. Yes.

14 Q. Are you familiar with those
15 foundations?

16 A. Yes.

17 Q. And do you serve as an officer or
18 director of any of those foundations?

19 A. I -- I believe I have or I could be
20 with regard to Dallas Foundation, but I'm not
21 certain.

22 Q. Okay. Do you know if you have any
23 role with any of the other three foundations
24 that are on there?

25 A. I do not believe so.

1 Dondero - 6-1-2021

2 Q. Okay. Looking at the next row,
3 there's four incorporated or there's four
4 entities that are identified as supporting
5 organizations.

6 Do you see that?

7 A. Yes.

8 Q. Do you have an understanding of what
9 a "supporting organization" is?

10 A. No, and I don't know the difference
11 between that first line and the second line,
12 and I don't know if my involvement with Dallas
13 Foundation was at the first line or the second
14 line.

15 Q. Do you know when Mr. Patrick set up
16 this structure?

17 A. Many years ago at the beginning of
18 the -- I don't think it's changed over the
19 years. As far as I know, the general -- or
20 this -- this structure was put in place at the
21 beginning, I believe, sometime in the late
22 2000s.

23 Q. Do you know what the Donor Advised
24 Funds are, the DAF funds?

25 MR. SBAITI: I'm going to object to

1 Dondero - 6-1-2021

2 the form of the question.

3 John, if you could be clear as to
4 which line -- are you talking about
5 charitable DAF HoldCo, or are you talking
6 about charitable DAF Fund, L.P.?

7 MR. TAYLOR: If you could be as
8 specific as possible, and he'll try to
9 answer as specifically as possible. I'm
10 not sure which box you're talking about.

11 MR. MORRIS: All right, Clay. Thank
12 you.

13 BY MR. MORRIS:

14 Q. Mr. Dondero, are you familiar with
15 the phrase "DAF"?

16 A. Yes.

17 Q. Have you used that phrase before?

18 A. Yes.

19 Q. When you refer to -- when you use
20 the phrase "DAF," what are you referring to?

21 A. It would depend.

22 Q. On what?

23 A. What the question is.

24 Q. What's -- do you have an
25 understanding of what the Charitable DAF GP,

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2 LLC, is?

3 A. The exact structural differences,
4 I -- I -- I -- I don't know.

5 Q. So when you use the phrase "DAF,"
6 what are you referring to?

7 A. In general, when I use the
8 expression, it's the -- the overall entity, the
9 overall pool of capital and/or the overall
10 entity that makes the donations from the pool
11 of capital.

12 Q. And which entity -- withdrawn.

13 Do you have an understanding as to
14 which entity holds the pool of capital?

15 A. No. It's -- no, I don't know for
16 sure.

17 Q. Do you know if it's CLO HoldCo,
18 Ltd.?

19 MR. SBAITI: Objection, asked and
20 answered.

21 A. I don't know.

22 BY MR. MORRIS:

23 Q. Do you know if Charitable DAF Fund,
24 L.P., holds any assets?

25 MR. SBAITI: Objection, relevance,

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2 no foundation.

3 A. I -- I don't know which entities
4 hold which of the assets.

5 BY MR. MORRIS:

6 Q. Did you -- did you approve of the
7 organizational structure that Mr. Patrick
8 created at your request?

9 A. Yes.

10 MR. TAYLOR: Objection, vague.

11 BY MR. MORRIS:

12 Q. I'm sorry. Did -- did you answer,
13 sir?

14 A. Yes.

15 Q. Okay. Who is Grant Scott?

16 A. I understand he was the trustee of
17 the DAF for a number of years.

18 Q. When you say "he was the trustee of
19 the DAF," what are you referring to?

20 A. I always refer to him as "trustee,"
21 but I see it's labeled here as "managing
22 member."

23 Q. Do you know how he came to be
24 appointed the trustee of the DAF?

25 A. I believe it was on my

1 Dondero - 6-1-2021

2 recommendation.

3 Q. Who did you make the recommendation
4 to?

5 A. It would have been Mark Patrick.

6 Q. Did Mark Patrick have the authority
7 to appoint Mr. Scott as the trustee of the DAF?

8 MR. SBAITI: Objection, vague.

9 Object to the extent it calls for a legal
10 conclusion.

11 A. Yeah, I don't know.

12 BY MR. MORRIS:

13 Q. Well, you've known Mr. Scott since
14 high school; isn't that right?

15 A. Yes.

16 Q. You went to UVA together; isn't that
17 right?

18 A. Yes.

19 Q. You were housemates together in
20 college; isn't that right?

21 A. Yes.

22 Q. He was the best man at your wedding;
23 isn't that right?

24 A. Yes.

25 Q. You picked Mr. Scott to serve as the

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2 trustee of the DAF; isn't that right?

3 MR. TAYLOR: Objection. That's not
4 what he stated.

5 A. I -- on the original formation, I
6 recommended Grant Scott.

7 BY MR. MORRIS:

8 Q. And you recommended Mr. Scott to
9 Mr. Patrick?

10 A. That's my recollection, I believe,
11 but I don't remember specifically.

12 Q. Do you remember if Mr. Patrick held
13 any role in any entity on the chart that stands
14 before you?

15 Withdrawn.

16 Do you know if Mr. Patrick held any
17 role with any entity prior to January 1st,
18 2021?

19 MR. SBAITI: Objection, vague.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. Why did you make the recommendation
23 to Mr. Patrick?

24 A. Initially? You're saying the
25 initial recommendation when it was set up?

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2 Q. Correct.

3 A. 13, 14, 15 years ago.

4 The -- it -- we thought -- I thought
5 at the time he would be suitable.

6 Q. But why did you select Mr. Patrick
7 as the person to whom to make your
8 recommendation?

9 A. Because he was responsible for
10 setting up the overall structure.

11 Q. Did he -- were you seeking his
12 approval when you made the recommendation to
13 him?

14 A. I -- I don't know the roles he was
15 playing at the -- at that moment, so I -- I
16 don't know.

17 Q. At the time that you recommended
18 Mr. Scott to serve as the trustee of the DAF,
19 did you have any understanding as to who had
20 the authority to actually appoint Mr. Scott?

21 A. I did not specifically.

22 Q. Did you ever learn who had the power
23 to appoint the trustee of the DAF?

24 A. I did not.

25 Q. As you sit here today, do you have

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2 any understanding as to who has the power to
3 appoint the trustee of the DAF?

4 MR. TAYLOR: I'll instruct the
5 witness not to answer to the extent it
6 would require him to reveal privileged
7 communications with counsel.

8 MR. MORRIS: I'm not asking him for
9 any communications, to be clear.

10 MR. TAYLOR: Or anything he heard
11 from counsel.

12 (Audio distortion.)

13 MR. MORRIS: Please don't -- Clay,
14 you're a very good lawyer, please don't
15 coach the witness. He's a very
16 sophisticated witness.

17 BY MR. MORRIS:

18 Q. Do you have any understanding, as
19 you sit here today, sir, as to who has the
20 authority to appoint the trustee of the DAF?

21 A. I know it's complicated. I know it
22 has to do with shares. I know it's -- I know
23 it's multiple levels, but I don't have specific
24 knowledge.

25 Q. Do you know if Mr. Patrick ever

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2 considered appointing -- withdrawn.

3 MR. MORRIS: Could we please put up
4 the next exhibit, Patrick File 6,
5 Document 1?

6 (Exhibit 2 introduced.)

7 MR. SBAITI: John, is that document
8 you put up a labeled exhibit for the, like
9 Exhibit 1 or something, the one you have up
10 right here.

11 MR. MORRIS: Yeah, that will be
12 marked as Exhibit 1, thank you.

13 So, now we're going to put up
14 Exhibit 2.

15 BY MR. MORRIS:

16 Q. Do you see that that's the Amended
17 and Restated Limited Liability Company
18 Agreement of the Charitable DAF GP, LLC?

19 A. Yes.

20 Q. And do you see that it's dated
21 effective as of January 1st, 2012?

22 A. Yes.

23 Q. So, that's approximately nine plus
24 years ago.

25 Do I have that right?

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2 A. Yes.

3 Q. Okay.

4 MR. MORRIS: Can we go to the last
5 page, please?

6 BY MR. MORRIS:

7 Q. Is that your signature on that page,
8 sir?

9 A. Yes.

10 Q. And do you understand that, pursuant
11 to this agreement, Mr. Scott replaced you as
12 the managing member of the DAF GP, LLC?

13 A. I -- I don't have a recollection of
14 that.

15 Q. Do you remember that you served as
16 the managing member of the DAF GP, LLC?

17 A. I don't -- I don't recall that.

18 Q. Now, Mr. Scott is a lawyer, correct?

19 A. Yes.

20 Q. He's a patent lawyer. Do I have
21 that right?

22 A. Yes.

23 Q. He has no experience or expertise in
24 finance, does he, to the best of your
25 knowledge?

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2 A. I would not say he has expertise. I
3 wouldn't say he's an expert in it, but I -- I'd
4 say he's more sophisticated than the average
5 layperson.

6 Q. Well, at the time that you
7 recommended him to Mr. Patrick, did you do so
8 because you thought he had valuable experience
9 and expertise in finance or investment?

10 MR. SBAITI: Objection, assumes
11 facts not in evidence before the witness.

12 BY MR. MORRIS:

13 Q. That wasn't one of the reasons you
14 recommended Mr. Scott, is it?

15 A. He wasn't going to be the investment
16 advisor. DAF had a separate investment
17 advisor.

18 Q. And who was going to be the
19 investment advisor?

20 A. Highland.

21 Q. And you owned and controlled
22 Highland at the time, correct?

23 MR. TAYLOR: Objection.

24 BY MR. MORRIS:

25 Q. Withdrawn.

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2 You controlled Highland at the time,
3 correct?

4 A. Yes.

5 Q. Did Mr. Scott have any experience or
6 expertise running charitable organizations, to
7 the best of your knowledge?

8 A. No.

9 Q. Had he ever, to the best of your
10 knowledge, made any decisions concerning
11 collateralized loan obligations?

12 A. No.

13 Q. Can you tell me why you recommended
14 to Mr. Patrick that Mr. Scott serve as the
15 trustee of DAF?

16 MR. TAYLOR: Objection, asked and
17 answered.

18 A. I -- I thought he would be a good
19 fit for the position.

20 BY MR. MORRIS:

21 Q. Why?

22 A. It required -- I don't -- in my
23 mind -- or I believed it would require a lawyer
24 and someone with legal skills, and I thought he
25 would be good at the position.

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2 Q. And you trusted him; is that right?

3 A. I -- yes.

4 Q. And you had a life-long relationship
5 with him; isn't that right? Isn't that one of
6 the reasons why you recommended him for this
7 position?

8 A. Yes.

9 Q. Do you know whether Mr. Patrick --
10 withdrawn.

11 Is Mr. -- do you believe that
12 Mr. Patrick is the person who appointed
13 Mr. Scott as your successor as managing member
14 in 2012?

15 MR. SBAITI: Objection, asked and
16 answered, calls for speculation; and object
17 to the extent it calls for a legal
18 conclusion.

19 A. I could -- I could repeat the answer
20 again.

21 I don't know the formal process, but
22 I do remember recommending to Mark Patrick that
23 Grant would be a good candidate. Now, how --
24 what mechanism and how the process works and
25 who actually approved that, I -- I don't know.

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2 BY MR. MORRIS:

3 Q. Did you recommend anybody else, or
4 was Mr. Scott the only person that you
5 recommended?

6 A. I don't -- I don't remember. I
7 don't remember. I don't remember recommending
8 anybody else or if the process required it. I
9 don't remember the process.

10 Q. Was anybody involved in the process
11 other than you and Mr. Patrick?

12 MR. TAYLOR: Objection to the extent
13 it calls for speculation.

14 BY MR. MORRIS:

15 Q. Withdrawn.

16 Do you know -- do you know if
17 anybody was in the process -- involved in the
18 process other than you and Mr. Patrick?

19 A. Again, I don't know the process and
20 the mechanism, if there were offshore boards
21 involved or if the four underlying charities
22 were involved. It was -- it was complicated,
23 and I delegated the process to Mark Patrick.

24 Q. Okay. I'm not asking you to
25 speculate. I'm just asking for your knowledge.

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2 Can you identify any person or
3 entity who was involved in the appointment of
4 Mr. Scott as your successor as managing member
5 of the DAF GP, LLC, other than yourself and
6 Mr. Patrick?

7 MR. SBAITI: Objection, assumes
8 facts.

9 A. Yeah, I don't -- I don't have
10 specific knowledge.

11 BY MR. MORRIS:

12 Q. Okay. Do you understand that in
13 addition to becoming the managing member of the
14 Charitable DAF GP, LLC, that Mr. Scott also
15 became the sole director of the Charitable DAF
16 HoldCo, Ltd., Charitable DAF Fund, L.P., and
17 CLO HoldCo, Ltd.?

18 MR. TAYLOR: Objection, assumes
19 facts not before the witness.

20 A. No.

21 BY MR. MORRIS:

22 Q. Do you know if he ever held the
23 directorship of any of those entities?

24 MR. SBAITI: Objection, vague.

25 A. I -- I don't know what his exact

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2 role is now, but I -- I thought I was informed
3 that that's -- his role now has something to do
4 with directorship.

5 BY MR. MORRIS:

6 Q. Can we put the chart back up,
7 Exhibit 1, please?

8 (Exhibit 1 on screen.)

9 BY MR. MORRIS:

10 Q. Do you know whether Mr. Scott held
11 any position at all with Charitable DAF HoldCo,
12 Ltd., at any time?

13 A. I don't know.

14 Q. Can you identify any person who's
15 ever -- who you believe had the authority to
16 act on behalf of the Charitable DAF HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. SBAITI: Objection, assumes
19 facts not in evidence.

20 A. I don't know.

21 BY MR. MORRIS:

22 Q. You can't name anybody in the world
23 who was authorized on behalf of -- who was
24 authorized to act on behalf of the Charitable
25 DAF HoldCo, Ltd., prior to March 1st, 2021?

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2 MR. TAYLOR: Objection, asked and
3 answered.

4 MR. SBAITI: Objection, calls for a
5 legal opinion.

6 A. I don't know.

7 BY MR. MORRIS:

8 Q. How about the Charitable DAF Fund,
9 L.P.; can you identify anybody in the world who
10 was authorized to act on behalf of that entity
11 prior to March 1st, 2021?

12 MR. SBAITI: Objection, calls for a
13 legal opinion.

14 A. I mean, other than Grant Scott, the
15 org chart seems to roll up back up to him.

16 BY MR. MORRIS:

17 Q. Okay. So, you're willing to say
18 that Grant Scott acted on behalf of that
19 entity?

20 Do I have that right?

21 MR. TAYLOR: That's not --
22 mischaracterizes his statements. He's
23 giving you his general --

24 MR. MORRIS: Just object to the form
25 of the question. Please, no speaking

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 19**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj1
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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2 objections. It's very simple.

3 MR. TAYLOR: So, John, I'm going to
4 make my record. If you don't like it, then
5 bring it up with the Judge.

6 BY MR. MORRIS:

7 Q. Mr. Dondero, do you understand that
8 Mr. Scott was authorized to act on behalf of
9 the Charitable DAF Fund, L.P., prior to
10 March 1st, 2021?

11 MR. TAYLOR: Objection, calls for a
12 legal conclusion.

13 A. I -- I don't know.

14 BY MR. MORRIS:

15 Q. Okay. Do you know if anybody was
16 authorized to act on behalf of CLO HoldCo,
17 Ltd., prior to March 1st, 2021?

18 MR. TAYLOR: Objection, calls for a
19 legal conclusion.

20 A. I -- I don't know the specifics on
21 how this operated.

22 BY MR. MORRIS:

23 Q. But you can't identify any person,
24 do I have that right, you don't know the
25 identity of any person who was ever authorized

1 Dondero - 6-1-2021

2 to act on behalf of CLO HoldCo, Ltd., prior to
3 March 1st, 2021; is that right?

4 MR. TAYLOR: Objection, calls for a
5 legal conclusion.

6 MR. MORRIS: I'm not asking for a
7 legal conclusion. I'm asking for
8 Mr. Dondero's knowledge of the facts or his
9 understanding of the facts.

10 MR. TAYLOR: With all due respect,
11 it calls for a legal conclusion.

12 MR. MORRIS: I cannot wait -- I
13 cannot wait until next Tuesday. This is
14 going to be brilliant.

15 BY MR. MORRIS:

16 Q. Mr. Dondero, let me try one last
17 time.

18 Can you identify any person who you
19 believed was authorized to act on behalf of CLO
20 HoldCo, Ltd., prior to March 1st, 2021?

21 A. I need to answer the question this
22 way: My knowledge begins and ends with Grant
23 as the trustee, or on this org chart, managing
24 member; and his control, it looks like it flows
25 down through all those entities. Now -- or --

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2 or ownership, at least, or maybe control or
3 agreement.

4 Now, what other people or boards or
5 trustees or -- or entity he had to go through,
6 whether US Cayman Guernsey, et cetera, to get
7 things done and where the assets were held, I
8 do not have specific knowledge and I don't know
9 the names of the people or the entities that
10 were on those boards or -- supervisory or
11 holders of shares, or whatever. I wasn't
12 specifically involved in the operation of this
13 structure.

14 Q. Did the Charitable DAF Fund, L.P.,
15 and Highland Capital Management, L.P., enter
16 into an Amended and Restated Investment
17 Advisory Agreement, to the best of your
18 knowledge?

19 A. There was an Investment Advisory
20 Agreement, as far as I knew.

21 Q. And what is your understanding of
22 the purpose of the Investment Advisory
23 Agreement?

24 A. Excuse me.

25 To provide portfolio management to

1 Dondero - 6-1-2021

2 achieve adequate returns on the portfolio to
3 support the charitable giving of the DAF.

4 Q. Did Mr. Scott lack the capability to
5 provide portfolio management services to the
6 Charitable DAF Fund, L.P., to the best of your
7 knowledge?

8 A. I would not say that.

9 Q. So why -- why did -- withdrawn.

10 Was the -- did you participate in
11 the negotiation -- withdrawn.

12 Can we please put up the next
13 exhibit? We'll call it Exhibit 3.

14 (Exhibit 3 introduced.)

15 BY MR. MORRIS:

16 Q. Do you see this is an Amended and
17 Restated Investment Advisory Agreement between
18 the Charitable DAF Fund, L.P.; the Charitable
19 DAF, GP, LLC; and Highland Capital Management,
20 L.P.?

21 A. Yes.

22 Q. Is this the agreement you were just
23 referring to?

24 A. Unless there was another amended
25 one. I believe there was always one -- best

1 Dondero - 6-1-2021

2 practice is to have an investment advisory
3 group.

4 Q. And do you know who prepared this
5 document?

6 A. No.

7 Q. Do you know if it was the subject of
8 any negotiation?

9 A. I don't know.

10 Q. Do you know if the Charitable DAF
11 Fund, L.P., or the Charitable DAF GP, LLC, had
12 independent counsel in connection with the
13 negotiation and execution of this Amended and
14 Restated Investment Advisory Agreement?

15 A. I don't know.

16 Q. Do you know if the Charitable DAF
17 Fund, L.P., or the Charitable DAF GP, LLC, ever
18 hired independent counsel prior to the
19 commencement of Highland's bankruptcy in
20 October 2019?

21 A. I don't know.

22 Q. Did those entities also enter into a
23 Shared Services Agreement with Highland Capital
24 Management?

25 A. I believe there was a Shared

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2 Services Agreement. I don't know which DAF
3 entities entered it.

4 Q. Before we get to that, pursuant to
5 the Investment and Advisory Agreement, did
6 Highland Capital Management, L.P., manage the
7 assets of the DAF and CLO HoldCo?

8 MR. TAYLOR: Objection, vague.

9 A. Can you repeat the question again?

10 BY MR. MORRIS:

11 Q. Sure. Is it your understanding that
12 pursuant to this agreement, HCMLP managed the
13 assets of the DAF and CLO HoldCo?

14 A. This agreement discusses the DAF,
15 right?

16 This disagreement doesn't discuss
17 CLO HoldCo, right?

18 Q. Do you know whether HCMLP ever had
19 any agreement of any kind with CLO HoldCo
20 pursuant to which it managed CLO HoldCo's
21 assets?

22 A. I don't know for certain.

23 Q. Do you have any understanding at all
24 as to whether such an agreement existed?

25 A. I -- I don't know for certain. I'm

1 Dondero - 6-1-2021

2 willing to be refreshed.

3 Q. Do you know who provides --
4 withdrawn.

5 Do you know whether anybody provides
6 independent -- withdrawn.

7 Do you know whether anybody has an
8 agreement with the Charitable DAF Fund, L.P.,
9 or the Charitable DAF GP, LLC, today similar to
10 the type that had been previously entered into
11 with HCMLP?

12 MR. TAYLOR: Objection, vague.

13 A. I believe Skygate has a similar --
14 similar agreements in place.

15 BY MR. MORRIS:

16 Q. Is it your understanding that
17 Skygate effectively replaced HCMLP as the
18 investment advisor to the DAF?

19 A. Let me clarify that for a second.

20 I believe Skygate has the Shared
21 Services Agreement. I don't know whether it's
22 Skygate or NexPoint has the Investment Advisory
23 Agreement or if it was another entity. I
24 don't -- I don't know. I -- I don't know the
25 specifics.

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2 Q. Okay. While Mr. Scott served -- I
3 think you said as the trustee of the DAF, can
4 you identify any investment decision that HCMLP
5 had recommended that Mr. Scott rejected?

6 A. No.

7 Q. Can you think of any investment that
8 Mr. Scott made on behalf of the DAF that didn't
9 originate with HCMLP?

10 A. He wasn't the investment advisor,
11 but, no, I don't -- I don't recall.

12 Q. Let's just speed this up a bit.

13 Do you recall that in October 2019,
14 the debtor filed for bankruptcy?

15 A. Yes.

16 Q. And do you recall that after the
17 debtor filed for bankruptcy, CLO HoldCo, Ltd.,
18 retained John Kane to act as counsel on its
19 behalf?

20 A. I -- I know he was retained. I
21 don't know which entities in particular.

22 Q. Do you have any understanding as to
23 who Mr. Kane represented?

24 A. My understanding was that he
25 represented the DAF. Now, whether it included

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2 all entities, CLO HoldCo, the offshore
3 entities, which entities, I -- I don't know.

4 Q. Do you know if -- do you know how
5 Mr. Kane came to be retained by the DAF?

6 MR. SBAITI: Objection to the extent
7 it calls for the DAF's confidential
8 privileged information (inaudible.)

9 A. I -- I don't remember. I know the
10 lawyers -- I let the legal department or
11 lawyers find and identify good -- I let them go
12 through the process of identifying and vetting
13 law firms.

14 BY MR. MORRIS:

15 Q. And are the lawyers that you're
16 referring to in-house counsel at HCMLP?

17 A. I -- I don't know which lawyers were
18 involved.

19 Q. Well, you just said that you let the
20 lawyers do the vetting. Which lawyers were you
21 referring to?

22 A. It could have been the HCMLP
23 lawyers, it could have been NexPoint lawyers.
24 I don't know.

25 Q. Could it have been any other lawyers

1 Dondero - 6-1-2021

2 besides the HCMLP lawyers and the NexPoint
3 lawyers?

4 A. I mean -- yes. I mean, sometimes we
5 get recommendations from outside counsel
6 regarding other outside counsel. The
7 recommendation could have come from one of the
8 other bankruptcy attorneys involved in the
9 case. I don't know.

10 Q. Do you recall that in October 2020,
11 Mr. Scott caused CLO HoldCo to amend its proof
12 of claim?

13 MR. TAYLOR: Objection, assumes
14 facts not before the witness.

15 A. Yeah, I don't -- I don't know.

16 BY MR. MORRIS:

17 Q. Let me take it out of the --
18 (Simultaneous conversation.)

19 BY MR. MORRIS:

20 Q. Okay. Let me take it out of the
21 time frame.

22 Do you recall that there came a
23 moment in time when Mr. Scott caused CLO HoldCo
24 to amend its proof of claim by reducing the
25 value of the claim to zero dollars?

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2 A. I -- I know there was ultimately a
3 settlement agreement. I don't know how that
4 manifested itself.

5 Q. Okay. So, just to be clear, you
6 don't have any memory of CLO HoldCo --
7 withdrawn.

8 Do you have a memory of CLO HoldCo
9 filing its original proof of claim in the
10 amount of approximately \$11 million?

11 A. I -- I don't recall the amount. I
12 do remember that the DAF was overbilled by
13 Highland and there was a claim. Whether it was
14 a POC or an administrative claim or -- I don't
15 know how that manifested itself in the
16 bankruptcy. It's -- yeah.

17 Q. Okay. And regardless of the form of
18 the claim, do you remember that there came a
19 point in time when Mr. Scott amended the claim
20 to reduce the value to zero?

21 A. I -- I heard a hundred thousand
22 dollars, but it's essentially zero, I guess.

23 Q. And did you know that Mr. Scott was
24 going to amend the proof of claim in that
25 manner prior to the time that he actually did

1 Dondero - 6-1-2021

2 so?

3 MR. TAYLOR: Objection to the extent
4 it calls for him to invade the
5 attorney-client privilege.

6 A. I don't -- I don't have knowledge of
7 what you just said. I -- my recollection is
8 there was a legitimate overbilling that
9 Highland did to multiple parties who have
10 pursued multiple -- those multiple claims
11 against the estate, but I don't have -- I don't
12 have specific knowledge of why the 11 was
13 reduced to zero, but --

14 BY MR. MORRIS:

15 Q. Did you ever discuss with Mr. Scott
16 his decision to reduce the claim to zero?

17 A. Not -- not before he did it.

18 Q. At any time, did you ever discuss
19 with Mr. Scott his decision to reduce the claim
20 to zero?

21 A. I believe afterwards.

22 Q. And what do you recall about your
23 discussions with Mr. Scott afterwards?

24 A. That he had given up bona fide
25 claims against the debtor, and I didn't

1 Dondero - 6-1-2021

2 understand why.

3 Q. Did he explain to you why he thought
4 he was not giving up bona fide claims --
5 withdrawn.

6 What did he say in response?

7 MR. SBAITI: Objection, calls
8 for legal --

9 (Audio distortion.)

10 BY MR. MORRIS:

11 Q. If anything?

12 A. I don't remember him having an
13 explanation.

14 Q. Was anybody else -- did anybody else
15 participate in this discussion?

16 A. No.

17 Q. Did this discussion occur in a
18 singular phone call, or was it in multiple --
19 during multiple conversations?

20 A. A couple, one or two.

21 Q. Do you remember anything about your
22 discussions with Mr. Scott concerning his
23 decision to amend CLO HoldCo's proof of claim
24 by reducing it to zero, other than what you've
25 testified to so far?

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2 MR. TAYLOR: Objection, vague.

3 A. No, but I'm willing -- I'm willing
4 to be refreshed or answer more questions, but
5 those are the only things that come to mind.

6 BY MR. MORRIS:

7 Q. Okay. So, I think what you've told
8 me--and I just want to make sure that I have
9 this right--that after the amendment was filed,
10 you had several conversations with Mr. Scott in
11 which you told him that you believed he had
12 given up bona fide claims against the debtor,
13 but that you don't recall what, if anything, he
14 said in response.

15 Have I missed anything?

16 A. You used "several." It's -- I said
17 "a couple."

18 Q. Okay.

19 A. But otherwise, that's -- that's my
20 testimony.

21 Q. Do you recall that sometime after
22 that, CLO HoldCo had filed an objection to the
23 proposed HarbourVest Settlement?

24 A. Yes.

25 Q. And did you subsequently learn that

1 Dondero - 6-1-2021

2 CLO HoldCo withdrew its objection to the
3 HarbourVest Settlement?

4 A. Yes.

5 Q. Do you recall if you learned that
6 before or after CLO HoldCo withdrew its
7 objection -- withdrawn.

8 That wasn't a good question.

9 Did you know, prior to the time that
10 CLO HoldCo announced that it was withdrawing
11 its objection, that it intended to do so; or
12 did you learn about that after -- you know, as
13 the announcement was being made?

14 MR. SBAITI: Objection, compound.

15 MR. TAYLOR: Objection, compound.

16 BY MR. MORRIS:

17 Q. You can answer.

18 A. I learned about it at the hearing.

19 BY MR. MORRIS:

20 Q. Were you surprised?

21 A. Yes.

22 Q. And why were you surprised?

23 A. It was inappropriate.

24 Q. Why did you believe it was
25 inappropriate?

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2 A. The night before, Counsel had
3 confirmed with other counsel.

4 MR. TAYLOR: Instruct the witness
5 not to reveal any privileged information.

6 THE WITNESS: Okay.

7 BY MR. MORRIS:

8 Q. Mr. Dondero, you and I have done
9 this many, many times. I hope that you
10 understand that I'm never, ever asking or
11 hoping that you'll mistakenly divulge
12 attorney-client communications.

13 A. Yeah. Let me rephrase.

14 Q. Yeah. So, having said that, you
15 said that you believed it was inappropriate;
16 and the question is really simple: Why did you
17 believe it was inappropriate?

18 A. There was legal basis or legal
19 interpretation, I believed, in the governing
20 partnership agreement justifying the objection;
21 and I also believed there were duties under the
22 Advisors Act to -- for the DAF to continue with
23 its -- or to argue its objections.

24 Q. And after you learned that Mr. Scott
25 instructed his attorneys to withdraw CLO

1 Dondero - 6-1-2021

2 HoldCo's objection to the HarbourVest
3 Settlement, did you have a conversation with
4 Mr. Scott about his decision?

5 MR. TAYLOR: Objection, assumes
6 facts not in evidence.

7 A. Yeah, I don't agree with the first
8 part of that question, so I need you to
9 rephrase it, please.

10 BY MR. MORRIS:

11 Q. After you -- after you learned that
12 CLO HoldCo withdrew the objection, did you
13 speak with Mr. Scott about that?

14 A. Yes.

15 Q. Okay. Did you have one conversation
16 or more than one conversation with Mr. Scott
17 concerning CLO HoldCo's withdrawal of its
18 objection to the HarbourVest Settlement?

19 A. I -- I only recall one.

20 Q. Did anybody participate in that
21 conversation besides the two of you?

22 A. No.

23 Q. Did that conversation take place on
24 the telephone or in some other form?

25 A. I -- I don't know.

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2 Q. Do you know how long after the
3 conclusion of the hearing the conversation took
4 place? Was it the same day? Was it
5 afterwards?

6 A. I believe it was the same day or
7 shortly thereafter.

8 Q. And what do you recall -- please
9 tell me everything you recall about the
10 conversation, everything that you said and
11 everything that he said.

12 A. The only two points I remember was
13 that it was inappropriate for the DAF to change
14 direction an hour before the hearing without
15 informing anybody else when it was -- yeah,
16 when it was a reversal of the direction he had
17 been going in for weeks and that it was also
18 inappropriate to -- well, no, that's -- that
19 was -- that was really -- that was really it, I
20 guess.

21 Q. Do you recall what, if anything,
22 Mr. Scott said in response?

23 MR. SBAITI: Objection calls --
24 (inaudible.)

25 MR. MORRIS: What's the basis for

1 Dondero - 6-1-2021

2 the objection?

3 MR. TAYLOR: Objection, calls for
4 hearsay.

5 MR. SBAITI: Calls for hearsay.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. That he had done it based on advice
9 of counsel.

10 Q. Did you have any reason to doubt
11 that?

12 A. It -- it didn't -- it didn't make
13 sense that counsel would change their opinion
14 between the night before and the morning of the
15 hearing, but I guess that -- that is a reason
16 to doubt it.

17 Q. Do you think -- do you think
18 Mr. Scott acted in good faith when he made the
19 decision to withdraw CLO HoldCo's objection to
20 the HarbourVest Settlement?

21 A. Can you ask that question -- ask
22 that question again, please?

23 Q. Sure. Do you believe that Mr. Scott
24 acted in good faith when he made the decision
25 to withdraw the CLO HoldCo objection to the

1 Dondero - 6-1-2021

2 HarbourVest Settlement?

3 A. I don't believe he operated in the
4 best interest of the DAF or CLO HoldCo by
5 withdrawing the claims or withdrawing the
6 objectives -- objections.

7 Q. Did you -- did the subject of the
8 Advisors Act come up during this conversation?

9 A. I don't -- I don't remember if it
10 specifically came up.

11 Q. Do you recall if the subject of
12 "fiduciary duties" came up in this
13 conversation?

14 A. Not using those words, but reminding
15 him he needed to do what was in the best
16 interest of the DAF was definitely part of the
17 conversation.

18 Q. Earlier you said -- and I -- if I
19 miss -- if I don't get this right, please feel
20 free to correct me; but I believe you said that
21 it was inappropriate for the DAF to change
22 direction without informing anybody else.

23 Do I have that right?

24 A. Yes.

25 Q. And who do you believe Mr. Scott

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2 needed to inform of his decision?

3 A. There was some coordination and
4 cooperation among lawyers representing
5 different parties and I believe there was some
6 obligation -- some professional obligation as
7 part of that to inform and keep people abreast
8 of it.

9 Q. And would the lawyers at Bonds
10 Ellis, your personal counsel, be among those
11 lawyers that you believed he had the
12 professional obligation to inform?

13 MR. SBAITI: Objection --

14 A. I don't know.

15 MR. SBAITI: -- lacks foundation.

16 A. I don't know who was in the
17 coordination group.

18 BY MR. MORRIS:

19 Q. Do you believe that he had an
20 obligation to inform you in advance?

21 MR. SBAITI: Objection, vague.

22 A. I don't know if I would use the word
23 "obligation," but, again, as the founder or the
24 primary donor and continued donor to the DAF
25 and as the investment advisor fighting for

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2 above-average returns on a daily basis for the
3 fund, significant decisions that affect the
4 finances of the fund would be something I would
5 expect typically a trustee to discuss with a
6 primary donor.

7 BY MR. MORRIS:

8 Q. And which primary donor are you
9 referring to?

10 A. Highland, prior to bankruptcy, and
11 myself or NexPoint post-bankruptcy.

12 Q. Is Dugaboy -- The Dugaboy Investment
13 Trust a donor to the DAF?

14 MR. SBAITI: Objection, relevance.

15 A. I -- I believe it's been a donor
16 over the years. It wasn't the initial donor, I
17 don't believe.

18 BY MR. MORRIS:

19 Q. How about the Get Good Trust? Is
20 the Get Good Trust a donor to the DAF?

21 MR. SBAITI: Objection, relevance.

22 A. I don't know.

23 BY MR. MORRIS:

24 Q. Do you know if either the Get Good
25 Trust or the Dugaboy Trust has any beneficial

1 Dondero - 6-1-2021

2 interest in any of the DAF entities?

3 A. It does not -- or they do not.

4 Q. Do you know if either of the Get
5 Good or Dugaboy trusts have an interest in the
6 CLO HoldCo, Ltd., entity?

7 A. They -- they do not. They do not.

8 Q. Do you recall that a short while
9 later or -- or maybe even within the same
10 month, the debtor commenced a lawsuit against
11 the entities that we've referred to previously
12 as the Advisors, the Funds, and CLO HoldCo,
13 Ltd.?

14 A. Which litigation is that?

15 Q. That was the one where the debtor is
16 seeking injunctive relief; and there was a
17 hearing in late January on the debtor's motion
18 for preliminary injunction against the Funds,
19 the Advisors, and CLO HoldCo?

20 A. There's -- there's -- which
21 specifically?

22 Q. Do you remember that there came a
23 point in time when -- when Mr. Scott, on behalf
24 of CLO HoldCo, reached a settlement with the
25 debtor that resolved the debtor's claim against

1 Dondero - 6-1-2021

2 CLO HoldCo, Ltd.?

3 A. I'm aware there was a settlement
4 that resolved most of his -- the -- most of the
5 issues with the debtor.

6 Q. Okay. And do you recall how you
7 learned about that settlement?

8 MR. TAYLOR: Objection to the extent
9 it invades any attorney-client privilege.

10 A. I learned about it after it was
11 done.

12 BY MR. MORRIS:

13 Q. Okay. And do you have an
14 understanding of the basic terms of the
15 settlement?

16 A. I think that was the hundred
17 thousand I spoke of earlier that the -- as the
18 11 or \$12 million of overbilling that every
19 other entity has pursued, you know, for -- the
20 overbilling was traded for a hundred thousand
21 dollars, and the -- I think Grant agreed to not
22 pursue some historic actions and not pursue
23 replacement of HCMLP as manager, regardless of
24 whether it was in the best interest of the DAF
25 or not.

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2 Q. And did you ever have a conversation
3 with Mr. Scott about his decision to enter into
4 that settlement on behalf of CLO HoldCo, Ltd.?

5 A. Yes.

6 Q. And did that -- did the
7 communications take place in one conversation,
8 more than one conversation, or in some other
9 form?

10 A. It was a couple times.

11 Q. Do you recall if anybody --
12 (Simultaneous conversation.)

13 BY MR. MORRIS:

14 Q. I'm sorry, were you finished?

15 A. It might have been just once, but
16 either one or two times.

17 Q. Okay. And did anybody participate
18 in that conversation other than the two of you?

19 A. No.

20 Q. Can you recall everything that was
21 discussed during that conversation, everything
22 that you recall saying in sum or substance and
23 everything that you can recall Mr. Scott
24 saying?

25 A. My message was what I just

1 Dondero - 6-1-2021

2 articulated, that -- that the compromise or the
3 settlement wasn't in the best interest of the
4 DAF, it wasn't in the best interest of the
5 investments in the DAF.

6 Q. Do you recall how long the
7 conversation lasted?

8 A. No. It wasn't that long.

9 Q. Do you recall that shortly after
10 Mr. Scott reached the settlement on behalf of
11 CLO HoldCo, that he gave notice of his intent
12 to resign from his positions with the DAF
13 entities and CLO HoldCo, Ltd.?

14 A. Yes.

15 Q. And do you recall that there was a
16 telephone conversation between and among you
17 and Mr. Scott and certain lawyers at around the
18 same time?

19 A. I don't -- I don't remember that
20 specifically with the lawyers.

21 MR. MORRIS: Can we please put up
22 the next exhibit, which I think we're
23 marking as Exhibit 4, which is Scott Bates
24 No. 11?

25 (Exhibit 4 introduced.)

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2 BY MR. MORRIS:

3 Q. So, I'll represent to you,
4 Mr. Dondero, that the hearing at which the CLO
5 HoldCo, Ltd., settlement was presented took
6 place on January 26th. And so, this is the
7 following Sunday.

8 And do you see there's a list of
9 people who were going to participate in a
10 conference call on Sunday, January 31st?

11 A. Yes.

12 Q. And you and Mr. Scott are among
13 those people?

14 A. Yes.

15 Q. Do you recall if this phone call
16 took place?

17 A. Yes.

18 Q. Do you recall the purpose of the
19 phone call?

20 A. Yes. It didn't have anything to do
21 with his resignation, this phone call.

22 Q. So, what was the purpose of this
23 call?

24 A. Earlier, I stated that to make -- to
25 pivot the plans or what he was -- or to

1 Dondero - 6-1-2021

2 withdraw without telling anybody, to reach
3 settlements without telling anybody that had a
4 material negative impact on the DAF was
5 inappropriate. And I believe the purpose of
6 this call was his representation that John Kane
7 had, in fact, told everybody, so -- but when I
8 spoke with everybody else, everybody said he
9 hadn't talked to them, and so to figure out --
10 to try and figure out what the truth was, we
11 had a conference call with everybody.

12 Q. Did you figure out what the truth
13 was during that conference call?

14 MR. TAYLOR: Objection. I'm going
15 to have to instruct the client not to
16 answer. This was a conversation with
17 attorneys that were acting in concert under
18 joint-defense agreement, or at least had a
19 common interest in litigation at that point
20 in time.

21 MR. MORRIS: I think it's a little
22 late for that.

23 BY MR. MORRIS:

24 Q. And there's no lawyer for you on
25 this call, at least that's identified on this

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2 email string, correct?

3 MR. TAYLOR: That's incorrect.

4 You'll see -- note that Judge Lynn's -- why
5 it was his email, I don't know, but Judge
6 Lynn's email address is on there.

7 MR. MORRIS: Okay. I think having
8 told me the purpose of the call, I think he
9 ought to be able to disclose what the
10 result of the call was. So I'm going to
11 ask my question again.

12 BY MR. MORRIS:

13 Q. And that is, did you learn the truth
14 as to whether or not Mr. Kane had given advance
15 notice to any of the lawyers on this email
16 string about any of the decisions you're
17 referring to?

18 MR. TAYLOR: I'm going to renew my
19 objection. You can answer the question,
20 but I do want to state for the record we
21 believe it's inappropriate and if brought
22 up in later proceedings, we'll move to
23 strike.

24 A. None of the lawyers on this email or
25 that participated in the call acknowledged any

1 Dondero - 6-1-2021

2 advanced conversations with Kane.

3 BY MR. MORRIS:

4 Q. Do you remember anything else about
5 the phone call that's referred to on this
6 exhibit?

7 MR. TAYLOR: I'm just going to renew
8 my objection.

9 A. No.

10 BY MR. MORRIS:

11 Q. And do you recall that Mr. Scott
12 gave notice of his intent to resign on the same
13 day?

14 A. I -- I didn't know it was exactly
15 the same day, but I knew it was on or around
16 that time.

17 Q. Okay.

18 MR. MORRIS: Can we pull up the next
19 exhibit, please, Exhibit Number 5, which is
20 Bates stamped Scott 18 and start at the
21 bottom.

22 (Exhibit 5 introduced.)

23 BY MR. MORRIS:

24 Q. Do you recall receiving this email
25 from Mr. Scott on January 31st, in the

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2 afternoon?

3 A. Yes.

4 Q. Do you know why Mr. Scott gave
5 notice of his resignation at that time?

6 MR. TAYLOR: Objection, calls for
7 speculation.

8 A. No. It -- you would have to
9 answer -- I have my own speculation, but you
10 would have to ask him.

11 BY MR. MORRIS:

12 Q. Did you ever have a conversation
13 with Mr. Scott where he informed you of the
14 reasons for his decision to give notice of his
15 resignation?

16 MR. TAYLOR: Objection, calls for
17 hearsay.

18 A. I knew he was suffering from anxiety
19 and health issues regarding the challenges and
20 the confrontation.

21 MR. MORRIS: I move to strike.

22 I just want you to listen carefully
23 to my question, sir.

24 BY MR. MORRIS:

25 Q. Did Mr. Scott tell you why he had

1 Dondero - 6-1-2021

2 decided to give notice of his intent to resign?

3 MR. TAYLOR: Objection, calls for

4 hearsay.

5 A. He told me he was suffering from

6 health and anxiety issues regarding the

7 confrontation and the challenges of

8 administering the DAF, given the bankruptcy.

9 BY MR. MORRIS:

10 Q. I'm sorry, did you use the word

11 "confrontation"?

12 A. Yes.

13 Q. Do you have an understanding as to

14 what confrontation he was referring to?

15 MR. TAYLOR: Objection, calls for

16 speculation.

17 A. I believe it was the interaction,

18 challenges of dealing with your firm.

19 BY MR. MORRIS:

20 Q. Did you have any advanced notice

21 that Mr. Scott would be sending this email to

22 you?

23 A. Not exactly. But a couple days

24 beforehand, he did propose it, that he was

25 considering resigning.

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2 Q. Did you ever ask him to reconsider?

3 A. No.

4 Q. You'll see in the third paragraph,
5 he states, quote: My resignation will not be
6 effective until I approve of the
7 indemnification provisions and obtain any and
8 all necessary releases.

9 Do you see that?

10 A. Yes.

11 Q. Did he ever explain to you why his
12 release wouldn't become -- his resignation
13 wouldn't become effective until those things
14 happened?

15 MR. TAYLOR: Objection, calls for
16 hearsay.

17 A. No.

18 BY MR. MORRIS:

19 Q. Did he ever tell you who he wanted a
20 release from?

21 MR. TAYLOR: Objection, calls for
22 hearsay.

23 A. No.

24 BY MR. MORRIS:

25 Q. Do you know if there is any

1 Dondero - 6-1-2021
2 agreement today that relates to the
3 indemnification and release provisions cited in
4 Mr. Scott's email?

5 MR. SBAITI: Objection, calls for a
6 legal conclusion, lacks foundation, lacks
7 relevance.

8 A. There's no new agreement that I'm
9 aware of. There's an existing agreement from
10 when he was originally put in place.

11 BY MR. MORRIS:

12 Q. Did you ask for Mr. Scott's
13 resignation?

14 A. No.

15 Q. Did Mr. Scott or anybody acting on
16 his behalf ever explain to you or anybody
17 acting on your behalf why he wanted the
18 indemnification and release provisions?

19 MR. TAYLOR: Objection, hearsay.

20 A. No.

21 BY MR. MORRIS:

22 Q. Did you ever say or suggest to
23 Mr. Scott that he had breached his fiduciary
24 duties to anybody at any time?

25 A. I -- I don't -- I don't remember if

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2 I spoke to anybody else about it.

3 Q. I'm just asking if you ever -- if
4 you or anybody on your behalf ever told that to
5 Mr. Scott or anybody acting on Mr. Scott's
6 behalf, like Mr. Kane.

7 MR. SBAITI: Objection, compound.

8 A. I -- I believe I testified already
9 that I told him he didn't do what was in the
10 best interest of the fund.

11 BY MR. MORRIS:

12 Q. And did you ever tell him, in sum or
13 substance, that you believed he had breached
14 his fiduciary duties to anybody in the world by
15 not acting in the best interest of the fund?

16 MR. SBAITI: Objection, vague.

17 A. I don't recall if I had those
18 discussions with somebody else. I mean -- no,
19 that's -- I don't -- I don't recall if I've had
20 those conversations with anybody else.

21 BY MR. MORRIS:

22 Q. Did you ever threaten to sue
23 Mr. Scott?

24 A. Did I -- no.

25 Q. Did you ever tell Mr. Scott that you

1 Dondero - 6-1-2021

2 were considering suing him?

3 A. I remember telling him he needed to
4 do what was in the best interest of the funds.
5 That's -- that's as far as I remember.

6 Q. Did you ever tell Mr. Scott that you
7 believed that the fund had claims against him?

8 A. I believe anytime you're a trustee
9 and you don't do what's in the best interest of
10 the funds, you leave yourself open for that,
11 potentially.

12 Q. I appreciate that that's your
13 perspective, but I'm asking you whether you
14 ever told Mr. Scott that you believed that the
15 fund could assert claims against him.

16 A. I don't recall that.

17 Q. Do you recall if you ever told
18 Mr. Scott that you believed the fund should
19 assert claims against him?

20 A. No, I don't recall that.

21 Q. Okay. Did you ever tell Mr. Scott
22 that you believed anybody in the world had
23 potential causes of action against him for
24 actions or inactions taken on behalf of the DAF
25 or CLO HoldCo?

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2 MR. SBAITI: Objection, vague.

3 A. I don't recall that.

4 BY MR. MORRIS:

5 Q. What did you do after you received
6 this email?

7 Withdrawn.

8 Did you do anything in response to
9 receiving this email?

10 MR. TAYLOR: For the record, we're
11 talking about Exhibit 5?

12 MR. MORRIS: Yes, I believe so.

13 Is that right, La Asia?

14 MR. TAYLOR: For that -- sorry, 4.

15 MS. CANTY: I'm sorry, John. Repeat
16 that.

17 MR. MORRIS: Is this document on the
18 screen Exhibit 5?

19 MS. CANTY: It's going to be
20 Exhibit 5, but what we had -- we had
21 premarked them. So, we skipped one in
22 sequence. So, when I upload it, it will be
23 5.

24 MR. MORRIS: Okay. Thank you.

25 MS. CANTY: You're welcome.

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2 MR. MORRIS: Yes, Clay, we're going
3 to -- ultimately, this will be marked as
4 Exhibit 5.

5 MR. TAYLOR: Thank you.

6 MR. MORRIS: Yeah.

7 BY MR. MORRIS:

8 Q. So, the question, Mr. Dondero, is:
9 Do you recall doing anything after receiving
10 this email?

11 MR. TAYLOR: Objection, vague.

12 A. I don't remember doing anything with
13 it. I -- I didn't know what to do with it. I
14 didn't know how the DAF structure worked when
15 there was a resignation.

16 BY MR. MORRIS:

17 Q. Did you ask Mr. Scott why he chose
18 to send it to you?

19 A. No.

20 Q. Did you forward it to anybody?

21 A. I don't recall.

22 Q. Did you notify anybody that you had
23 received this?

24 A. I -- I don't remember.

25 MR. MORRIS: Can we scroll up to

1 Dondero - 6-1-2021

2 Mr. Dondero's response?

3 (Scrolling.)

4 BY MR. MORRIS:

5 Q. You can see --

6 MR. MORRIS: That's perfect right
7 there.

8 BY MR. MORRIS:

9 Q. You can see in the first sentence of
10 Mr. Scott's email there's a reference to
11 resigning and divesting. Do you see that? I'm
12 summarizing.

13 A. Yes.

14 Q. And you responded, and you requested
15 clarification that -- the next morning; is that
16 fair?

17 That's the first question.

18 A. Yes.

19 Q. And then you tried to explain to
20 Mr. Scott what your view was of the phrase
21 "divestment" or "divest."

22 Do I have that right?

23 A. Yes. Divest has a different meaning
24 in investments than it does, I guess, in legal
25 structuring; and I just wanted to make sure

1 Dondero - 6-1-2021

2 you -- you didn't mean liquidation of the
3 assets.

4 Q. Okay. That's what I'm getting to.

5 MR. MORRIS: So can we scroll up to
6 Mr. Scott's response?

7 (Scrolling.)

8 BY MR. MORRIS:

9 Q. And Mr. Scott tried to clarify why
10 he -- he used the word "divest." Do you see
11 that?

12 A. Yes.

13 Q. Okay.

14 MR. MORRIS: And then if we can
15 scroll up to your response.

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see your response says: What
19 does that mean? Quote, you need to tell me
20 ASAP that you have no intent to divest assets.

21 Do you see that?

22 A. Yes.

23 Q. Why did you write that?

24 A. It was unpredictable -- some of his
25 behavior was unpredictable at this point. I

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2 just wanted to make sure he wasn't liquidating
3 or intending to liquidate the portfolio.

4 Q. What interest did you have in making
5 sure that Mr. Scott didn't liquidate the
6 portfolio?

7 A. It could materially damage the value
8 of the DAF and its ability to continue its
9 mission as a charitable entity.

10 Q. Had Mr. Scott ever divested assets
11 before?

12 MR. TAYLOR: Objection, vague.

13 A. Well, by giving up the
14 11 million-dollar disclaim against the debtor,
15 he divested an 11 million-dollar asset.

16 BY MR. MORRIS:

17 Q. Anything else?

18 A. Not that I can recall.

19 Q. When was the last time you
20 communicated with Mr. Scott?

21 A. I sent him a Happy Birthday text a
22 couple days ago.

23 Q. And when was the last time you spoke
24 with him?

25 A. It's been a couple months.

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2 Q. Is the last time you spoke to him at
3 around the time that he gave notice of his
4 intent to resign?

5 A. No. It was about a month after
6 that.

7 Q. Mr. Patrick replaced Mr. Scott as
8 the managing member of the DAF GP and as the
9 director of the affiliated DAF entities and CLO
10 HoldCo, correct?

11 MR. SBAITI: Objection --
12 (Audio distortion.)

13 A. Ultimately, yes.

14 BY MR. MORRIS:

15 Q. Do you know how Mr. Patrick came to
16 replace Mr. Scott?

17 MR. TAYLOR: Objection to the extent
18 it calls for a legal conclusion.

19 A. I -- I found out about it after it
20 happened, you know, only from things that Mark
21 Patrick told me.

22 BY MR. MORRIS:

23 Q. Did you know that it was going to
24 happen before the event occurred, before the
25 actual replacement occurred?

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2 MR. TAYLOR: Objection, relevance.

3 A. No.

4 BY MR. MORRIS:

5 Q. Do you know who -- who gave

6 Mr. Patrick -- withdrawn.

7 Do you know anything about the
8 circumstances by which Mr. Patrick replaced
9 Mr. Scott?

10 A. I -- only from conversations with
11 Mark Patrick after the fact.

12 Q. What did Mr. Patrick tell you?

13 MR. TAYLOR: Objection, hearsay.

14 A. He had struggled to -- he had
15 struggled to find other candidates or entities.
16 He had struggled with D&O insurance around some
17 of the alternative candidates.

18 And one day, when he was talking to
19 Grant Scott, they came to some -- I don't know
20 who said what to who, but that -- why doesn't
21 Mark Patrick do it and he has knowledge of the
22 structure, he enjoys the charitable giving
23 part.

24 And unbeknownst to me, they agreed,
25 and he sent over the appropriate documentation

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2 or transfer of shares of voting--again, I don't
3 know how it works specifically--and Grant
4 signed it, and Mark Patrick became the trustee.

5 BY MR. MORRIS:

6 Q. So, it's your testimony that, prior
7 to the time they signed the documentation
8 pursuant to which Patrick replaced Scott, you
9 had no knowledge that there were discussions
10 underway pursuant to which that would occur?

11 A. Correct.

12 Q. You mentioned that Mr. Patrick told
13 you that they had trouble getting D&O
14 insurance.

15 Do I have that right?

16 A. That was -- yeah, that was one of
17 the factors with a couple of the candidates.

18 Q. And did he tell you who those
19 candidates were?

20 MR. TAYLOR: Objection, hearsay.

21 A. He did at the time. I can't
22 remember who they were. One was -- one was a
23 former Dean Foods executive, I believe; and the
24 other was an offshore sole practitioner.

25 BY MR. MORRIS:

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2 Q. Did he tell you what the
3 difficulties were in obtaining D&O insurance?

4 A. No.

5 Q. Did you ask?

6 A. No.

7 Q. Do you know where Mr. Patrick got
8 the authority to -- withdrawn.

9 Do you know who determined to
10 replace Mr. Scott with Mr. Patrick?

11 MR. TAYLOR: Objection to the extent
12 it calls for a legal conclusion.

13 A. As I testified, I believe it was the
14 two of them together.

15 BY MR. MORRIS:

16 Q. And do you have any understanding as
17 to what authority they had to designate
18 Mr. Scott's successor?

19 MR. TAYLOR: Objection, calls for a
20 legal conclusion.

21 A. I -- I believed, between the two of
22 them, they knew how the structure worked, and I
23 believed between the two of them, they had
24 authority -- believed they had authority, and
25 that's why they effectuated it.

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2 BY MR. MORRIS:

3 Q. Okay. Was Mr. Patrick ever employed
4 by HCMLP?

5 A. Yes.

6 Q. Do you know what period of time he
7 was employed by HCMLP?

8 A. He's been there for quite a while.
9 I mean, he was there for quite a while. I
10 believe over a decade.

11 Q. And what positions did he hold, if
12 you recall?

13 A. He headed up our tax department. I
14 don't remember him having any position other
15 than that or before that.

16 Q. Is he a lawyer, to the best of your
17 knowledge?

18 A. He's -- he's a tax lawyer, yeah.

19 Q. And do you know if he's employed
20 today?

21 A. I -- yes.

22 Q. Do you know where he's employed?

23 A. Yes.

24 Q. Where do you understand Mr. Patrick
25 is employed?

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2 A. At SkyBridge.

3 Q. Do you know where SkyBridge's
4 offices are located?

5 A. Yes.

6 Q. Where are they located?

7 A. On McKinney Avenue. I believe it's
8 2515.

9 Q. Is that the same suite of offices
10 where your office is located?

11 MR. SBAITI: Objection, vague.

12 A. It's not the same floor. We -- we
13 left, as you know, the Highland offices
14 suddenly, and so until we establish permanent
15 office locations, they're located there, but I
16 expect they will be relocating in the
17 not-too-distant future.

18 BY MR. MORRIS:

19 Q. Did you have any discussions with
20 Mr. Patrick concerning the positions he was
21 inheriting from Mr. Scott before he agreed to
22 accept them?

23 A. No.

24 Q. Do you have any written or oral
25 agreements with Mr. Patrick of any kind?

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2 MR. SBAITI: Objection --

3 MR. TAYLOR: Objection, vague.

4 A. Yeah, not that I know of, but I'm
5 not sure what you're asking.

6 BY MR. MORRIS:

7 Q. All right. Do you have any written
8 oral agreements of any kind with Mr. Patrick
9 pertaining to his role as an authorized
10 representative of any of the DAF entities or
11 CLO HoldCo, Ltd.?

12 MR. TAYLOR: Objection, vague.

13 A. I do not, no.

14 BY MR. MORRIS:

15 Q. Do you know if Mr. Patrick has any
16 agreement with any of the DAF entities or CLO
17 HoldCo, Ltd., other than those set forth in the
18 limited partnership agreement and the Amended
19 and Restated Limited Liability Company
20 Agreement for the general partnership?

21 A. I don't know of any.

22 Q. Okay. So, there was almost a
23 two-year period between the date that Mr. Scott
24 sent his notice to you of his intent to resign
25 and Mr. Patrick's replacement of Mr. Scott at

1 Dondero - 6-1-2021

2 the end of March. Do I have that right?

3 MR. TAYLOR: Objection. I think you
4 said two-year period.

5 MR. MORRIS: If I did, let me
6 restate it.

7 BY MR. MORRIS:

8 Q. There was approximately a two-month
9 period between the time that Mr. Scott sent his
10 notice to you of his intention to resign and
11 Mr. Patrick's replacement at the end of
12 March 2021. Do I have that right?

13 A. Yes.

14 Q. Okay. Are you aware that during
15 that interim period, Mr. Patrick gave certain
16 instructions to Mr. Scott?

17 MR. TAYLOR: Objection, calls for
18 hearsay.

19 MR. SBAITI: Lacks foundation.

20 A. I -- I don't know specifically.

21 BY MR. MORRIS:

22 Q. Do you know generally? Are you
23 aware of any instructions that Mr. --
24 withdrawn.

25 Can I call that period between

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2 January 31st and the time that Mr. Patrick
3 formally replaced Mr. Scott as "the interim
4 period"? Is that okay?

5 A. Sure.

6 Q. Okay. Did you ever learn at any
7 time during the interim period that Mr. Patrick
8 was giving Mr. Scott instructions with respect
9 to the duties and responsibilities concerning
10 the DAF and CLO HoldCo?

11 MR. SBAITI: Objection, assumes
12 facts not in evidence.

13 A. Not that I recall.

14 BY MR. MORRIS:

15 Q. Okay. Did you communicate with
16 Mr. Scott at all during the interim period
17 other than the birthday text that you
18 mentioned?

19 MR. SBAITI: Objection, misstates
20 testimony.

21 A. I don't -- I don't recall. I mean,
22 I know I've had some conversations with him,
23 yeah, about that -- I have a house in Aspen
24 but -- and we had some conversations about
25 Aspen and skiing and stuff like that, but I

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2 don't remember -- I don't remember
3 specifically --

4 BY MR. MORRIS:

5 Q. Did -- did --

6 A. -- anything else.

7 Q. -- Mr. Patrick --

8 I apologize, Mr. Dondero. Were you
9 finished?

10 A. Yeah, I'm done.

11 Q. Okay. Did Mr. Patrick inform you of
12 any issues that were being raised that needed
13 to be addressed with Mr. Scott during the
14 interim period?

15 A. Not that I recall.

16 Q. Did you ever instruct Mr. Patrick on
17 what to tell Mr. Scott with respect to any
18 matter concerning any of the DAF entities or
19 CLO HoldCo during the interim period?

20 A. Not that I recall.

21 Q. Are you familiar with the phrase
22 "adherence agreement"?

23 A. No.

24 MR. MORRIS: Can we please put up
25 the next exhibit, which we'll mark as

1 Dondero - 6-1-2021

2 Exhibit 6, Grant Scott, beginning at Bates
3 No. 85.

4 (Exhibit 6 introduced.)

5 MR. MORRIS: And if we could --

6 BY MR. MORRIS:

7 Q. Did you ever learn that there was a
8 point in time when the debtor was requesting
9 that CLO HoldCo, Ltd., enter into an adherence
10 agreement?

11 A. No.

12 MR. MORRIS: Can we scroll up a
13 little bit, please?

14 (Scrolling.)

15 MR. MORRIS: And just a little
16 further.

17 (Scrolling.)

18 BY MR. MORRIS:

19 Q. And do you see that Grant Scott
20 forwards it to Mark Patrick and says, "This
21 relates to the second issue from the debtor"?

22 A. Yes.

23 MR. MORRIS: And can you scroll up a
24 little more?

25 (Scrolling.)

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. And you see Mr. Patrick's
4 instruction, "Do not sign the adherence
5 agreement from the debtor. The successor will
6 address this"?

7 A. Yes.

8 Q. Do you have any knowledge that
9 Mr. Patrick instructed Mr. Scott on March 2nd,
10 2001, not to sign an adherence agreement from
11 the debtor?

12 A. I have no knowledge prior to this.

13 Q. Okay.

14 MR. MORRIS: Can you scroll to the
15 top?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see Mr. Patrick further
19 instructed Mr. Scott on March 2nd to, quote,
20 "Stand down on any communication," close quote?

21 A. Yes.

22 Q. Were you aware that Mr. Patrick had
23 instructed Mr. Scott to stand down?

24 A. No.

25 Q. Did you ever tell Mr. Patrick to

1 Dondero - 6-1-2021

2 instruct Mr. Scott to stand down?

3 A. No.

4 Q. Do you have any understanding as to
5 where Mr. Patrick obtained the authority to
6 instruct Mr. Scott to stand down?

7 MR. SBAITI: Objection, vague,
8 assumes facts not in evidence.

9 A. I -- I wouldn't view it as an
10 authority issue. I think they had a long-term
11 relationship, friendship, working relationship
12 with regard to the DAF; and I think Mark was
13 giving him advice.

14 MR. MORRIS: Okay. It's 12:20 New
15 York time. I'd like to just take a short
16 break until 12:30, and I shouldn't have too
17 much more left.

18 MR. TAYLOR: Okay.

19 (Recess held 11:19a-11:31a.)

20 MR. MORRIS: Okay. Hopefully just
21 15 or 20 minutes more. A half hour at
22 most, I promise.

23 BY MR. MORRIS:

24 Q. Are you ready to proceed,
25 Mr. Dondero?

1 Dondero - 6-1-2021

2 A. Yes.

3 Q. You've told me that you expressed to
4 Mr. Scott--and I'm, you know,
5 paraphrasing--that you expressed to Mr. Scott
6 your concerns with respect to his -- certain of
7 the decisions that he made during the course of
8 the bankruptcy.

9 Do I have that right? Is that fair?

10 A. Yes.

11 Q. Do you know whether anybody else
12 besides yourself expressed any concerns to
13 Mr. Scott concerning any of the decisions that
14 he made during the post-petition period?

15 MR. SBAITI: Objection, vague.

16 A. I -- I don't recall.

17 BY MR. MORRIS:

18 Q. Are you aware of anybody other than
19 yourself telling Mr. Scott, in sum or
20 substance, that any of the decisions he made
21 post-petition were inappropriate or not in the
22 best interests of the DAF or CLO HoldCo, Ltd.?

23 A. I don't know.

24 Q. Okay. You're not aware of anybody;
25 is that fair?

1 Dondero - 6-1-2021

2 A. Not as I sit here today.

3 Q. Okay. We talked earlier about the
4 suggestion -- and again, if I get this wrong,
5 just correct me.

6 But I think you testified that
7 implicit in your conversations with Mr. Scott
8 was your belief that he wasn't acting in the
9 best interests of the DAF and CLO HoldCo, Ltd.,
10 and had breached his fiduciary duties; is that
11 fair?

12 A. I think I testified that I didn't
13 use the word "fiduciary duties" but -- I don't
14 recall using those words, but I do recall
15 stating that he was making decisions that
16 weren't in the best interest of the fund.

17 Q. Okay. And I appreciate the
18 clarification and -- I appreciate the
19 clarification.

20 Do you have your own personal belief
21 as to whom Mr. Scott owed fiduciary duties to?

22 MR. SBAITI: Objection, vague.

23 MR. MORRIS: Withdrawn.

24 I'm going to try and do this a
25 different way.

1 Dondero - 6-1-2021

2 Ms. Canty, can we please put back up
3 on the screen Exhibit 1?

4 (Exhibit 1 on the screen.)

5 BY MR. MORRIS:

6 Q. Can you see that, sir?

7 A. Yes.

8 Q. Is there any entity on this
9 Exhibit 1 that you do not believe Mr. Scott
10 owed a fiduciary duty to prior to the time of
11 his resignation in late March 2021?

12 MR. SBAITI: Object to the extent it
13 calls for a legal conclusion.

14 A. Yeah. I -- I can't answer that
15 question.

16 BY MR. MORRIS:

17 Q. Well, do you believe that Mr. Scott
18 owed a fiduciary duty to the three entities
19 that have in their name "Charitable DAF"?

20 MR. SBAITI: Same objection.

21 A. Again, regardless of where the
22 assets are held, he has a responsibility, in my
23 mind, as the trustee or the managing member, to
24 optimize those assets and protect those assets
25 and to efficiently, effectively administer

1 Dondero - 6-1-2021

2 expenses.

3 BY MR. MORRIS:

4 Q. I appreciate that. I'm just asking
5 you to whom he owes the duty to do those
6 things, if you have an understanding. I'm
7 just -- I'm not asking for a legal conclusion.
8 I'm asking you if you have an understanding as
9 to whom he owes those duties.

10 A. Not specifically.

11 Q. Okay. Did you ever discuss at any
12 time with Mr. Patrick your views concerning
13 Mr. Scott's decision to withdraw the objection
14 to the HarbourVest Settlement?

15 MR. SBAITI: Objection, vague, lacks
16 foundation.

17 A. I don't -- I don't specifically
18 recall. It's -- I'm willing to be refreshed,
19 but I -- I don't specifically recall, but
20 that's -- yeah, I don't specifically recall.
21 It's not -- I don't want to speculate.

22 BY MR. MORRIS:

23 Q. I don't want you to speculate,
24 either.

25 Do you have any recollection of --

1 Dondero - 6-1-2021

2 at all of ever discussing with Mr. Patrick your
3 views as to Mr. Scott's decision to withdraw
4 the objection to the HarbourVest Settlement?

5 MR. TAYLOR: Objection, asked and
6 answered.

7 A. Yeah, I don't recall.

8 BY MR. MORRIS:

9 Q. Did you -- do you have any
10 recollection at all of ever discussing with
11 Mr. Patrick your views concerning Mr. Scott's
12 decision to enter into the settlement agreement
13 on behalf of CLO HoldCo?

14 A. I don't recall.

15 Q. I'm sorry. Are you -- yeah, are you
16 aware that CLO HoldCo and the DAF, Ltd.,
17 commenced the lawsuit against the debtor and
18 others in the United States District Court for
19 the Northern District of Texas?

20 A. Yes.

21 Q. Okay.

22 MR. MORRIS: Can we put that
23 complaint up on the screen and mark it as
24 Exhibit 7, I believe?

25 (Exhibit 7 introduced.)

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. I'll just represent to you that this
4 is the first page of the complaint. If you
5 need to refer to it for any purpose, just let
6 me know.

7 But I'm going to start with the
8 question of, have you ever seen a copy of the
9 complaint that was filed by the Charitable DAF
10 Fund, L.P., and CLO HoldCo, Ltd., against the
11 debtor and certain other entities?

12 A. Yes.

13 Q. When did you see the complaint for
14 the first time, that you recall?

15 MR. TAYLOR: Objection, vague.

16 A. Near final versions before it was
17 filed.

18 BY MR. MORRIS:

19 Q. So you saw -- you saw versions of
20 the complaint before it was filed. Do I have
21 that right?

22 A. Yes.

23 Q. Okay. Did you participate in any
24 discussions concerning the substance of the
25 complaint before it was filed?

1 Dondero - 6-1-2021

2 MR. TAYLOR: I'm just going to
3 caution the witness: You can tell him if
4 you participated in any conversations; but
5 to the extent that you had conversations
6 with any attorneys who were acting as
7 lawyers, please do not go into the
8 substance of those conversations.

9 A. Yeah. I mean, yes, I had
10 conversations with attorneys.

11 BY MR. MORRIS:

12 Q. Which attorneys did you speak with
13 about this complaint before it was filed?

14 A. Mazin. I can't remember -- I can't
15 remember -- I talked to a lot of attorneys. I
16 can't remember -- I can't remember besides
17 Mazin.

18 Q. Okay. Now, Mazin doesn't represent
19 you personally, does he?

20 A. No.

21 Q. Can you please tell me everything
22 you discussed with Mazin concerning this
23 complaint?

24 MR. TAYLOR: Objection,
25 attorney-client privilege.

1 Dondero - 6-1-2021

2 MR. SBAITI: Well, I'm also -- DAF
3 is asserting work-product privilege and
4 joint-interest privilege regarding
5 communication through DAF with us.

6 MR. MORRIS: I'm sorry. I'm sorry.
7 I'm having a little trouble hearing you. I
8 think I heard attorney work product. What
9 over privileges are being asserted here?

10 MR. SBAITI: Joint interest. As
11 advisor to the DAF, he provided us some
12 information that we used and helped us
13 identify information that we were using.
14 So, helping his advisee's counsel perform
15 their duties falls under the work-product
16 privilege. We're claiming work-product
17 privilege over the content of his
18 conversation.

19 MR. MORRIS: Okay. Did I hear
20 somebody say attorney-client privilege,
21 too?

22 MR. TAYLOR: I had said that, but I
23 was just making sure that Mazin jumped in
24 with his objections --

25 (Whereupon, the court reporter's

1 Dondero - 6-1-2021

2 computer crashed, calls were made, and an
3 iPad was engaged to finish the deposition.)

4 MR. MORRIS: All right.

5 Mr. Dondero, can you hear me?

6 THE WITNESS: Yes.

7 MR. MORRIS: Mr. Court Reporter, can
8 you hear me?

9 THE REPORTER: Yes, sir.

10 BY MR. MORRIS:

11 Q. Mr. Dondero, did you provide any
12 comments to the Sbaiti firm on any draft of the
13 complaint before it was filed?

14 MR. SBAITI: You can answer that
15 question yes or no. I'll just instruct the
16 witness not to answer with any content of
17 any kind on the basis -- and we're
18 instructing him not to answer on the basis
19 of work-product privilege and
20 joint-interest privilege.

21 A. Some.

22 BY MR. MORRIS:

23 Q. Can you disclose for me all of the
24 information and comments you provided that --
25 to the draft complaints?

1 Dondero - 6-1-2021

2 MR. SBAITI: Instruct the witness
3 not to answer on the basis of work-product
4 privilege and joint-interest privilege.

5 BY MR. MORRIS:

6 Q. Are you going to follow Counsel's
7 advice, Mr. Dondero?

8 A. Yes.

9 Q. Did you provide any conceptual or
10 strategic ideas about what claims to pursue to
11 the Sbaiti firm prior to the time the complaint
12 was filed?

13 MR. SBAITI: Can you repeat the
14 question?

15 BY MR. MORRIS:

16 Q. Did you provide any thoughts or
17 ideas as to what claims should be pursued in
18 this complaint prior to the time it was filed?

19 MR. TAYLOR: I'm going to first
20 lodge an objection as to vague, and I
21 believe Mazin has some other objection.

22 MR. SBAITI: Yeah. I would -- I
23 will say the same objection, and we will
24 object to any content of the -- within the
25 attorney-client work-product and

1 Dondero - 6-1-2021

2 joint-interest privilege.

3 A. Not that I recall.

4 BY MR. MORRIS:

5 Q. Did you provide any facts that are
6 set forth in the complaint?

7 Withdrawn.

8 Did you -- did you provide to the
9 Sbaiti firm any facts that are reflected in the
10 final version of the complaint?

11 MR. SBAITI: Mr. Dondero, you can
12 answer that question yes or no; otherwise,
13 we instruct you not to answer on the basis
14 of -- the content on the basis of
15 attorney-client, work-product and
16 joint-interest privilege.

17 A. Not that I recall.

18 BY MR. MORRIS:

19 Q. You don't recall providing any facts
20 at all?

21 A. Not specifically.

22 Q. Did you provide any general facts or
23 ideas to the Sbaiti firm in connection with
24 your review of the drafts of the complaint?

25 MR. SBAITI: Same instruction, same

1 Dondero - 6-1-2021

2 objections.

3 A. Maybe some.

4 BY MR. MORRIS:

5 Q. Okay. Can you describe those for
6 me, please?

7 MR. SBAITI: I'll instruct you not
8 to answer that on the basis of
9 attorney-client work-product privilege and
10 joint-interest privilege.

11 BY MR. MORRIS:

12 Q. Are you going to follow Counsel's
13 advice, Mr. Dondero?

14 A. Yes.

15 Q. Did you have any discussions with
16 the Sbaiti firm concerning whether or not to
17 name James Seery as a defendant in the original
18 complaint?

19 MR. SBAITI: I'll instruct the
20 witness not to answer on the basis of
21 attorney-client, work-product and
22 joint-interest privilege as doing so would
23 reveal the contents of such communication.

24 BY MR. MORRIS:

25 Q. Can you just answer yes or no?

1 Dondero - 6-1-2021

2 A. No.

3 Q. You didn't have -- that wasn't part
4 of any of the discussions you had prior to the
5 time the complaint was filed?

6 MR. SBAITI: Same instruction. Just
7 don't answer.

8 THE WITNESS: So please don't
9 answer, right, or don't answer --

10 MR. SBAITI: Don't answer.

11 THE WITNESS: Okay.

12 BY MR. MORRIS:

13 Q. Are you going to follow Counsel's
14 advice?

15 A. Yes.

16 Q. Did you -- did you suggest that
17 Mr. Seery should be named as a defendant in
18 this lawsuit to the Sbaiti firm prior to the
19 time it was filed?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of
22 attorney-client work product and
23 joint-interest privilege, as doing so would
24 reveal the contents of those
25 communications.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advice?

5 A. Yes.

6 Q. Did you know, prior to the time the
7 complaint was filed, that the Sbaiti firm
8 intended to file a motion for leave to amend
9 their complaint to add Mr. Seery as a
10 defendant?

11 MR. SBAITI: You can answer that
12 question yes or no, but, otherwise, it will
13 reveal the content of any underlying
14 communication on the basis of
15 attorney-client work product, or
16 joint-interest privilege.

17 A. No.

18 BY MR. MORRIS:

19 Q. When did you learn that the Sbaiti
20 firm filed a motion for leave to amend their
21 complaint to add Mr. Seery as a defendant?

22 A. I don't -- I don't recall.

23 Q. Do you recall whether you had any
24 conversations with anybody in the world at any
25 time prior to the time that motion was filed

1 Dondero - 6-1-2021
2 regarding the possibility of filing a motion
3 for leave to amend the pleading to add
4 Mr. Seery as a defendant?

5 MR. SBAITI: Objection, vague, lacks
6 foundation; and instruct the witness not to
7 reveal the content of any communications on
8 the basis protected under the
9 attorney-client, work-product,
10 common-interest privilege.

11 A. I don't recall.

12 BY MR. MORRIS:

13 Q. Okay. Did you ever discuss with
14 Mr. Patrick the topic of whether or not
15 Mr. Seery should be sued?

16 A. No.

17 Q. Did you ever discuss with the Sbaiti
18 firm the topic of whether Mr. Seery should be
19 sued?

20 MR. SBAITI: Instruct the witness
21 not to answer on the basis of attorney work
22 product -- attorney-client, and
23 common-interest privilege as answering
24 would reveal the contents of such
25 communications, if they occurred.

1 Dondero - 6-1-2021

2 BY MR. MORRIS:

3 Q. Are you going to follow Counsel's
4 advise?

5 A. Yes.

6 MR. MORRIS: I think I may be done.

7 Can we just take a three-minute
8 break and let me just check my notes?

9 MR. SBAITI: Sure.

10 (Recess held.)

11 MR. MORRIS: All right. I have no
12 further questions. I would request the
13 production of a privilege log reflecting
14 the communications, if any, between
15 Mr. Dondero and the Sbaiti firm; but,
16 otherwise, I have nothing further at this
17 time.

18 MR. SBAITI: Okay.

19 MR. MORRIS: Again, I appreciate
20 your time, Mr. Dondero.

21 MR. SBAITI: We'll reserve our
22 questions.

23 MR. MORRIS: Okay. Thank you,
24 everybody.

25 MR. SBAITI: Thank you. Take care.

1 Dondero - 6-1-2021

2 THE REPORTER: Mr. Sbaiti, do you
3 guys need a copy of this deposition?

4 MR. SBAITI: Yeah, we would just
5 need a PTX of the deposition transcript and
6 soft copies of the exhibits. Are you going
7 to send something to the witness to read
8 and sign? I think you could send it to him
9 either directly or to Mr. Taylor on his
10 behalf.

11 (Time Noted: 12:01 p.m.)

12

13

14

JAMES DONDERO

15

16 Subscribed and sworn to before me
17 this _____ day of _____, 2021.

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1 Dondero - 6-1-2021

2 C E R T I F I C A T E
3 STATE OF TEXAS)
4 COUNTY OF ELLIS)

5 I, Daniel J. Skur, a Notary Public
6 within and for the State of Texas, do
7 hereby certify:

8 That JAMES DONDERO, the witness whose
9 deposition is hereinbefore set forth, was
10 duly sworn by me and that such deposition
11 is a true record of the testimony given by
12 such witness.

13 That pursuant to Rule 30 of the Federal
14 Rules of Civil Procedure, signature of the
15 witness was reserved by the witness or
16 other party before the conclusion of the
17 deposition;

18 I further certify that I am not
19 related to any of the parties to this
20 action by blood or marriage; and that I am
21 in no way interested in the outcome of this
22 matter.

23 IN WITNESS WHEREOF, I have hereunto
24 set my hand this 1st day of June, 2021.



25

Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

1 Dondero - 6-1-2021

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name:

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

7 In re:)
 8 HIGHLAND CAPITAL) Case No.
 9 MANAGEMENT, LP,) 19-34054 L.P.
 10 Debtor,) Chapter 11

11 -----)
 12 HIGHLAND CAPITAL MANAGEMENT,)
 13 LP,)

14 Plaintiff,) Adversary No.
 15 vs.) 21-03003-sgi

16 JAMES D. DONDERO,)
 17 Defendant.)

18 Dep. Date: 06/01/2021
 19 Deponent: JAMES DONDERO

- 20 Reason codes:
 21 1. To clarify the record.
 22 2. To conform to the facts.
 23 3. To correct transcription errors.

24 CORRECTIONS:

25	Pg.	LN.	Now Reads	Should Read	Reason
	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
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1 Dondero - 6-1-2021

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JAMES DONDERO

19 _____

20 _____

21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS _____ DAY OF _____, 2021.

23 _____

24 (Notary Public) MY COMMISSION EXPIRES: _____

25 _____

1 Dondero - 6-1-2021

2 -----I N D E X-----

3 WITNESS: EXAMINATION BY PAGE:

4 JAMES DONDERO

5 Mr. Morris 288

6

7 *****

8 -----EXHIBITS-----

9 Deposition Exhibits PAGE/LINE

10 Exhibit 1 DAF/CLO Holder Structure 290/15
Chart
11 Bates No. GScott000007

12 Exhibit 2 Amended and Restated 301/6
Limited Liability Company
13 Agreement of Charitable
DAF GP, LLC
14 Bates No. PATRICK_000031
through 000035

15 Exhibit 3 Amended and Restated 313/14
Investment Advisory
16 Agreement
17 Bates No. GScott000325
through 000340

18 Exhibit 4 Phone Conference 335/25
19 Invitation For 1/31/2021
Bates No. GScott000011

20 Exhibit 5 January/February 2021 339/22
21 Email String Regarding
22 Notice of Intent to Resign
and Divest From CLO
23 HoldCo, Ltd., and Related
Entities
24 Bates No. GScott000018
through 000019

25

1 Dondero - 6-1-2021

2 -----EXHIBITS-----

3 Deposition Exhibits PAGE/LINE

4 Exhibit 6 March 2021 Email String 361/4
5 Regarding Highland
6 Adherence Agreement
7 (Highland CLO Funding) in
8 Connection With Transfer
9 of HarbourVest Shares
10 Bates No. GScott000085
11 through 000088

12 Exhibit 7 Original Complaint in Re: 368/25
13 Charitable DAF Fund, L.P.
14 and CLO HoldCo, Ltd., V
15 Highland Capital
16 Management, L.P. and
17 Others
18 Bates No. GScott000389
19 through 000414

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EXHIBIT 17

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

3 In Re:) **Case No. 19-34054-sgj-11**
4)
4 HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 21, 2020
5) 9:30 a.m.
6 Debtor.)
7) MOTIONS

7 _____)
8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
10 UNITED STATES BANKRUPTCY JUDGE.

11 APPEARANCES:

12 For the Debtor: Jeffrey N. Pomerantz
13 PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd., 13th
14 Floor
Los Angeles, CA 90067
(310)_277-6910

15 For the Debtor: John A. Morris
16 PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

17 For the Debtor: Maxim B. Litvak
18 PACHULSKI STANG ZIEHL & JONES, LLP
150 California Street, 15th Floor
San Francisco, CA 94111-4500
(415) 263-7000

19 For the Debtor: Melissa S. Hayward
20 Zachery Z. Annable
21 HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
22 Suite 106
Dallas, TX 75231
23 (972) 755-7104

24
25

1 APPEARANCES, cont'd.:

2 For the Official Committee Dennis M. Twomey
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7438

5 For the Official Committee Penny Packard Reid
6 of Unsecured Creditors: Juliana Hoffman
SIDLEY AUSTIN, LLP
7 2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
8 (214) 981-3413

9 For ACIS Capital Rakhee V. Patel
10 Management GP, LLC, WINSTEAD, P.C.
et al.: 2728 N. Harwood Street, Suite 500
11 Dallas, TX 75201
(214) 745-5250

12 For the Issuer Group: Amy K. Anderson
13 JONES WALKER, LLP
811 Main Street, Suite 2900
14 Houston, TX 77002
(713) 437-1866

15 For the Issuer Group: James T. Bentley
(Telephonic) SCHULTE ROTH & ZABEL, LLP
16 919 Third Avenue
New York, NY 10022
17 (212) 756-2000

18 For Redeemer Committee of Mark A. Platt
19 the Highland Crusader FROST BROWN TODD, LLC
Fund: 100 Crescent Court, Suite 350
20 Dallas, TX 75201
(214) 580-5852

21 For Redeemer Committee of Marc B. Hankin
22 the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
(Telephonic) New York, NY 10022-3098
23 (212) 891-1600

24
25

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert
3 OFFICE OF THE UNITED STATES
4 TRUSTEE
5 1100 Commerce Street, Room 976
6 Dallas, TX 75242
7 (214) 767-8967 Ext. 1080

8 For UBS AG London Branch, Kimberly A. Posin
9 et al.: LATHAM & WATKINS, LLP
10 355 South Grand Avenue
11 Los Angeles, CA 90071-1560
12 (213) 485-1234

13 For UBS AG London Branch, Asif Attarwala
14 et al.: LATHAM & WATKINS, LLP
15 330 N. Wabash Avenue, Suite 2800
16 Chicago, IL 60611
17 (312) 876-7700

18 Recorded by: Michael F. Edmond
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

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1 DALLAS, TEXAS - JANUARY 21, 2020 - 9:35 A.M.

2 THE COURT: Counsel in the courtroom first in
3 Highland.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz, John Morris, and Max Litvak from Pachulski Stang
6 Ziehl & Jones, counsel for the Debtor.

7 THE COURT: Good morning.

8 MR. POMERANTZ: Also in the courtroom are the members
9 of the independent board: John Dubel, Jim Seery, and Russell
10 Nelms.

11 THE COURT: Good morning.

12 MS. HAYWARD: Good morning, Your Honor. Melissa
13 Hayward and Zachery Annable on behalf of the Debtor.

14 THE COURT: Good morning.

15 MS. LAMBERT: Lisa Lambert with the U.S. Department
16 of Justice representing William Neary, the United States
17 Trustee. I believe Ms. Kippes will also be joining later this
18 morning.

19 THE COURT: Okay. Good morning.

20 MS. LAMBERT: Thank you.

21 MR. TWOMEY: Good morning, Your Honor. Dennis
22 Twomey, Penny Reid, and Juliana Hoffman on behalf of the
23 Unsecured Creditors' Committee from Sidley Austin. Thank you.

24 THE COURT: Good morning.

25 MS. PATEL: Good morning, Your Honor. Rakhee Patel

1 of Winstead, P.C. on behalf of ACIS Capital Management, LP and
2 ACIS Capital Management, GP, LLC.

3 THE COURT: Good morning.

4 MS. PATEL: Thank you.

5 MR. PLATT: Good morning, Your Honor. Mark Platt.

6 I'm here on behalf of the Redeemer Committee of the Highland
7 Crusader Fund. And Mark Hankin, I believe, is on the phone as
8 well.

9 THE COURT: Okay. Good morning.

10 MS. POSIN: Good morning, Your Honor. Kim Posin of
11 Latham & Watkins. Also here is Asif Attarwala from Latham.
12 We represent creditor UBS Securities, LLC and UBS AG London
13 Branch.

14 THE COURT: Good morning.

15 MS. ANDERSON: Good morning, Your Honor. Amy
16 Anderson with Jones Walker on behalf of the Issuer Entities.
17 And with me on the phone is Mr. James Bentley with Schulte
18 Roth.

19 THE COURT: Okay. Thank you.

20 All right. That's all the courtroom appearances. If
21 you're on the phone and wish to appear, you may go ahead. I
22 think we heard at least Mr. Bentley, you're on the phone,
23 correct?

24 MR. BENTLEY: Yes, Your Honor. Thank you.

25 THE COURT: All right. And we heard Mr. Mark Hankin

1 should be on the phone, correct?

2 MR. HANKIN: Yes, Your Honor.

3 THE COURT: All right. Anyone else wishing to
4 appear?

5 All right. Well, we originally had quite a few things on
6 the calendar, and it looks like we're down just to four or
7 five maybe at this point, correct?

8 MR. POMERANTZ: That is correct, Your Honor. Again,
9 Jeff Pomerantz; Pachulski Stang Ziehl & Jones.

10 There has been a flurry of paperwork. I have either
11 inserts or replacements to things in your binders, or I have
12 completely new binders. What would Your Honor prefer?

13 THE COURT: Well, by the way, you had a very helpful
14 binder, whoever was responsible for that. I think just the
15 inserts will do.

16 MR. POMERANTZ: Okay. May I approach?

17 THE COURT: You may. And I assume we're talking
18 about the pleadings binder that you sent over Friday-ish?

19 MR. POMERANTZ: Correct.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Okay. Very good. Thank you.

23 MR. POMERANTZ: Your Honor, I thought I would take
24 Your Honor through the agenda. And if the agenda that we
25 provided today was helpful, we would propose to do it for all

1 hearings, if that would be acceptable.

2 THE COURT: That would be great, yes.

3 MR. POMERANTZ: Thank you, Your Honor.

4 So, Your Honor, number one on the agenda was the DSI
5 retention motion. Your Honor has already entered an order
6 approving that motion.

7 THE COURT: Uh-huh.

8 MR. POMERANTZ: Number two is the ordinary course of
9 business protocol motion, which was rendered moot by Your
10 Honor's approval of the settlement, so a notice of withdrawal
11 of that motion has been filed on the docket.

12 THE COURT: Okay.

13 MR. POMERANTZ: The number three and four, the
14 retentions of Foley Gardere and Lynn Pinker, we have agreed
15 with the Committee and ACIS to continue those hearings. At the
16 conclusion of this hearing, I will be asking perhaps for a
17 couple of hearing dates --

18 THE COURT: Okay.

19 MR. POMERANTZ: -- over the next couple of months so
20 that --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- we can set these for the next one.
23 Number five is the PensionDanmark relief from stay motion.
24 That also by agreement has been continued until the next date.

25 Number six is the settlement motion. The only trailing

1 issue, if Your Honor may recall, the CLO Issuers had raised
2 some concerns that the ordinary course of business protocols
3 would somehow impact the ability of the Debtor and the CLO
4 Funds to operate in accordance with their contractual
5 documents. We have been engaged with them and with the
6 Creditors' Committee in discussions on how to address their
7 concerns. We are still working on that, and we would ask that
8 that matter continue to trail to the next hearing.

9 THE COURT: Okay. All right.

10 MR. POMERANTZ: Your Honor, number seven and number
11 eight and number nine, we are -- we were -- they were --
12 they're unopposed. There have been some discussions, both in
13 connection with the cash management motion and on the bonus
14 motion, of the Committee and others. We would propose to hear
15 those after the contested matters. So we would prefer to trail
16 them until after the three contested matters.

17 THE COURT: All right.

18 MR. POMERANTZ: And Your Honor, the three contested
19 matters remaining, we would propose to take them in the order
20 of argument on the agreed protective order. There is
21 opposition by the Trustee's Office. Then an argument on the
22 Committee seal motion, and then followed by the United States
23 Trustee's motion to appoint a trustee.

24 THE COURT: All right. I am good with that sequence.
25 Anyone want to comment?

1 All right. So we'll start with the protective order.

2 MR. POMERANTZ: Your Honor, and I will cede the
3 podium to my partner, John Morris, who will be handling
4 argument on that.

5 THE COURT: All right. Thank you. Mr. Morris?

6 MR. MORRIS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. MORRIS: John Morris; Pachulski Stang Ziehl &
9 Jones; for the Debtor.

10 Your Honor, the Committee and the Debtor have agreed upon
11 the terms of a protective order. The protective order really
12 is a garden-variety protective order. And if I may, I would
13 just like to spend a couple of minutes giving the Court some
14 background as to how we got here.

15 THE COURT: Okay.

16 MR. MORRIS: This case has been going on for three
17 months, and obviously there's been a substantial exchange of
18 information during the interim. The case was filed in mid-
19 October. Almost immediately, the Debtor received substantial
20 requests from the Committee's professionals, both the lawyers
21 as well as the financial advisors. Under the leadership of
22 Brad Sharp, who was acting at that point as the CRO, the Debtor
23 acted very quickly to provide the information that it could.

24 Given that it was asked to produce documents on a very
25 expedited basis, given that it was asked to produce information

1 on a wide variety of issues that didn't concern an adversary
2 proceeding, that didn't concern a contested matter, some of
3 which related to, for example, transactions that were being
4 contemplated and we wanted to give the Committee visibility,
5 for all those reasons, the documents were produced initially on
6 a professional-eyes-only basis.

7 From time to time, the Committee sought the Debtor's
8 consent to share certain of that information with the Committee
9 members in order to enable the Committee members to fulfill
10 their duties. And I won't go into detail, but most of the time
11 we agreed. Sometimes we didn't.

12 The fact is, Your Honor, the parties worked very
13 cooperatively throughout the fall, notwithstanding the
14 adversarial nature of the proceedings, to provide information.
15 And we continued on that basis until late December, when the
16 Committee and the Debtor finally reached an agreement on the
17 terms of a protective order, and that's what we filed I think
18 on December 27th.

19 And the flow of information continued. The parties, I
20 think it's fair to say, have relied upon the terms of that
21 order. Under the guidance of the newly-appointed independent
22 directors, the Debtor has continued to provide information to
23 the Debtor as well as to other parties.

24 What information has been provided during this time? I
25 think it's important for Your Honor to understand the

1 magnitude of just what the Debtor has done here. I think the
2 Committee has made over 30 -- no, let me state it differently.
3 The Debtor has made over 30 separate document productions. It
4 covers more than 10,000 pages of material. It covers the
5 laundry list of issues that the Committee is interested in,
6 again, both with respect to contested matters and stuff that
7 has absolutely nothing to do with anything that's on the
8 Court's calendar today.

9 We've engaged in depositions. The Committee took three
10 very extensive depositions of Mr. Sharp, the CRO, of Mr.
11 Caruso, his partner at DSI, and they took a more-than-seven-
12 hour deposition of Frank Waterhouse, the CFO of the Debtor. I
13 defended each of those depositions. I didn't direct any of my
14 witnesses not to answer a single question. So there's been
15 full transparency here. I think there was maybe one question
16 that I asked to be marked confidential because it pertained to
17 the identity of investors in a nondebtor entity, and the
18 Committee didn't object to that.

19 So there's been that free flow of information.

20 Of course, Your Honor, the Debtor has filed its schedules,
21 its SOFAs. The Debtor sat for an almost-two-hour examination
22 before the United States Trustee and creditors, answering
23 questions about those documents at a 341 meeting that is going
24 to be continued tomorrow morning.

25 The point here, Your Honor, is that the agreed-upon rules

1 as reflected in the protective order haven't hindered the flow
2 of information. In fact, it's enhanced the ability of the
3 Creditors' Committee to gain information.

4 In the absence of the cooperation between the Committee
5 and the Debtor, Your Honor, I believe it's hard to imagine how
6 we could have reached an agreement on things like corporate
7 governance and the bonus motion, which includes information
8 relating to personnel matters, salaries and things of that
9 nature. And so this flow of information I think is helping
10 the Debtor's estate, it's helping the process, and I think it
11 ought to be encouraged, frankly.

12 As I mentioned earlier, another very critical component of
13 the information-sharing is sharing with the Committee
14 information relating to proposed transactions. That has
15 nothing, again, to do with an adversary proceeding, has
16 nothing to do with a contested matter, but it would really
17 hinder the Debtor's ability to operate if it was in a
18 contentious situation with the Committee over its day-to-day
19 business. And so, again, this protective order enables the
20 Debtor to carry forth its business.

21 I think it's important, Your Honor, to look at what the
22 consequences of this have been. Neither the Committee nor
23 anybody else has ever filed a motion to compel the Debtor to
24 provide information. Neither the Committee nor any other
25 party in interest has ever even requested a conference with

1 this Court or the Court in Delaware on matters relating to
2 discovery.

3 No one has objected to the protective order except the
4 United States Trustee. And we do appreciate the perspective
5 and the position that the United States Trustee is in, but
6 it's got to be taken into the context of this case. And in
7 the context of this case, where the Committee is on board,
8 where nobody else is objecting, the Court ought to ask itself
9 why. And I think the reason why is because the process is
10 really working, and it's working very well.

11 The people and the entities that are mentioned in the
12 United States Trustee's objection, whether it's ACIS or the
13 SEC or the PBGC or investors, they're all very sophisticated
14 parties, they're all well aware of what's happening, they all
15 have notice, and nobody is here objecting. And I think that's
16 very important.

17 The good news, Your Honor, I think the good news, anyway,
18 is the Committee and the Debtor have agreed to amend its form
19 of protective order in a way that we hope and we believe goes
20 a long way to addressing the United States Trustee's concerns.
21 In particular, what we've done is we've added the United
22 States Trustee as one of the parties who will receive
23 everything. Okay. So we've amended that. And Your Honor, I
24 have both clean and blacklines of the revised protective
25 order, if you'd like me to hand it up.

1 THE COURT: All right. You may approach.

2 MR. MORRIS: And I can just show you exactly where
3 these changes have been made.

4 THE COURT: Okay. Thank you. Thank you.

5 MR. MORRIS: So, Your Honor, you'll see in the
6 blackline at Paragraph 2 on Page 7 that we've added in
7 Subparagraph 2(f) the United States Trustee's Office. So
8 they're now one of the people or entities --

9 THE COURT: Uh-huh.

10 MR. MORRIS: -- who will receive everything. And
11 then on Page 11 in Paragraph 10, we've tried to make it very
12 clear that the protective order is not intended to prevent the
13 U.S. Trustee from disclosing discovery material in compliance
14 with a subpoena or court order or a FOIA request, provided
15 that the Debtor and the Committee are given notice pursuant to
16 Paragraph 9 so that we have an opportunity to intervene if we
17 think that there's a reason not to engage in that process.

18 So, as long as we receive notice, you know, the U.S.
19 Trustee can be responsive in the way that I think, I think at
20 least to some degree, they want to.

21 This order now, Your Honor, and I think this is -- I'll
22 thank the Committee for pointing this out -- this order is now
23 really wholly consistent with a protective order that was
24 entered by Judge Hale in the *PHI* case. It was entered just
25 last April, and it's filed at Docket #316. And that's a

1 protective order that wasn't entered in connection with an
2 adversary proceeding or a contested matter. It was a
3 protective order that was for use to all parties who wanted to
4 participate in discovery at any stage of the case. It also
5 included the United States Trustee's Office as one of the
6 recipients of documents, and it specifically provided not only
7 for confidential information but for professional-eyes-only
8 designation. I have a copy of that order if it would be
9 helpful for the Court to see.

10 THE COURT: All right. You may approach.

11 (Pause.)

12 MR. MORRIS: To the extent that there's any party who
13 has not yet requested information or has not sought discovery,
14 if the Court enters this order they'll be able to do so
15 pursuant to this order. And to be clear, as soon as a party
16 either requests or produces information, discovery
17 information, they become a party to this document. And so
18 they'll have all of the rights and the abilities to seek
19 information, to challenge designations. So nobody's rights
20 are really being curtailed in their ability to gain discovery.
21 And at this point, Your Honor, we have both the Committee as
22 well as the United States Trustee's Office who are going to
23 see everything. And so if either the Committee or the
24 Trustee's Office believe that the Debtor has improperly
25 labeled or categorized any document as either confidential or

1 highly confidential, there's a process to be followed. And
2 that process, I think, is quite reasonable. It's pretty
3 standard, at least in my experience. They'll let us know that
4 they disagree. We'll have a conversation. We'll either --
5 the Debtor will either agree to redesignate the document or
6 we'll bring the matter to the Court for the Court's
7 determination.

8 Sealing issues. Again, the U.S. Trustee's Office and the
9 Committee will both be fully informed as to what's happening
10 here. And if either of them has an issue, they can bring that
11 to the Court's attention.

12 To the extent that there is a disputed matter before the
13 Court on a sealing motion, the rules of engagement remain the
14 same. There's nothing in this protective order that seeks to
15 shift the burden. There's nothing in this protective order
16 that seeks to change the burden. The only thing that it does
17 is it attempts to identify, through the agreement with the
18 Committee, the types of information that the Debtor reserves
19 the right to designate as highly confidential.

20 It doesn't mean that that's now the standard that the
21 Court has -- the Court will rule, employ whatever standard it
22 thinks is appropriate, frankly. But it's a description, I
23 think it's in Paragraph 12, of the type of information that we
24 would mark as highly confidential. And I think the Committee
25 would agree, if given the opportunity, to give the Court some

1 comfort that at this point the Debtor has been quite judicious
2 and limiting in terms of the amount of information that
3 they've designated for that particular category.

4 So, in summary, Your Honor, there's no dispute that it's
5 needed. Gratefully, even the U.S. Trustee isn't telling the
6 Court that a protective order is not needed. From the
7 Debtor's perspective, it's not only needed, I would -- I
8 daresay it's required. Because if you want the Debtor and the
9 Committee to continue to engage in a free flow of information
10 outside of an adversary proceeding, outside of a contested
11 matter, this is the only way to do it. And I know that's what
12 the Debtor wants. I believe that's what the Committee wants.
13 It's why we've entered into this agreement. So these are
14 matters that ought to be protected.

15 1102(b)(3) doesn't give all creditors a right to all
16 documents. It gives them the right to information. And we
17 believe that this agreement facilitates the Committee's
18 ability to get information and to share it, as they determine,
19 with their members.

20 Unless Your Honor has any questions, I have nothing
21 further.

22 THE COURT: I do not. All right. Ms. Reid, did you
23 -- it's a joint motion. Did you want to say something?

24 MS. REID: Yes, Your Honor. Penny Reid with Sidley
25 Austin on behalf of the Creditors' Committee.

1 Just briefly, I would agree with Mr. Morris that this
2 protective order was a heavily-negotiated protective order
3 that took quite a while to get the parties' agreement, and it
4 enabled the Creditors' Committee to get the documents it
5 needed.

6 What is very important to note is two things. It does
7 provide a mechanism for any party to object to the
8 designation. And it's the burden of the party designating it
9 to support the designation. And all disputes or anything
10 related to this order comes to Your Honor. It's the
11 jurisdiction of this Court to decide everything, which is also
12 very important to our client.

13 THE COURT: Okay. Thank you.

14 MS. REID: Thank you, Your Honor.

15 THE COURT: All right. Ms. Lambert? Have we at
16 least made some progress from your prospective with the added
17 language?

18 MS. LAMBERT: We're making some progress, but not
19 sufficient progress. May I approach the bench --

20 THE COURT: You may.

21 MS. LAMBERT: -- with the exhibit binders?

22 THE COURT: All right.

23 MS. LAMBERT: Your Honor, this is not, as the Debtor
24 characterized it, a garden-variety protective order. This is
25 not like the *PHI* order, which was a confidentiality order that

1 defined parameters for sharing information with the creditors.
2 This is a motion that prevents the sharing of matters.
3 Protective orders are granted in contested matters and in
4 adversaries, not in the case in chief. Rule 23 is not
5 available in the case in chief. Section 1102, the only
6 statute that they cite, presumes sharing, not failing to
7 disclose. And the reason --

8 THE COURT: Well, let me ask you this. I want to
9 really drill down on this, because, you know, he used the
10 words, counsel used the words garden-variety. And frankly,
11 when I read these pleadings back in chambers, I thought, I
12 think this is pretty standard fare, this protective order. I
13 think I've signed something like this many times before.

14 And I get what you're saying. Well, let me see if I get
15 what you're saying. It feels like your main issue is that we
16 don't have a contested matter or an adversary proceeding. But
17 what I will throw out is this: Had we had a motion for a 2004
18 exam, a gazillion times I have seen people come back with
19 okay, we, debtor, will produce, but we want this protective
20 order. And it ends up looking maybe almost identical to this
21 one.

22 Another context I thought of was back shortly after the
23 2005 amendments when these new provisions were added with
24 regard to creditors' committees and sharing in 1102(b), I very
25 often saw, in complex Chapter 11s, a protocol order, we

1 sometimes called it, where a creditors' committee sort of
2 wanted cover for their dos and don'ts, and it resulted in sort
3 of a protective order. You know, I haven't gone back and
4 looked and compared terms, but something like this.

5 MS. LAMBERT: Right.

6 THE COURT: So, --

7 MS. LAMBERT: And the *PHI* order is --

8 THE COURT: -- are we punishing -- is this a no good
9 deed goes unpunished sort of thing? They didn't make the
10 Creditors' Committee file a 2004 motion.

11 MS. LAMBERT: The difference --

12 THE COURT: They've produced. And then now they've
13 negotiated this. I mean, --

14 MS. LAMBERT: The difference is very important, Your
15 Honor. You have --

16 THE COURT: What is --

17 MS. LAMBERT: -- gone right to the crux. A motion
18 for 2004 exam defines the areas to be discovered. An
19 adversary proceeding defines the areas to be discovered. A
20 motion for contested matter defines the issues that are
21 subject to discovery. Here, --

22 THE COURT: They -- the Debtor --

23 MS. LAMBERT: -- no one --

24 THE COURT: -- didn't insist on that. The Debtor is
25 just like, fine. We're going to in good faith produce.

1 MS. LAMBERT: But it's not the Debtor's issue.

2 THE COURT: We just want this order.

3 MS. LAMBERT: It's also the parties' issues, the
4 other creditors. If you have some knowledge of what is at
5 issue, you have some opportunity to come to the Court and say
6 hey, I, the SEC, or I, Creditor X, also am interested in what
7 --

8 THE COURT: But nothing about this order would
9 prevent them from filing --

10 MS. LAMBERT: But they don't know --

11 THE COURT: -- a 2004 motion and seeking the
12 information themselves, correct?

13 MS. LAMBERT: Right. And then they're going to have
14 to fight the sealing provision. So -- or the fact that it's
15 been designated highly confidential, which they would not have
16 had to fight otherwise until an opportunity came and they knew
17 what the information was. But now they don't have the
18 information. See, the information would have been given to
19 them as highly confidential, --

20 THE COURT: Uh-huh.

21 MS. LAMBERT: -- maybe labeled that way, in a
22 protective order in connection with their litigation.

23 THE COURT: Uh-huh.

24 MS. LAMBERT: But now they don't even get to get it
25 because it's already protected from them. Already insulated.

1 This is the problem.

2 So the -- if the Court compares the *PHI* order -- and the
3 U.S. Trustee certainly understands that there must be sharing
4 protocols or some type of confidentiality in general. This is
5 not it, though. This goes way beyond that. There should be a
6 provision that creditors can get information under certain
7 circumstances.

8 If the Court looks at the orders that are typical in these
9 cases, there is such a provision. That does not exist. In
10 addition, the carve-out in the order for contested matters,
11 2004 exams, and adversaries is material. And they should be
12 carved out here, too.

13 So those are the substantive, big-parameter issues of why
14 this, as a matter of law, is problematic.

15 In addition, there are particular provisions that are
16 untenable. The first is the limitation on the Government.
17 And this goes all the way back to the *WorldCom* case, Your
18 Honor. In *WorldCom*, a court entered an order for the examiner
19 to be able to interview people under seal, basically, in
20 confidence. An examiner prepared various reports. Later, the
21 U.S. Attorney's Office sought to obtain those, and they were
22 not able to because they had been done under seal originally
23 and that was material to the disclosure of the information.
24 This Court should not modify the statutory obligations that
25 the parties have to refer matters, either for ethical or

1 criminal matters. The U.S. Trustee circulated the routine
2 language that we ask for in every order of this type, and they
3 declined to do it.

4 THE COURT: Show me that language.

5 MS. LAMBERT: I can -- I can provide the Court with a
6 -- the language. I emailed it to them. I don't have it here
7 right now, but I can provide it to the Court. But basically,
8 I'm sure the Court has seen it before, we put it in all of our
9 languages, and it says nothing in this order constrains the
10 obligations of any party under ethical or federal statute to
11 share information. But now what's required is, if the U.S.
12 Trustee wants --

13 THE COURT: I don't know if I've ever signed -- I
14 mean, that might be an exception that would swallow up the
15 rule. I feel like I have -- I've approved language before
16 that, you know, says kind of the sky is blue, nothing prevents
17 a party from seeking modification of this order on notice to
18 parties and a hearing.

19 MS. LAMBERT: Your Honor, --

20 THE COURT: I mean, --

21 MS. LAMBERT: -- the United States Trustee should not
22 be required to come to this Court to tell -- or to tell the
23 Debtor that they have a subpoena for information or that
24 they're sending a criminal referral.

25 THE COURT: No, no, no. There's already an exception

1 on there for a subpoena.

2 MS. LAMBERT: No. No. The issue is --

3 THE COURT: But you don't think you have to give them
4 notice if you did a subpoena?

5 MS. LAMBERT: I have to give them notice. If I have
6 a FOIA request --

7 THE COURT: I mean, but you don't think that's
8 appropriate?

9 MS. LAMBERT: No, Your Honor. I don't think it's
10 appropriate that the U.S. Trustee, who has an obligation
11 statutorily, and the Court has an obligation statutorily, to
12 send matters to the U.S. Attorney's Office, that we have to
13 disclose when we're doing that. No. And other parties in
14 interest should be free to do that, too. That's what the
15 statute says. We have an obligation to do that.

16 We don't have to tell them what our whole case is. It
17 will become apparent if the U.S. Attorney's Office pursues it.
18 They release the information, usually. But this is not
19 standard. It has never been --

20 THE COURT: Okay. I just want the language that you
21 --

22 MS. LAMBERT: All right.

23 THE COURT: -- you argue is standard, and you said
24 that --

25 MS. LAMBERT: That language is, Nothing in this order

1 constrains anybody --

2 THE COURT: I want to see it. I want to get -- see
3 examples.

4 MS. LAMBERT: All right. Well, I'm happy --

5 THE COURT: Because I don't remember -- maybe I've
6 signed it a million times and I just don't remember, but I
7 don't really remember that.

8 MS. LAMBERT: I'm happy to provide the Court with a
9 number of orders signed by a number of judges in this
10 district.

11 THE COURT: I would like to see it now.

12 MS. LAMBERT: Okay. Well, I will have Ms. Kippes
13 provide that. But --

14 THE COURT: She's sitting in the back of the
15 courtroom now.

16 MS. LAMBERT: I'm sure that she is.

17 So, the other thing is, Your Honor, --

18 THE COURT: Unless you can show me right now, look,
19 here, in fact, is the garden-variety form of order, here is
20 the language that time after time after time after time after
21 time courts insist upon, --

22 MS. LAMBERT: Your Honor has not required -- Your
23 Honor has not required them to provide any evidence that this
24 language is standard. And it's not. So, --

25 THE COURT: I have a form of order that the

1 Creditors' Committee is supportive of and has heavily
2 negotiated. And it just looks at first glance to me to be
3 somewhat garden-variety. So, --

4 MS. LAMBERT: Well, --

5 THE COURT: -- you as the objector need to, you know,
6 point out why it's not.

7 MS. LAMBERT: Your Honor, the appearance of this case
8 is that there's a desire to keep it from being public. This
9 Court routinely, all the time, says bankruptcy is an open
10 process.

11 THE COURT: But I also, routinely, all the time, sign
12 protective orders. And it's like, We'll have a hearing down
13 the road if something needs to get in the record. This is
14 about discovery outside the courtroom.

15 MS. LAMBERT: Correct. And the order in *PHI*, I think
16 the Court will find, is very different from the order in this
17 case. So -- and is useful for that reason. I anticipate the
18 --

19 THE COURT: Okay. Go through the protective order in
20 *PHI* and highlight for me provisions that it has --

21 MS. LAMBERT: It does not bar sharing with government
22 entities. It is not as limiting to professional eyes, though
23 it has some limitations. And it contemplates sharing with
24 creditors under defined provisions.

25 THE COURT: Okay. Again, lengthy order. Point out

1 which provision from *PHI* you would like to see in this order.

2 MS. LAMBERT: All right. If the Court gives me a
3 break, I will annotate the order.

4 The IRS, I anticipate the evidence will be, has an
5 estimated claim of \$8 million to \$9 million that's on appeal.
6 The SEC is involved in the oversight of this Debtor. The PBGC
7 is a creditor.

8 THE COURT: They can file motions for a 2004 or file
9 an adversary. Or they file a proof of claim, it's objected
10 to, we can have discovery.

11 MS. LAMBERT: That changes the --

12 THE COURT: They got notice of this motion --

13 MS. LAMBERT: The change --

14 THE COURT: -- for approval of a protective order.

15 Yes or no?

16 MS. LAMBERT: Yes. I'm not -- I question whether the
17 IRS has as a creditor. I think they received notice because
18 they're not really listed as a creditor, they're listed as
19 contested.

20 THE COURT: Okay. But they got notice. They have
21 able counsel that shows up all the time in cases.

22 MS. LAMBERT: So, Your Honor, the statute, 1102,
23 presumes the disclosure of information, not the constraining
24 of information.

25 THE COURT: But you would agree, would you not, that

1 many, many times courts have entered protective orders in
2 connection with a Committee's 1102(b) obligations?

3 MS. LAMBERT: No.

4 THE COURT: Again, I use the analogy back shortly
5 after the 2005 amendments, --

6 MS. LAMBERT: They're referred --

7 THE COURT: -- where people prospectively said hey,
8 we want -- we want to be clear we're doing things correct,
9 we'll share information with our constituency, we, the
10 Creditors' Committee, but there's certain confidential,
11 privileged items we may somehow get into our hands, and we
12 want to --

13 MS. LAMBERT: It is --

14 THE COURT: -- be clear about what we have to share
15 and what we should not.

16 MS. LAMBERT: It is true that the Court enters
17 confidentiality orders in cases. I'm well aware of that. The
18 issues of this one is different. It is not garden-variety.
19 The difference goes right to the language of confidential
20 versus protected.

21 Your Honor, another aspect of this case or this motion
22 that is not workable is the sealing provision being co-
23 extensive with those, the items that are designated as highly
24 protected. You heard at the Federal Bar Association meeting
25 only last week that the magistrate judges were talking about

1 striking these provisions routinely. The FJC's publication on
2 protective orders and sealing also says it should not be
3 coextensive, should be a separate motion to seal. The
4 standards are totally different and much higher for sealing
5 the documents. This is a public process, and it should be
6 maintained as a public process.

7 THE COURT: All right. Any --

8 MS. LAMBERT: The Court delegates under this motion
9 its responsibility to evaluate information to the Debtor
10 unilaterally. The Debtor gets to make the decisions, not the
11 Court. And nobody knows what those decisions are, except
12 maybe the party that is asking for the information. If you
13 don't know that the information exists and it's already
14 subject to protection, you never get that opportunity.

15 It's for these reasons that the motion should be denied or
16 tailored.

17 THE COURT: All right. Anything else?

18 You know, no one has mentioned this, but it danced through
19 my brain: Part of the settlement I approved with the
20 Committee contemplated sort of a common interest privilege on
21 some things, right? Or am I misremembering that?

22 MR. MORRIS: They will have access, Your Honor, to
23 information as part of their investigation. I can't tell you
24 off the top of my head --

25 THE COURT: Okay. No one --

1 MR. MORRIS: -- the precise parameters of it.

2 THE COURT: No one can immediately tell me?

3 MR. MORRIS: Yeah.

4 THE COURT: Okay. Anything else?

5 MS. LAMBERT: Your Honor, if the Court would like,
6 the U.S. Trustee is happy to annotate one of the orders and to
7 provide a supplement with the orders that contain the
8 language, both that the Court -- this Court has entered and
9 other courts have entered from the district.

10 THE COURT: All right. Well, --

11 MR. MORRIS: Your Honor, just very briefly. John
12 Morris, again. Pachulski Stang Ziehl & Jones.

13 THE COURT: This motion has been pending for a long
14 time. It was actually filed in Delaware?

15 MR. MORRIS: It has.

16 THE COURT: Okay.

17 MR. MORRIS: And it's -- and we've relied on it.

18 THE COURT: Okay.

19 MR. MORRIS: The reason that I went through the
20 background, Your Honor, is to give the Court the assurance
21 that it's working, it's not being abused. By bringing the
22 U.S. Trustee under the tent with the Creditors' Committee,
23 you're going to have two independent parties who are going to
24 review and challenge, if they think appropriate, the Debtor's
25 designations.

1 Nobody is being prevented here from filing a motion,
2 whether it's for a 2004 or another contested matter. Nobody
3 here is -- just because something is marked as highly
4 confidential doesn't mean that other people can't get access
5 to it. They just need to come and use a device pursuant to
6 which it's responsive. That's all it is. It is garden-
7 variety, Your Honor. Thank you.

8 THE COURT: All right. I'm going to overrule the
9 objections and approve the proposed agreed protective order as
10 amended in accordance with the mark-up that was shown and the
11 announcement made.

12 I am also, even though I think this is like saying the sky
13 is blue, I'm also going to direct that the Debtor and
14 Committee add a sentence at the very last paragraph that the
15 Court reserves the right to amend or -- amend this order upon
16 motion by any party in interest and notice and a hearing.

17 Again, I think that's probably a no-brainer, doesn't need
18 to be said, but I'm going to direct it to be said in there.
19 And, again, it would have to be on motion of a party in
20 interest and notice and a hearing, and we can all come and
21 argue whether some sort of amendment is needed to this order.
22 And, you know, you already have provisions in there that
23 contemplate, you know, someone may file a motion pursuant to
24 this order, but we'll just throw that in for good measure.

25 Again, I feel like this is an agreed order that is not

1 substantially different from forms of order this Court and
2 other courts have approved many times before. While the
3 timing and context may seem different, feel different to the
4 U.S. Trustee, I feel like, as we say in the law, it's a
5 difference -- a distinction without a difference, or whatever
6 the expression is.

7 Again, I allude to the many times in the past where a
8 creditors' committee, early in the case, before there were
9 contested matters, before there were adversary proceedings,
10 filed motion for approval of protocols under 1102(b) regarding
11 its obligation to share information, and by the time we showed
12 up for the hearing, there was an agreed protective order that
13 had been negotiated.

14 I compare it to the context of the committee or somebody
15 files a motion for a 2004 exam early in the case, and then we
16 come back with an agreed protective order.

17 I said before it's as though, to me, no good deed goes
18 unpunished. We have cooperation early on the case, and now,
19 you know, when this agreed protective order is proposed, the
20 argument is, well, there wasn't a 2004, there wasn't a
21 contested matter. Again, I don't think that distinction from
22 other cases makes any meaningful difference. I think there's
23 good cause pursuant to 1102(b), 105, and Rule 26. While maybe
24 not triggered yet with a contested matter or adversary
25 proceeding, I think there's good cause to approve this agreed

1 form of protective order.

2 All right. So, if you all could make those changes that
3 we discussed here on the record, and I'll sign it right away.

4 MR. MORRIS: Thank you, Your Honor.

5 THE COURT: All right. We now had the seal motion of
6 the Committee that I think you all proposed we go to second
7 today. And I'll tell you what floated through my head,
8 reading these pleadings. It almost felt like a moot issue by
9 this point. I don't know if anyone -- maybe I took your
10 thunder here, but --

11 MR. TWOMEY: You did somewhat steal my thunder, Your
12 Honor. I just wanted --

13 THE COURT: Okay.

14 MR. TWOMEY: Dennis Twomey again on behalf of the
15 Creditors' Committee.

16 THE COURT: I'm sure you're going to articulate it
17 much better than I just did.

18 MR. TWOMEY: If I might, Your Honor, maybe I'll take
19 a minute just to describe the genesis of the motion, which, --

20 THE COURT: Uh-huh.

21 MR. TWOMEY: -- just like the motion you heard, is
22 also about two months old and has been on ice for a while.
23 The Committee filed a motion to seal back in early December in
24 conjunction with, at the time, the Committee's objection, the
25 omnibus objection to the Debtor's second-day motions. As you

1 just noted, those objections were all resolved as part of the
2 governance settlement that you approved at the last hearing.
3 In terms of what was covered by the motion to seal as part of
4 that omnibus objection, which has now been resolved, the
5 Committee had attached as Exhibits C and D two orders that
6 were issued in the arbitration proceedings between the Debtor
7 and the Redeemer Committee, which, as Your Honor is aware, the
8 Redeemer Committee is a member of our Creditors' Committee
9 here. And at the time of the filing, the Committee sought to
10 seal the awards, primarily because the Debtor had previously
11 expressed to the Redeemer Committee that the Debtor believed
12 the rewards were subject to a protective order in that
13 litigation. And the Redeemer Committee at the time, while --

14 THE COURT: Now, let me ask you to repeat what you
15 just said, because I know this was brought up in the U.S.
16 Trustee's motion. You alluded to a protective order in your
17 motion. Are you saying now that you thought at the time there
18 was a protective order in place in the arbitration that you
19 might be running afoul of by disclosing it?

20 MR. TWOMEY: Correct.

21 THE COURT: Okay.

22 MR. TWOMEY: More specifically, Your Honor, we had to
23 get our omnibus objection, the Committee's omnibus objection
24 on file, and we wanted to include those awards as exhibits to
25 our omnibus objection. And the Redeemer Committee, who sits

1 on our Creditors' Committee, had indicated to the full
2 Committee that the Debtor had previously expressed the view
3 that these awards were subject to that separate protective
4 order in the other case.

5 And so, out of an abundance of caution, so that we could
6 get our omnibus objection on file, we sought -- we filed the
7 seal motion. And so that was sort of the genesis of the
8 motion.

9 So we filed it out of an abundance of caution in order to
10 press forward with our filing of the omnibus objection at the
11 time. And since that time, we've had the opportunity to
12 consider it more, and the Redeemer Committee has sort of
13 indicated its views on the protective order. But most
14 importantly, our objection, obviously, has now been resolved
15 as part of the settlement that Your Honor approved last week.

16 So, given that, coming full circle, Your Honor, the
17 Committee is no longer seeking the relief that we had
18 requested in the seal motion, and so that's where things stand
19 today. The Committee has communicated its position to both
20 the U.S. Trustee and the Debtor, and that's where things
21 stand.

22 So I believe the Debtor, in terms of the underlying
23 merits, I believe the Debtor still believes that those awards
24 contain some confidential information. Mr. Morris can speak
25 to that. And obviously, the U.S. Trustee had objected to our

1 seal motion.

2 But, again, Your Honor, coming full circle to the point
3 you raised initially, this really isn't an issue -- this isn't
4 a motion that the Committee continues to pursue, because the
5 objection, the underlying objection, the omnibus objection to
6 those second-day motions has been resolved as part of last
7 week's, or almost two weeks ago, the order that Your Honor
8 entered.

9 THE COURT: All right. So, to recap: The two
10 arbitration awards, or parts of them, I don't know if it was
11 the whole thing, but they were attached to the omnibus
12 objection, which is now moot because it was an objection to
13 the cash management motion, the DSI retention application, and
14 the ordinary course business protocols. That objection is
15 totally moot, if you will, now, because the global settlement
16 or the -- well, the settlement I approved last week resolved
17 all the issues raised in that objection. So, well, I guess, I
18 mean, what -- I was going to say, what would stop you from
19 just withdrawing the objection?

20 MR. TWOMEY: We can -- I think we can withdraw the
21 motion. Because it's a motion, obviously. We can withdraw
22 the motion to file under seal. That's --

23 THE COURT: Well, and again, I'm not telling you how
24 to do things, but I'm just saying that's what rolled through
25 my mind as far as why this might be a moot point.

1 MR. TWOMEY: Understood, Your Honor. And certainly,
2 from the Committee's perspective, we're not trying to, you
3 know, add more --

4 THE COURT: Uh-huh.

5 MR. TWOMEY: -- more issues that don't need to be
6 added. And I think that's exactly right. That's what I was
7 going to --

8 THE COURT: And that's part of what I'm getting here.
9 I mean, this could be a battle for another day. At some
10 point, someone may want to file a pleading attaching those
11 arbitration awards.

12 MS. LAMBERT: Your Honor, they are in evidence for
13 the motion to appoint a Chapter 11 trustee. That's why we're
14 having this motion before. The U.S. Trustee was constrained
15 to file its pleading redacted and all the documents under seal
16 --

17 THE COURT: Right.

18 MS. LAMBERT: -- because they're filed under seal
19 here and the order seals it.

20 THE COURT: Okay. Well, I guess what you're saying
21 is you're going to move, in connection with your trustee
22 motion in a few minutes, for me to admit into evidence these
23 arbitration awards we're arguing about right now?

24 MS. LAMBERT: That is correct.

25 THE COURT: Okay. Okay.

1 MR. TWOMEY: Thank you, Your Honor.

2 THE COURT: Thank you. Who else wishes to speak on
3 this?

4 MR. MORRIS: John Morris for Pachulski Stang Ziehl &
5 Jones for the Debtor.

6 THE COURT: Uh-huh.

7 MR. MORRIS: Your Honor, my first point here was
8 objection moot; procedurally nothing before the Court. I
9 think that's been taken care of.

10 But it's a very important point. And the reason why it's
11 very important is because the Redeemer award was first
12 proffered by the Committee in opposition to the Debtor's
13 motion for the appointment of a CRO. Old management was going
14 to stay in place, and they were using -- I presume that they
15 would have attempted to use the Redeemer award to show that,
16 notwithstanding the Debtor's desire to appoint the CRO, old
17 management was still in place.

18 The reason why it's very important to note that the
19 objection that the Committee filed is now moot is because
20 we're now here in a very different context. We're here
21 because the United States Trustee's Office wants to offer the
22 Redeemer awards into evidence in support of their motion for
23 the appointment of a trustee. That motion is going to be
24 determined under 1104. 1104 relates solely to current
25 management. We were here two weeks ago, Your Honor, and the

1 Court approved an order appointing new management.

2 And so our first argument, Your Honor, is that there is no
3 sealing issue for the Court to decide in the first instance
4 because the Redeemer awards simply are not relevant and
5 shouldn't be admitted into evidence, and we can leave it for
6 another day when and if another party in interest seeks to
7 either discover or otherwise introduce into evidence the
8 Redeemer awards.

9 If you recall, the week before last we were here and the
10 United States Trustee's Office attempted to elicit argument
11 over prior acts that were described in Your Honor's ACIS
12 decision, in a prior SEC order, in the Redeemer awards. And I
13 think Your Honor properly at that point kind of shut it down
14 and said, We're here on a motion to appoint new management.
15 And we have new management. And I'm prepared to put my
16 witness in the box who will testify that the independent
17 directors are firmly in control of this debtor, that every
18 single employee is under their authority and control, that
19 they have the ability to fire any of them, that none of them
20 are able to engage in any conduct that is outside their
21 approval.

22 And so I think the Redeemer award -- and, frankly, we're
23 going to have the same objection to the U.S. Trustee's offer
24 of the ACIS opinion into evidence and the SEC order, because
25 they're all related to conduct that took place prepetition

1 under old management.

2 1104, the only section upon which this motion is based,
3 refers to current management. And I don't think that we want
4 to spend a whole day. I mean, I just don't think it's
5 relevant. And so if it's not relevant, then it's not
6 admissible into evidence. The Court need not even get to the
7 issue of sealing.

8 If the Court were inclined to introduce it into evidence,
9 we would still request that it be marked under seal.

10 Specifically, Your Honor, under 107, the Debtor believes
11 that there is a very compelling interest in keeping the
12 Redeemer awards confidential. It does go into substantial
13 allegations and findings pertaining to the Debtor's business
14 practices. We do believe it contains confidential
15 information, confidential commercial information, as required
16 under 107. And the Debtor is very concerned. And you will
17 hear the testimony from the independent directors about
18 innuendo and rumor that can get into the marketplace and
19 hinder the ability of the Debtor to reorganize and to go
20 forward with their business operations.

21 So, in sum, Your Honor, I think we've got two points to
22 make. One is that the Redeemer award has nothing to do with
23 current management. There's no allegation that it has
24 anything to do with current management. There won't be any
25 facts to establish that the Redeemer award has anything to do

1 with current management. And we think that kind of ends
2 everything.

3 But if Your Honor really is inclined to allow that into
4 evidence, we would still ask that it be marked under seal.

5 THE COURT: Okay.

6 MR. MORRIS: Thank you.

7 MS. LAMBERT: Your Honor, the U.S. Trustee has two
8 responses. And the first really goes to the motion to seal.
9 Cause can be broader than the items listed. That goes all the
10 way to *Little Creek* and is carried through into the Fifth
11 Circuit's precedent on trustee appointment. The statute says
12 "or similar cause."

13 So the U.S. Trustee has raised three issues in connection
14 with the appointment of a trustee, and one of those issues is
15 that the legal division of the Debtor has so much control over
16 the Debtor's conduct that that establishes cause to appoint a
17 trustee so that there is somebody to replace the (inaudible)
18 decisions.

19 I anticipate the evidence will be that the Court in ACIS
20 and that the arbitration award and the SEC opinion all go to
21 those types of issues. That's number one.

22 Number two, technically, and it's not just a bureaucratic
23 technicality under the facts, the management of this debtor
24 has not changed. Individuals at Strand have changed. And the
25 U.S. Trustee agrees that, under some circumstances, that might

1 resolve the issues. But not under the facts of this case.

2 And that's because Dondero remains the sole shareholder of the
3 Strand entity. And --

4 THE COURT: That's not management.

5 MS. LAMBERT: No, it's not.

6 THE COURT: It's an equity interest.

7 MS. LAMBERT: It's an equity interest. That's
8 correct. Management has changed, but the management owes a
9 fiduciary duty to the stockholder. And there are a lot of
10 things --

11 THE COURT: Didn't they contract around that --

12 MS. LAMBERT: No.

13 THE COURT: -- in the settlement agreement?

14 MS. LAMBERT: Mr. Dondero contracted around various
15 provisions, but the board did not. And the reason the board
16 did not, I believe, is that the Delaware statute prohibits
17 contracting around a fiduciary duty to shareholders. If you
18 think about it, it makes a lot of sense.

19 THE COURT: I signed an order.

20 MS. LAMBERT: You did sign an order.

21 THE COURT: It's not a contract.

22 MS. LAMBERT: And you signed an order where Mr.
23 Dondero constrained his rights to vote the stock and a variety
24 of other things, but that doesn't change the fiduciary
25 obligations of the board to Mr. Dondero's stock equity

1 interests. And the case law is that corporate fiduciary
2 duties to shareholders, generally speaking, cannot be changed.

3 So it's a problem. It's a problem that, you know, it's
4 not because I'm a genius, it's because I've played chess on
5 this table a number of times that I know that this problem can
6 arise. And it's an issue of conflict for the new board.

7 THE COURT: Okay. Let -- my brain needs to take
8 things in a certain sequence. In all the arguments, we've
9 bled over a little bit to your motion for appointment of a
10 trustee. On the motion to seal, --

11 MS. LAMBERT: On the motion --

12 THE COURT: -- I am inclined, and tell me why I
13 shouldn't, I'm inclined to punt. The objection is now moot.
14 The motion to seal to which it attaches, in my mind, is moot.
15 So I'm inclined to just deny for mootness, and then we --

16 MS. LAMBERT: Your Honor, --

17 THE COURT: -- punt to another day whether these
18 arbitration awards get in in some context. Can -- is there
19 any disagreement with that, so we can just roll into the U.S.
20 Trustee's motion?

21 MS. LAMBERT: The U.S. Trustee is not subject to a
22 protective order except one the Court's about to enter. At
23 the time this was entered, the U.S. Trustee had no -- was not
24 subject to the protective order, but we did receive these
25 documents under the motion to seal order. So I need some

1 clarity on what I'm going to be doing.

2 This arbitration award was the basis, according to the
3 declaration, the catalyst for the filing of this bankruptcy
4 case. And the Court is considering and being asked to
5 restrain its disclosure to the public. It's highly material
6 to the facts of this case --

7 THE COURT: Okay.

8 MS. LAMBERT: -- generally.

9 THE COURT: All right. Well, again, my simple brain
10 is going to take these things in sequence. I am denying the
11 motion to seal merely for mootness, okay? I'm overruling the
12 objection -- well, I'm deeming the objection of the Committee
13 as moot, the omnibus objection to the CRO, the cash management
14 motion. It's moot, and therefore the motion to seal relating
15 to it is moot.

16 I haven't made any ruling broader than that with regard to
17 this motion to seal.

18 Now, I realize there's the protective order I've just
19 approved, and that has some relevance here, but we're done on
20 the motion to seal. Okay? Denied for mootness only.

21 MS. LAMBERT: Dismissed for mootness?

22 THE COURT: Denied. Dismissed. Is there a
23 distinction there that I'm glossing over?

24 MS. LAMBERT: I think, procedurally, dismissed for
25 mootness.

1 THE COURT: All right. It's one or the other.
2 Committee, you can draft the order as you think is
3 appropriate. I dismiss/deny, either one.

4 All right. Let's --

5 MR. TWOMEY: Thank you, Your Honor.

6 THE COURT: Let's move to the motion for appointment
7 of a trustee. I assume you're going to want opening
8 statements. I've read the pleadings. They don't need to be
9 lengthy.

10 OPENING STATEMENT ON BEHALF OF THE U.S. TRUSTEE

11 MS. LAMBERT: Judge Jernigan, the Debtor and the U.S.
12 Trustee have agreed to do brief opening statements, and the
13 U.S. Trustee is going to move for the admission of the binders
14 to establish its case in chief. The Debtor has some
15 objections, some of which you've already heard, to the U.S.
16 Trustee's exhibits. And then we'll move to the Debtor's case
17 in chief.

18 THE COURT: All right. In your opening statement,
19 you're asking the Court to admit the ACIS opinion, the
20 Redeemer Committee's arbitration award, the partial award
21 dated March 3, 2019, the final award dated April 29, 2019, and
22 an SEC order of September 25, 2014?

23 MS. LAMBERT: That is --

24 THE COURT: You're asking me, in your opening
25 statement, to admit those?

1 MS. LAMBERT: No, Your Honor. I was going to do that
2 after my opening statement, --

3 THE COURT: Well, I was confused.

4 MS. LAMBERT: -- but I will do it now if you'd like.

5 THE COURT: I misunderstood your statement.

6 MS. LAMBERT: I was going to make my opening
7 statement, they're going to make their --

8 THE COURT: You may proceed.

9 MS. LAMBERT: All right.

10 THE COURT: You may proceed.

11 MS. LAMBERT: So, the issues in the motion to appoint
12 a Chapter 11 trustee are three.

13 First, the management is the same because Strand is still
14 the general partner. In some context, because the individuals
15 at Strand have changed, it is material. On the other hand, it
16 has created its own conflict, and that is the basis for the
17 appointment of a trustee.

18 Number two, the legal team is central. I anticipate the
19 evidence will be that many of the compliance issues that
20 caused problems in past cases and have -- and the evidence
21 will indicate that the management -- the legal management team
22 ignored the advice of outside counsel. The Court's findings
23 in the ACIS opinion go to individuals at the legal team who
24 still remain there. And the testimony I anticipate will be
25 that they continue to maintain control over compliance

1 decisions and other decisions at the Debtor, based on the
2 testimony of the CRO.

3 And, finally, the efforts to keep this case *sub rosa* by
4 filing expansive protective orders and seeking expansive
5 sealing of documents that are central to the case continue to
6 prevent the transparency that's necessary, and a Chapter 11
7 trustee would facilitate the transparency that the Court has
8 always emphasized in all of its cases is a cornerstone of
9 Chapter 11.

10 For these reasons, the U.S. Trustee seeks the appointment
11 of a Chapter 11 trustee in this case.

12 THE COURT: All right. Other opening statements?

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: Good morning again, Your Honor. Jeff
15 Pomerantz; Pachulski Stang Ziehl & Jones.

16 Your Honor, the burden is on the United States Trustee to
17 demonstrate by clear and convincing evidence that cause exists
18 for the appointment of a Chapter 11 trustee or that the
19 appointment of a Chapter 11 trustee is in the best interest of
20 parties. The Debtor intends to present the testimony of Mr.
21 John Dubel, one of the Debtor's independent directors, which
22 will demonstrate that the U.S. Trustee cannot come close to
23 meeting its burden.

24 Rather, the testimony will unequivocally demonstrate that
25 the alternative governance structure approved by this Court on

1 January 9th satisfactorily addresses any concerns with the
2 Debtor's prepetition management, allows the parties to put the
3 acrimony which marked the first three and a half months of
4 this case behind them, and allows them to focus on efforts to
5 restructure the Debtor's liabilities in an efficient and
6 timely manner.

7 Specifically, the testimony will show that, since its
8 employment, the board has been fully engaged in managing the
9 Debtor's business. That a member of the board has physically
10 been at the Debtor's headquarters for six of the seven days
11 since their appointment, and that Mr. Dubel, the testifying
12 witness, has devoted in excess of 80 hours to the engagement
13 in the last 12 days.

14 The testimony will show that the board has met with
15 department heads and received briefings from them regarding
16 all facets of the Debtor's operations. And that, importantly,
17 the Debtor's employees, including the legal department, are
18 respecting the independent board members' authority and are
19 fully cooperating with the board.

20 And lastly, that the board is effectively overseeing the
21 implementation of the court-approved protocols.

22 Lastly, Your Honor, the evidence will demonstrate that the
23 appointment of a Chapter 11 trustee would destabilize the
24 business further, creating further uncertainty and adversely
25 affect the Debtor's ability to restructure.

1 For these reasons, Your Honor, the Debtor opposes the
2 appointment of a trustee. Thank you, Your Honor.

3 THE COURT: All right. Any other opening statements?

4 MR. TWOMEY: Your Honor, Dennis Twomey on behalf of
5 the Committee. The Committee did file an objection, Your
6 Honor, but does not intend to put forth any evidence. So if
7 it's okay with Your Honor, we would prefer to just wait to
8 make our statement until the end of the proceedings.

9 THE COURT: All right. That's fine.

10 MR. TWOMEY: Thank you.

11 THE COURT: Thank you. All right. Ms. Lambert?

12 MS. LAMBERT: Your Honor, Ms. Kippes has provided me
13 with this Court's order in the *Adeptus* case, where the Court
14 did include the standard language that the U.S. Trustee has
15 about referring criminal or ethical obligations. I'm happy to
16 present it to the Court.

17 THE COURT: All right. Well, you may. I've made my
18 ruling, but --

19 (Pause.)

20 THE COURT: Again, I've made my ruling. And, you
21 know, I don't know if this was heavily negotiated in that
22 case. If it was, you know, fine. I just don't know.

23 MS. LAMBERT: If I may I approach the bench?

24 THE COURT: Okay. These are the proposed exhibits
25 for the Trustee now?

1 MS. LAMBERT: Yes.

2 THE COURT: Okay.

3 MS. LAMBERT: Your Honor, I have an additional set of
4 binders. I'd intended for the ones that I presented to the
5 Court to be the work copies, and there to be an original set.
6 Does the Court not need the original set?

7 THE COURT: Well, did you give one to Tom?

8 MS. LAMBERT: I did.

9 THE COURT: Okay. We're good, then. Well, Tom,
10 don't work on yours.

11 MS. LAMBERT: No, I have an additional one.

12 THE COURT: Oh, well, if you have an additional one,
13 fine.

14 MS. LAMBERT: Yeah.

15 THE COURT: Give it to Michael over here.

16 (Pause.)

17 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
18 the admission of all but Exhibit 6, which the U.S. Trustee
19 hasn't been able to obtain, which is the transcript of the 341
20 meeting.

21 THE COURT: Okay. So, 1 through 5 and 7 through 11?

22 MS. LAMBERT: Yes, Your Honor.

23 THE COURT: All right. I know there are objections
24 to some of these. Are there some that are not objected to?

25 MR. MORRIS: May I speak from here, Your Honor?

1 THE COURT: Yes.

2 MR. MORRIS: Okay. John Morris for the Debtor. The
3 Debtor has no objection to Exhibits 4, 5, 8, and 9.

4 (U.S. Trustee's Exhibits 4, 5, 8, and 9 are received into
5 evidence without objection.)

6 MR. MORRIS: With respect to Exhibit #7, which
7 pertains to certain deposition designations, we've got a list
8 here that we shared with the U.S. Trustee's Office yesterday
9 that goes through each of the designations and identifies
10 those with which we have objections, those with which we do
11 not. We identified the bases for each of the objections, and
12 we've also offered a limited set of counterdesignations, to
13 which I understand the U.S. Trustee does not object.

14 If it would be easier, I could just mark this as an
15 exhibit and give it to the Court for the Court's
16 consideration.

17 THE COURT: All right. He's got a substitute, it
18 sounds like, for Exhibit 7. Do you have an issue with that?

19 MS. LAMBERT: Your Honor, the U.S. Trustee put in the
20 entire deposition, anticipating that the rule of completeness
21 would be sought and due to the time constraints and the
22 holiday weekend, not being able to change our depositions. So
23 we don't have any objections to the rule of completeness and
24 the entire deposition transcript, statement of a party, is in
25 the binder under Tab 7.

1 THE COURT: All right. Well, --

2 MR. MORRIS: That's not what we were asking, Your
3 Honor. We do not want the entire transcript admitted into
4 evidence for any reason. The U.S. Trustee's Office
5 specifically identified certain pages and lines, and we
6 responded. And there's a very limited set of
7 counterdesignations that we've offered simply for purposes, I
8 think, of I say completeness in two instances and context in
9 one. But nothing should go into evidence that is either
10 unobjected to or if the Court overrules any of our objections.
11 We don't want the whole transcript into evidence.

12 THE COURT: All right. So, do you need to look at
13 his revised version of your Exhibit 7?

14 MS. LAMBERT: Well, I would, yes.

15 THE COURT: Okay. And, again, I understood he gave
16 it to you earlier.

17 MS. LAMBERT: He gave it to me yesterday during the
18 holiday.

19 The objections that they've made are on relevance, and the
20 U.S. Trustee's response on the relevance is that the
21 management issues go to the in-house counsel as well, and
22 there's testimony about the in-house counsel. The only
23 objections are on relevance, Your Honor, and because this is a
24 bench trial, the Court has broader discretion on a relevance
25 objection than it would in a jury trial, as the Court is

1 disciplined and can scan out those materials that are not
2 relevant. And, more importantly, they are relevant to the
3 case as the U.S. Trustee has alleged it.

4 MR. MORRIS: Your Honor, the relevance objections
5 actually are not limited to issues of whether or not the
6 testimony relates to current management. Some of them have to
7 do with venue and I'm not even sure why it was designated.
8 But we've made our objections, and I think it would be
9 appropriate for the Court to rule. We understand that it's a
10 bench trial, but that doesn't -- that doesn't negate the Rules
11 of Evidence.

12 THE COURT: All right. Well, I certainly don't want
13 to go back in chambers and read the entire deposition if
14 that's not really what anyone was originally wanting me to do.

15 MS. LAMBERT: For this reason, Your Honor, the U.S.
16 Trustee has designated the lines that were relevant in the
17 U.S. Trustee's witness and exhibit list 7. And they
18 corresponding have designated the lines that they feel are
19 necessary for completeness and context.

20 THE COURT: Okay. I'm going to -- I guess I'm
21 overruling the objection to 7. I will look at your deposition
22 excerpts and I will look at what Mr. Morris has handed you as
23 far as his supplemental excerpts. All right?

24 (U.S. Trustee's Exhibit 7 is received into evidence as
25 specified. Debtor's supplement is received into evidence as

1 specified.)

2 MR. MORRIS: So then with respect to the exhibits,
3 Your Honor, I don't know if you want to hear argument now on
4 the objections.

5 THE COURT: All right. So, we have objections to 1,
6 2, and 3.

7 MR. MORRIS: Right. And those really just follow
8 along the argument that I made earlier. All of these
9 documents, the first one, I believe, is the ACIS opinion. The
10 second is the Redeemer awards. The third is a more than five-
11 year-old SEC cease-and-desist order. And our argument is that
12 they should not come into evidence for any purpose. They all,
13 to the extent -- you know, I'm not sure what they're trying to
14 use with them, but, again, 1104 is crystal clear. It relates
15 to the current management. None of the current managers were
16 at the Debtor prior to two weeks ago, let alone at the time
17 these orders were entered.

18 THE COURT: All right. Let me tell you where I am on
19 this, Ms. Lambert. I almost think of this as a summary
20 judgment issue on current management. I mean, I am inclined
21 to agree with the Debtor's argument that 1104 -- is it (b)(1)?
22 No. Which one? (a)(1). Just simply doesn't apply as a
23 matter of law anymore because we're not talking about current
24 management anymore.

25 Now, your U.S. Trustee motion lives another day, in my

1 view, because of 1104(a)(2), because you might still convince
2 me that it's in the interest of creditors, equity holders, or
3 other interests of the estate. But it almost feels like,
4 again, a summary judgment issue on current management.

5 So, what is your response to that?

6 MS. LAMBERT: Your Honor, the Fifth Circuit case law
7 is not limited to just management. Fraud, dishonesty,
8 incompetence, or gross [mis]management of the affairs of the
9 debtor by current management, either before or after the
10 commencement of the case, or similar. Or similar cause. The
11 U.S. Trustee is under 1104(a)(1). The Fifth Circuit precedent
12 establishes that cause for purposes of (a)(1) should be
13 considered like cause for bad faith or other factors such as
14 *Little* --

15 THE COURT: So you're saying there's clear Fifth
16 Circuit authority that says --

17 MS. LAMBERT: That --

18 THE COURT: -- similar cause --

19 MS. LAMBERT: -- inherent --

20 THE COURT: -- goes beyond the context of activities
21 of current management?

22 MS. LAMBERT: Correct. Like inherent conflicts,
23 which is what we have, an inherent conflict.

24 THE COURT: All right. Well, I am going to sustain
25 the objection to those three, but without prejudice,

1 basically, to me reconsidering your offer, for example, during
2 a rebuttal stage. Okay? If I hear something from witnesses
3 that makes me see this in a different light. But my view now
4 is that things changed when we replaced the current management
5 structure of the Debtor, the management structure that it had
6 when it filed bankruptcy, and all of these --

7 MS. LAMBERT: These issues -- these are not --

8 THE COURT: -- these orders --

9 MS. LAMBERT: Are not for current --

10 THE COURT: -- pertain to the prior regime.

11 MS. LAMBERT: No. The ACIS opinion, the Redeemer
12 arbitration partial award, also go line by line to the legal
13 counsel as being in control of decisions.

14 THE COURT: Okay. Again, I'm over -- I'm sustaining
15 the objection to these exhibits, subject to you re-offering
16 them after I've heard witness testimony --

17 MS. LAMBERT: But --

18 THE COURT: -- essentially as rebuttal evidence if
19 you convince me that --

20 MS. LAMBERT: But this is my case-in-chief evidence.

21 THE COURT: I've ruled.

22 MS. LAMBERT: So, the Court is determining that cause
23 must be management? Because these are being introduced for
24 issues as to the counsel.

25 THE COURT: Well, give me -- make your best argument

1 again on why 11(a)(1) is broader than just the context of
2 current management.

3 MS. LAMBERT: Cause can be items other than those
4 that are listed. Or similar cause. That's what the statute
5 says --

6 THE COURT: You're giving me a statutory
7 interpretation I disagree with, but do you have Fifth Circuit
8 authority binding on me --

9 MS. LAMBERT: Yes, Your Honor.

10 THE COURT: -- that --

11 MS. LAMBERT: It's cited in the U.S. Trustee's
12 motion, and it is --

13 THE COURT: I mean, I know *Cajun Electric* and --

14 MS. LAMBERT: *Cajun Electric* involves an inherent
15 conflict between --

16 THE COURT: But was that a context, I don't think it
17 was, where a whole new slate of directors and managers had
18 been put in place?

19 MS. LAMBERT: It was not a case involving wrongdoing.
20 And so the facts are totally --

21 THE COURT: Conflicts of interest.

22 MS. LAMBERT: It involves directly conflicts of
23 interest, yes, in the positions that must be decided by the
24 controlling board.

25 THE COURT: I am --

1 MS. LAMBERT: And I --

2 THE COURT: -- asking you, had a whole new slate of
3 officers and directors been brought in in *Cajun Electric*?

4 MS. LAMBERT: No, and that would not have resolved
5 the --

6 THE COURT: It's been many years since I've read it.

7 MS. LAMBERT: That would not have resolved the
8 problem in *Cajun Electric*.

9 THE COURT: Okay. So *Cajun Electric* is not --

10 MS. LAMBERT: But *Cajun Electric* stands for the
11 proposition that cause is broader than the items listed here.

12 THE COURT: Of course. But it's still pertaining to
13 current management. I'm not reading those words "for cause"
14 out of the statute. I'm just saying I think --

15 MS. LAMBERT: Right.

16 THE COURT: -- they all pertain to current
17 management.

18 MS. LAMBERT: But here's the thing on the Court's
19 statutory construction.

20 THE COURT: I either have --

21 MS. LAMBERT: The Court has --

22 THE COURT: -- a binding case or not. I'm telling
23 you what my interpretation of the statute is.

24 MS. LAMBERT: Right. Well, --

25 THE COURT: I either have a binding case or not.

1 MS. LAMBERT: -- *Cajun Electric* is binding and it
2 establishes, as do *Little Creek* and other Fifth Circuit cases,
3 in every context --

4 THE COURT: Okay.

5 MS. LAMBERT: -- where cause is used, --

6 THE COURT: But I am looking for a case on point.

7 MS. LAMBERT: Your Honor, this is a matter of
8 statutory construction. The Court is reading out a full
9 clause of the statute.

10 THE COURT: Okay.

11 MS. LAMBERT: Current management is at the --

12 THE COURT: I've ruled on the evidence. Do we want
13 to talk about Exhibit 6, which was objected to, and Exhibit
14 10?

15 MS. LAMBERT: No. 6 is out. That was the
16 transcript.

17 THE COURT: Oh, I'm sorry. 6 is out. So, 10 was the
18 one that --

19 MS. LAMBERT: And 10, the purpose of 10 is to
20 establish that Strand is -- Advisors is a Delaware
21 corporation, and I think that's stipulated to.

22 THE COURT: Uh-huh.

23 MR. MORRIS: If that's the only fact for which it's
24 offered, we withdraw the objection.

25 THE COURT: Okay. 10 is admitted.

1 (U.S. Trustee's Exhibit 10 is received into evidence.)

2 THE COURT: And 11, that's something that obviously I
3 can take judicial notice of the docket entry in this case.
4 Right?

5 MS. LAMBERT: Right.

6 THE COURT: Okay. So I just, I'll take judicial
7 notice of 11.

8 All right. You may call your first witness.

9 MS. LAMBERT: Your Honor, the U.S. Trustee rests on
10 its documentary exhibits.

11 THE COURT: All right. Debtor, your witness?

12 MR. MORRIS: Your Honor, before we call our case, we
13 move for a directed verdict based on the evidence or lack
14 thereof that was adduced.

15 THE COURT: Okay. Well, I'm going to deny that. I
16 haven't had a chance to go back and look at this Frank
17 Waterhouse deposition testimony. It may or may not resolve
18 the issue. So, --

19 MR. MORRIS: Thank you, Your Honor. I just wanted to
20 preserve the record.

21 The Debtor calls John Dubel.

22 THE COURT: All right. Mr. Dubel, if you could
23 approach our witness box. Yes. Please raise your right hand.
24 Please raise your right hand.

25 JOHN DUBEL, DEBTOR'S WITNESS, SWORN

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1 THE COURT: All right. Please be seated.

2 DIRECT EXAMINATION

3 BY MR. MORRIS:

4 Q Good morning, Mr. Dubel. Take your time.

5 (Pause.)

6 MR. MORRIS: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. MORRIS: Okay.

9 BY MR. MORRIS:

10 Q Mr. Dubel, do you currently have a relationship to the
11 Debtor?

12 A Yes, I do.

13 Q And can you describe for the Court your understanding of
14 your relationship to the Debtor?

15 A Yes. I am one of the three independent directors
16 appointed at the Strand Advisors, Inc. level, which is the
17 general partner of Highland Capital Management, LP, which I'll
18 probably refer to as HCMLP, just for brevity, Your Honor.

19 Q Okay. I may refer to it as the Debtor, if I may.

20 A You may.

21 Q Do you recall when you were appointed as an independent
22 director?

23 A Yes. January 9th of 2020.

24 Q Okay. And prior to that time, did you personally have
25 experience in bankruptcy and the insolvency areas?

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1 A Yes, I do.

2 Q Can you describe that experience for the Court?

3 A My experience is about 35-plus years of working on all the
4 arenas of the restructuring, both from creditor side, debtor
5 side, as an investor in distressed. The majority of my work
6 over the years has been in the debtor side of running
7 companies as a CEO or a chief restructuring officer, sitting
8 on boards of directors as an independent director for
9 companies going through stress, either bankruptcy or
10 restructuring.

11 Q And are there other independent directors at the Strand
12 level today?

13 A There are.

14 Q And who are they?

15 A There are two of them. Russell Nelms, who is a retired
16 bankruptcy judge from the Fort Worth area, and Mr. James
17 Seery, who is an investor, also an attorney, but an investor
18 in distressed, and has also practiced law.

19 Q Okay.

20 MR. MORRIS: I want to spend a few minutes, if I may,
21 Your Honor, just asking the witness about the independent
22 directors' activities --

23 THE COURT: Okay.

24 MR. MORRIS: -- since appointment.

25 BY MR. MORRIS:

1 Q Has the board, in fact, been engaged in managing the
2 Debtor since being appointed?

3 A We have.

4 Q Can you describe for the Court generally the types of
5 tasks that the independent directors have covered since their
6 appointment?

7 A The first day of our appointment, on the 9th, we met as a
8 board, which the board meeting actually continued through
9 until the 10th, on that Friday, in which we sat down with the
10 chief restructuring officer and his team. We met with the
11 vast majority of the senior managers within the company to
12 make sure that we could hear from them what was going on
13 within the company and to convey to them what our duties and
14 responsibilities were, so it was very clear to both the CRO
15 and to all the management, the senior management, of what the
16 responsibilities were for the independent board and how the
17 protocol would work and how they would need to interact with
18 us in a -- in what has now become a daily basis.

19 Q And since being appointed, have the independent directors
20 received presentations from the Debtor and from DSI concerning
21 the Debtor's operations, assets, and liabilities?

22 A We have.

23 Q Can you describe just generally the nature and scope of
24 those presentations?

25 A Yes. So we've gone through, which is not untypical for

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1 situations like this when you get involved, go through each of
2 the departments and ask them to walk us through how their
3 department works, what they're working on, key issues that are
4 necessary for us to pay attention to immediately, key issues
5 that we would look at further down the road, understand who
6 the personnel are within the organization, their group.

7 And we, of course, because there were a lot of issues that
8 were very time-sensitive, we reacted to those issues to be
9 able to give them guidance on what we needed, what we needed
10 further information for or what decisions we would make
11 immediately on those decisions -- on those issues.

12 Q Since being appointed, have you -- have the independent
13 directors also reviewed and authorized certain court filings?

14 A We have. We had a protocol in place where one or -- or
15 all three, depending on the filings, are required to sign off
16 on any filings before they're submitted to the Court so that
17 we have a good understanding and can make sure that we have
18 good -- good direction to our counsel as to what would be
19 going forward.

20 Q Mr. Dubel, in the last 12 days, how much time have you
21 personally spent managing the Debtor?

22 A In excess of 80 hours, probably closer to 90 hours. I
23 don't keep a -- I'm fortunate I don't have to keep time
24 records to the tenths of an hour like counsel does. But just
25 in looking at my calendar, in excess of 80 hours. And it's

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1 been literally every single day, Saturdays and Sundays
2 included.

3 Q And to the best of your understanding, is the same true
4 with respect to Mr. Nelms and Mr. Seery?

5 A Yes, it is. In fact, a lot of the time has been spent
6 with them together on these issues. So, I, you know, I have
7 firsthand knowledge of the amount of time that they are
8 putting in also.

9 Q Can you describe for the Court the extent to which the
10 three of you have been physically present in the Debtor's
11 office since being appointed as independent directors?

12 A Yes. During the work days, which it's now I think been
13 seven business days that the offices have been open, we have
14 been there six of those days. Actually, seven, if you count
15 this morning. We spent some time in the offices this morning
16 working with folks before we came over here. And either one
17 or all three of us have been there during those six days.
18 We're trying to balance out the workload a little bit with the
19 needs of the organization.

20 Q Can you describe for the Court the role that Mr. Sharp and
21 DSI have played since the time that you were appointed as an
22 independent director?

23 A Yes. Mr. Sharp, as the chief restructuring officer, and
24 his team have provided us with a tremendous amount of
25 information on the organization, on the assets of the various

1 different entities that the Debtor has to manage. Provided us
2 with asset positions, liability issues, and has basically been
3 very helpful in bringing us up to speed immediately on
4 everything we need to know to understand how to operate the
5 business, and acted in a very, you know, forthright manner.

6 Q Since being appointed, have the independent directors
7 played a role in the implementation of the protocols that were
8 part of the order appointing them?

9 A Yes. We have made sure that everybody -- all the senior
10 managers in the organization understand what the protocols are
11 and worked with either DSI or directly with us, depending on
12 the facts and circumstances of the particular situation, so
13 that the protocols are being followed. And we continue to do
14 that on a daily basis.

15 Q Have you and the other directors had an opportunity to
16 review proposed transactions since being appointed?

17 A Yes, we have, starting on Thursday, January 9th, through,
18 actually, this morning. While we were sitting in court, we
19 got confirmation of things that were taking place as it
20 related to the protocols.

21 Q Since being appointed, have you and the other directors
22 communicated with the Creditors' Committee and its
23 professionals?

24 A We have. In accordance with the protocol, we have, but we
25 would be doing that anyway, even if the protocols didn't

1 require it, because we feel it's good for the transparency in
2 this case. But we have met with the Committee professionals
3 many times and with the Committee members themselves via
4 conference call.

5 Q Let's shift gears a little bit and talk about your
6 interaction and the interaction of the other directors with
7 the Debtor and its employees. Have the directors sought
8 information from the Debtor's employees as part of the tasks
9 that you've just described?

10 A Yes, we have.

11 Q And can you describe for the Court, you know, either by
12 name or by title or by department, the places within the
13 organization from which the directors have sought information?

14 A Yeah. So, I can kind of -- maybe it's easiest by
15 department. There have been investment decisions that have
16 been needed to be made. Part of those investment decisions
17 require compliance reviews and a legal understanding of those
18 decisions. So we have reached out to the three different
19 department heads or the individuals responsible within those
20 departments for information that was necessary for us to
21 understand and be able to make decisions.

22 So, as an example, for compliance, making sure that
23 whatever it is that's being asked of us is in accordance with
24 all of the compliance requirements under the various different
25 regulatory authorities, looking at it from a legal point of

1 view, making sure we understand how that transaction legally
2 might fit in with something else, whether it's a related party
3 issue or making sure that it fits in with the protocols.

4 And then, obviously, from the actual asset manager point
5 of view, the trader, understanding how the impact of our
6 decision would be able to be implemented in the ordinary
7 course process of trading a position as necessary or holding
8 onto a position.

9 Q To the best of your knowledge, have the independent
10 directors timely received the information that was sought to
11 fulfill your duties?

12 A We have.

13 Q And do you have any concerns that anyone at the Debtor has
14 withheld information from you or the other directors?

15 A I do not. In fact, I think they've been very forthright
16 in presenting us with information that we have requested and
17 been very responsive.

18 Q To the best of your knowledge, have either of the other
19 directors ever expressed any concern to you about the flow of
20 information?

21 A No, they have not.

22 Q Do you have any reason to believe that any information
23 provided to the independent directors by any of the employees
24 at the Debtor is false or inaccurate?

25 A No, I do not.

1 Q Have you and the other independent directors requested to
2 meet with certain employees?

3 A We've requested to meet with many of the employees, yes.

4 Q Can you just describe for the Court, again, either by
5 title or by department, the employees with whom the directors
6 have met thus far?

7 A Pretty much every single department head, whether it's the
8 finance office through the chief financial officer, the
9 controller, the -- looking through, then, to the chief
10 compliance officer, the trading groups for a variety of
11 different entities that we have under management. Our private
12 equity group, the leadership in that. The legal group,
13 looking -- we've met with pretty much everybody in the legal
14 group to understand various issues and get a better
15 understanding of the business. Human resources, et cetera.

16 Q Um, --

17 A Communications. Forgot about that one.

18 Q Have you or any of the other independent directors ever
19 expressed any concerns about the reliability of information
20 provided by any of the Debtor's employees?

21 A No, we have not.

22 Q Are you generally familiar with the Court's order that
23 appointed you as an independent director?

24 A I am.

25 Q Are you generally familiar with the duties and

1 responsibilities that have been bestowed upon you as set forth
2 in that order?

3 A I am.

4 Q Have you and the other independent directors discussed the
5 scope and responsibilities for your duties as an independent
6 director?

7 A We have.

8 Q And do you have a general understanding as to what those
9 duties are?

10 A Yes. As the independent directors of Strand, we are the
11 general partner for the Debtor's estate, HCMLP, and it's my
12 understanding that those duties lie to -- go to the Debtor's
13 estate, to maximize value for the Debtor.

14 Q And is it your understanding that the order that was
15 entered was an order that was entered after the Committee and
16 the Debtor reached an agreement for the appointment of new
17 management?

18 A That is my understanding.

19 Q Okay. Did -- have the independent directors taken any
20 steps to make sure that the Debtor's employees are aware of
21 your duties and responsibilities?

22 A Yes. From the first day that we got there, as I mentioned
23 earlier, we've met with all the department heads, explained to
24 them what the roles and responsibilities are. Walked through
25 with them the protocol that is laid out in the order. Asked

1 them to communicate that down into the organization.

2 We continue to walk around the offices. All of our
3 employees, except with the exception of one or two who are
4 overseas, all reside in the offices here in Dallas, and so
5 we've walked around and met with many of the other employees.
6 We've had our communications department put together
7 communication that's been posted on the Intranet and -- the
8 Intranet, the internal communications, and also on the
9 company's website for all employees to see and understand.
10 And we actually will be having an all-hands meeting this
11 afternoon with all of the employees.

12 Q Do you have any concerns that any of the Debtor's
13 employees either don't understand or don't respect the
14 authority and role of the independent directors?

15 A I do not.

16 Q Have either of the other independent directors ever
17 expressed to you any concern at all that any of the Debtor's
18 employees either don't understand or fail to respect the
19 authority and role that the three of you play?

20 A I've not heard any concerns, no.

21 Q Do you have any concerns at all that the Debtors engage in
22 any transactions that don't have the independent directors'
23 knowledge and approval?

24 A I do not.

25 Q Do you -- have the independent directors taken any steps

1 to try to prevent any unauthorized transactions from taking
2 place?

3 A Yes, through communications directly with all of the
4 individuals that could have the authority to do -- or the
5 apparent authority to enter into transactions, making it very
6 clear what our role and responsibility is, making it clear
7 what they have to do in order to execute anything.

8 We've also engaged, through working with the chief
9 restructuring officer and his team, to have them be
10 continuously looking at transactions that take place through
11 the Debtor's systems.

12 Q So, is it your understanding that the CRO has visibility
13 into the movement of the Debtor's assets?

14 A Yes.

15 Q Okay. Do you have any concern that the independent
16 directors are not firmly in control of the Debtor?

17 A I do not.

18 Q Have either of the other independent directors expressed
19 any concern to you at all that the independent directors might
20 not be fully in control of the Debtor?

21 A They have not expressed that.

22 Q I think you were in the courtroom for the argument that
23 preceded your testimony; is that right?

24 A I was.

25 Q Um, --

1 A Or, except for a very short period of time.

2 Q Pursuant to the order that was entered by this Court, is
3 it your understanding that the independent directors have the
4 ability to fire any employee of the Debtor?

5 A That is my understanding and that is exactly what we have
6 the authority to do.

7 Q And is it your understanding that the independent
8 directors have the final authority over transactions that are
9 being made on behalf of the Debtor?

10 A It is very clear in my mind that we have that authority.

11 Q Is there any aspect of the Debtor's business in which any
12 employee of the Debtor has authority that exceeds any of the
13 independent directors'?

14 A When you say exceeds, meaning overrides?

15 Q Correct.

16 A No. There's no -- no one has the authority that overrides
17 our decisions. We may authorize people to do things, but no
18 one has the authority to override our decisions.

19 Q And have the independent directors made that known to all
20 of the department heads?

21 A We have.

22 Q And have the independent directors made that known to all
23 of the employees in the legal department?

24 A We have.

25 Q And have the independent directors made that known to all

1 of the employees in the compliance department?

2 A I think there's only one person who's in Compliance, but

3 --

4 Q That's --

5 A Our chief compliance officer. Yes.

6 Q I do love precision. Thank you.

7 Does the independent -- do you or any of the independent
8 directors have any concerns at all that the message of control
9 has not been adequately conveyed to the people who are
10 executing your orders?

11 A I don't have any concerns about that.

12 Q Okay. Do you believe the independent directors -- have
13 you begun to kind of familiarize yourself with the Debtor's
14 operations, structures, and assets?

15 A Yes, we have.

16 Q And does the Debtor oppose the motion for the appointment
17 of a trustee at this time?

18 A Yes, the Debtor does.

19 Q Can you explain to the Court why the Debtor opposes the
20 appointment of a trustee at this time?

21 A Yes. There is a new management team in place, led by the
22 -- you know, with the independent directors in place, having
23 the authority over all of the actions of the Debtor. And we
24 believe that, based upon the expertise of the three
25 individuals, that we have the right expertise to run the

1 company, between legal, trading, restructuring, investment
2 management, that the expertise that we bring to the table is
3 what is necessary to run the company, and that if there were a
4 change in that it would obviously cause a tremendous amount of
5 disruption in the business. If there were a Chapter 11
6 trustee appointed, that it would have a tremendous negative
7 impact on the Debtor's ability to create the greatest value
8 for our creditors and other stakeholders.

9 Q Have any of the Debtor's employees quit since the
10 independent directors were appointed?

11 A We've lost a couple of people. I just don't remember the
12 exact timeline. But it's -- it has happened. It's -- you
13 know, we've had three -- I think three resignations.

14 Q Okay. Does the Debtor have any concerns that if a trustee
15 is appointed that the Debtor will be at risk of losing senior
16 -- senior management or other -- you know, senior employees or
17 other employees of the Debtor?

18 A Yes, we do.

19 Q And what's the basis for that concern?

20 A Our goal here is to reorganize the company and create the
21 greatest value for our creditors and others. And if an
22 appointment of a trustee was to be so ordered, that it would
23 send the wrong message to the employees and the employees
24 would lose confidence and seek employment elsewhere. And it's
25 a vibrant market for employees right now.

1 Q Based on your experience in the insolvency area, do you
2 have a view as to how the appointment of a Chapter 11 trustee
3 might be viewed in the marketplace?

4 A This is a business that trades on credibility. It's not
5 walking into a store and buying an item off of a shelf of a
6 company that's in Chapter 11, but it's all about the
7 credibility of the individuals. And if an appointment of a
8 Chapter 11 trustee was so ordered, we think it would have a
9 negative impact on our ability to continue to have that
10 relationship with the third parties that we have to deal with
11 on a daily basis.

12 Q Do you have a view as to whether or not the appointment of
13 a trustee could impair the Debtor's ability to reorganize?

14 A I do.

15 Q And can you share that view with the Court?

16 A I think it's for the exact same things that I just
17 mentioned. Our ability to create the greatest value and
18 reorganize and -- would be impacted by, you know, loss of
19 personnel who might not want to work in that environment and
20 also the loss of the relationships in the trading partners
21 that we have to deal with. And so it would -- it would
22 inhibit our ability to reorganize properly for this and create
23 greatest value.

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

25 THE COURT: All right. Cross?

1 CROSS-EXAMINATION

2 BY MS. LAMBERT:

3 Q Hello again. We talked before the hearing. But my name
4 is Lisa Lambert. I'm with the U.S. Trustee's Office.

5 A Good morning, Ms. Lambert.

6 Q How are you?

7 A Good.

8 Q So, you're an independent director of Strand, and Strand
9 is the general partner of the Debtor, right?

10 A That's correct.

11 Q And your testimony is that the duties to the Debtor trump
12 any duties to the stockholders of Strand, right?

13 A It is my testimony that, as the general partner, our
14 duties are to the Debtor's estate and to protect the Debtor's
15 estate and create the greatest value there, which would
16 ultimately benefit Strand.

17 Q Okay. So is it your testimony that there's no duty to the
18 stockholders of Strand?

19 A Our duty is to the Debtor's estate as the general partner,
20 and that would then protect Strand.

21 Q So your perspective is the duties are not in conflict?
22 They are coextensive, right?

23 A I apologize. I don't know -- I'm not a lawyer, so --

24 Q I'm going to --

25 A -- the reference to coextensive might be something that's

1 a legal term, but --

2 Q But the duties are the same, --

3 A Uh, --

4 Q -- is your testimony?

5 A I don't know if they're the same. My -- my view is the
6 duties are to the Debtor's estate as the general partner of
7 Strand.

8 Q Okay. Mr. Dondero is the -- still a stockholder of
9 Strand, right?

10 A As I understand, yes.

11 Q And Mr. Dondero currently is an employee of the Debtor?

12 A He is a nonpaid employee of the Debtor.

13 Q So if the decision came to terminate Mr. Dondero as an
14 employee, do you think it impacts his -- your fiduciary role
15 to him as the stockholder?

16 MR. MORRIS: Objection, Your Honor, to the extent all
17 of this calls for a legal conclusion. I just want to make
18 sure that we're just talking about the witness's lay
19 understanding.

20 MS. LAMBERT: No. His understanding.

21 THE COURT: Okay. Over...

22 MS. LAMBERT: His under...

23 THE COURT: Overruled.

24 BY MS. LAMBERT:

25 Q What is your understanding?

1 A I'm sorry. Could you repeat the question, Ms. Lambert?

2 Q Mr. Dondero is an employee of the Debtor, whether unpaid
3 or not. And does the board's -- the directors' decisions
4 about whether to maintain him or terminate him, is that
5 impacted by his holding all of the stock of Strand?

6 A From my perspective, it would have no impact. If there
7 was a decision to be made to keep him on board or terminate,
8 it would have no impact as to what his holdings are in Strand.

9 Q Why is that?

10 A Because our duties in managing the Debtor would be to
11 figure out what the right answer is for the Debtor. And if
12 that decision was to either keep him in place, as we currently
13 have, or to terminate him because there was no longer a need
14 for him at that level, it would be a decision we would make on
15 behalf of managing the Debtor.

16 Q You would agree with me that he might have a different
17 perspective on that, right?

18 A I don't know what his decision -- what his view would be.
19 It may be different; it may not be. It depends on the facts
20 and circumstances at the time that we would have to make that
21 decision.

22 Q Now, you testified that you've been very busy with the
23 activities of the Debtor. Did you have an opportunity to read
24 the Court's ACIS opinion?

25 A Yeah. I've read multiple decisions or multiple filings on

1 -- on ACIS. I --

2 Q I'm talking about the published opinion. It's a little
3 bit lengthy. You would have remembered seeing it, I think.

4 A I believe I did read that prior to our appointment, yes.

5 Q Okay. And then did you also read the Redeemer arbitration
6 awards?

7 A I've read a few different Redeemer arbitration awards. I
8 think there were two or three of them.

9 Q Two.

10 A Yeah.

11 Q And I'm talking about the partial --

12 A Yeah.

13 Q -- and the final judgments.

14 A Yes, I have.

15 Q Okay. You're aware that both of those opinions talk about
16 the attorneys testifying with plausible deniability, --

17 MR. MORRIS: Your Honor?

18 MS. LAMBERT: -- the in-house counsel?

19 MR. MORRIS: Your Honor, I would just ask the witness
20 not to answer the question until I state my objection.

21 This is exactly why we objected to the relevance of these
22 exhibits into evidence, and now she's just doing orally what
23 she has not yet been able to do with the admission of the
24 documents.

25 She should establish a foundation first that there's

1 anybody in any of those decisions who are in control of the
2 Debtor or who are deemed to be current management. Because
3 the evidence at this point I think is undisputed that the
4 independent directors are in fully -- are in full control of
5 this enterprise. They -- everybody reports to them. All
6 decisions are made with their knowledge and approval. And
7 there's no evidence to the contrary.

8 So I don't, you know, I don't think the U.S. Trustee
9 should be able to get through the back door what they're not
10 able to get through the front door.

11 THE COURT: I sustain that objection.

12 BY MS. LAMBERT:

13 Q Have you worked with the in-house legal department?

14 A Of the Debtor?

15 Q Of the Debtor.

16 A Yes.

17 Q Can you name for me the employees of the legal department
18 of the Debtor?

19 A I probably can't name all of them, but starting from the
20 top, Scott Ellington. Isaac Leventon. J.P. Sevilla. Tim
21 Cournoyer. Thomas Surgent is an in-house -- he's a lawyer.
22 He's also our chief compliance officer. I don't know
23 technically which -- whether he covers both. And then there
24 have been others in the group that I -- I don't remember all
25 the names. But those are the main folks that we've had to

1 deal with.

2 Q And Compliance is part of Legal, right?

3 A I don't technically know. I think it stands on its own.

4 But Mr. Surgent is an attorney, as I understand.

5 Q And how often have you dealt with Mr. Ellington?

6 A In the seven days that we've been there, probably five or
7 six of them he's had to travel for, you know, for work, so we
8 haven't always, you know, seen him every day. But pretty much
9 every day, including yesterday, when we were in the office.

10 Q And Mr. Leventon, how often have you consulted with him?

11 A Unfortunately, not as often as we would like, because Mr.
12 Ellington -- Mr. Leventon had an auto accident that he was
13 involved with, so he's been out of the office. But I've dealt
14 with him a little bit over the last several days as he, you
15 know, as he's allowed to -- as he's recuperating.

16 Q So, the board has been talking with the legal department
17 almost every day, right?

18 A Yes.

19 Q And the legal department in this particular business is
20 particularly important for management decisions, right?

21 A It's important to get information from them to inform us
22 as the managers, meaning the board, yes.

23 Q You rely on their advice, don't you?

24 A We take into consideration what they -- what they share
25 with us, yes.

1 Q And they have expertise in the areas of the legal issues
2 that are central to this case, right?

3 A They have expertise. Fortunately, the board also has a
4 tremendous amount of legal expertise, both in the -- specific
5 to investment management and also corporate governance. And
6 having been a CEO and a CRO and been involved for the last 35
7 years in some highly-contentious, litigious litigations, I've
8 unfortunately picked up a little bit of how to understand what
9 is given to me and interpret it.

10 Q All right. Have you had any hesitation in relying on
11 their legal advice?

12 A No.

13 Q Are you aware that the -- that the Redeemer's arbitration
14 award determines that their advice ignored the advice of
15 outside counsel?

16 MR. MORRIS: Objection, Your Honor. Relevance.

17 THE COURT: Sustained.

18 MS. LAMBERT: Your Honor, the relevant --

19 BY MS. LAMBERT:

20 Q Are you aware that the ACIS Court also determined that Mr.
21 Ellington and Mr. Leventon were providing affidavits for the
22 Debtor rather than the Debtor, --

23 MR. MORRIS: Object, Your Honor.

24 MS. LAMBERT: -- Mr. Dondero?

25 MR. MORRIS: Same objection.

1 THE COURT: Sustained.

2 MS. LAMBERT: Your Honor, these -- both of these
3 questions go to our presentation that the in-house counsel is
4 not providing advice that's in the interest of the Debtor and
5 has ignored outside counsel. It's relevant to whether -- to
6 the case if current management knows that, which the evidence
7 is unclear, and whether they're doing something about it.
8 That's the United States Trustee's case.

9 THE COURT: All right. I don't think you've laid the
10 foundation to go this route.

11 MS. LAMBERT: Okay.

12 BY MS. LAMBERT:

13 Q You're relying on the advice of the legal counsel on a
14 daily basis, right?

15 A We take information from counsel and we process it. We
16 talk as a group, meaning the board. And as I referenced
17 earlier, two of our board members happen to be experienced
18 lawyers, one of whom is an expert in corporate governance and
19 bankruptcy law, having been a judge for 14 years. We sift the
20 information that comes from all different parties and make our
21 decisions based upon our experience in these situations. We
22 talk to outside counsel also as necessary.

23 Q Are you aware of any concerns about the advice that your
24 legal counsel in-house has provided to you?

25 A I'm sorry. Could you -- are -- excuse --

1 Q Are you aware of any concerns about the advice that the
2 in-house legal counsel has provided to you?

3 A Nothing that's been provided to us, no. No concerns about
4 that.

5 Q Are you aware of any concerns historically?

6 A I understand that there -- and have read that there were
7 issues related to that on a historical basis, yes.

8 Q Has that impacted the way you interact with the legal
9 counsel?

10 A Sure. A healthy dose of skepticism is always important
11 whenever you get into a new situation, whether there are those
12 allegations or rulings or what have you. It's always
13 important to have a healthy set of skepticism on these things.

14 Q All right.

15 MS. LAMBERT: Your Honor, the U.S. Trustee moves for
16 the admission of U.S. Trustee's 1, 2, and 3.

17 MR. MORRIS: *Voir dire*, Your Honor?

18 THE COURT: Pardon?

19 MR. MORRIS: *Voir dire*? Can I just ask a few
20 questions?

21 THE COURT: You may. Uh-huh.

22 VOIR DIRE EXAMINATION

23 BY MR. MORRIS:

24 Q Sir, has -- have the members of the legal department been
25 cooperative?

1 A Yes.

2 Q Have the members of the legal department been responsive
3 to the independent directors' requests?

4 A Yes, they have.

5 Q Have the members of the legal department been authorized
6 to do anything without the independent directors' knowledge
7 and approval?

8 A No.

9 Q Are the independent directors aware of any member of the
10 legal department having done anything without the knowledge
11 and approval of any of the independent directors?

12 A I am not.

13 Q Do the members of the legal department all report to the
14 independent directors?

15 A They report through the legal department organization,
16 which reports to the independent directors.

17 Q And the independent directors ultimately have the sole
18 authority as to whether or not to fire any member of the legal
19 department, as true with any member of the organization; is
20 that right?

21 A That is correct.

22 Q All right.

23 MR. MORRIS: I have no further questions.

24 MS. LAMBERT: Your Honor, the U.S. Trustee contends
25 that this is -- these opinions are highly relevant to the

1 board's understanding of the current situation. The
2 cooperativeness and the responsiveness and the doing of the
3 acts for the board members is not the issue if the information
4 that is being provided to the board is fundamentally
5 unreliable. And that's the issue the U.S. Trustee wants to
6 raise.

7 THE COURT: Okay. I sustain the objection and I
8 overrule the request to have the Court admit Exhibits 1
9 through 3.

10 MS. LAMBERT: Your Honor, is it necessary for me to
11 do an offer of proof, given that these exhibits are already in
12 the binder and have been -- everybody is familiar with the
13 desire that they be admitted?

14 THE COURT: All right. Well, if you're not wanting
15 any testimony, if you're just wanting the admission of the
16 exhibits, they will certainly be included in the record as
17 offered but not admitted. So if there's an appeal, they're in
18 there for the Court of Appeals to see.

19 CROSS-EXAMINATION, RESUMED

20 BY MS. LAMBERT:

21 Q So, it's your testimony that the Debtor's legal counsel
22 have been cooperative, responsive, and doing acts for the
23 board, and that ultimately the board acts as the sole
24 authority, right?

25 A That's correct.

1 Q Has the legal counsel provided the board with any advice
2 that they have -- that the board has disagreed with?

3 MR. MORRIS: Objection, Your Honor. To the extent
4 that this calls for the disclosure of attorney-client
5 communications, I would object.

6 THE COURT: All right. If you can answer without
7 disclosing privileged information, you may answer.

8 THE WITNESS: Okay. May I ask if you could repeat
9 the question, just so I --

10 BY MS. LAMBERT:

11 Q Has the board reached a determination that disagreed with
12 the legal counsel's recommendations?

13 A I don't believe so.

14 Q Has the board sought outside legal counsel after receiving
15 a report from in-house counsel that they -- that they wanted
16 more information on?

17 A That would be very common practice for getting information
18 from in-house counsel, then getting additional information
19 from outside counsel. It's -- we have done that. I would say
20 that's just a normal part of any organization, and I would do
21 that in every situation I'm involved with, --

22 Q Okay. But --

23 A -- if it was so relevant.

24 Q But I'm asking a little different question, which is, to
25 date, in this case, has the board done that?

1 A Have we sought advice from outside counsel on something --

2 Q That the in-house counsel provided advice on.

3 A Yes. And as I said, I think that's just a normal part of
4 our understanding information so that we can make decisions.

5 Q Now, you testified that having a trustee would impact the
6 Debtor's credibility in the market, right?

7 A That's my --

8 Q And ACIS --

9 A -- view.

10 Q -- had a trustee, correct?

11 A As I understand, yes.

12 Q And ACIS reorganized, didn't it?

13 A I am not familiar with the ACIS case, you know, whether it
14 was a reorganization. I'm just not familiar with the details
15 of it.

16 Q Okay. So, earlier, I had asked you if you were familiar
17 with the ACIS opinion and with the ACIS case, and my
18 understanding was you had read documents in the ACIS case.
19 Right?

20 A I've read them. I haven't studied them. I believe ACIS
21 was a reorganization, but I'm not familiar with the details of
22 it.

23 MS. LAMBERT: No further questions.

24 THE COURT: All right. Any other examination?

25 MR. MORRIS: No, Your Honor.

1 THE COURT: All right. Thank you. You're excused.

2 (The witness steps down.)

3 THE COURT: Does the Debtor have other evidence?

4 MR. MORRIS: No, Your Honor. The Debtor rests.

5 THE COURT: All right.

6 MR. MORRIS: Oh, I apologize. The only exhibit that
7 we did have that we noted on the exhibit list was the Court's
8 order and the exhibits that appointed the independent
9 directors. The protocols. We'd just --

10 THE COURT: All right. Well, the Court can take
11 judicial notice of those.

12 MR. MORRIS: Exactly. And just for the record, it's
13 at Docket #354-1.

14 THE COURT: Thank you.

15 MR. MORRIS: And I have a binder of exhibits if --

16 THE COURT: All right. You may approach with that.
17 Thank you.

18 All right. And the Committee said it did not intend to
19 put on evidence, correct?

20 MR. TWOMEY: That's correct.

21 THE COURT: All right. Any rebuttal evidence?

22 MS. LAMBERT: No, Your Honor.

23 THE COURT: All right. I'll hear closing arguments.

24 CLOSING ARGUMENT ON BEHALF OF THE U.S. TRUSTEE

25 MS. LAMBERT: Your Honor, Section 1104(a) is

1 structured with the clause about fraud, dishonesty, and gross
2 [mis]management, referring to -- management. Thereafter, the
3 statute says "or for other cause." The structure
4 grammatically of the statute is important because the
5 management provisions are one set and the "or for cause" is
6 another.

7 The Fifth Circuit precedent is clear that there can be
8 other types of cause. The inability to manage this Debtor and
9 to rely on its in-house legal counsel is pervasive in the
10 prior opinions and remains an issue today.

11 It is for this reason that the U.S. Trustee sought the
12 admission of Exhibits 1 through 3. There are not just issues
13 with Mr. Dondero, but there remains an issue with Dondero,
14 which brings me to point two, which is that the Delaware
15 corporate statute requires that there be a fiduciary duty to
16 him. There are many contexts where one can contract around a
17 fiduciary duty in partnerships, limited partnerships, but not
18 in corporations, because corporations have the stockholder and
19 creditor function. There is no evidence, no evidence, about
20 what creditors there might be of Strand. We have no knowledge
21 of that. And the Delaware case law is that there is a
22 fiduciary duty to creditors.

23 But if there are no creditors, then that duty runs to Mr.
24 Dondero. This remains a conflict of interest issue for
25 consideration. And it is an actual conflict, especially

1 because Mr. Dondero remains in the Debtor as an employee. And
2 the evidence is that, today, he, Mr. Ellington, and Mr.
3 Leventon, all of whom have been cited in prior opinions as
4 trying to establish plausible credibility, remain at the
5 Debtor, advising the management. And the board -- no one
6 questions that the board is some of the best people that we
7 have. But the issue is that, as a board, they are separate
8 from the Debtor, and there is a CRO in, but the CRO, I
9 anticipate the evidence will be that the CFO relies on the in-
10 house legal counsel, and that's -- the deposition transcript
11 cites go to the reliance on in-house legal counsel for major
12 decisions.

13 And so this remains a concern. And it is within Section
14 1104.

15 Finally, Your Honor, the effort to seal matters, including
16 the *sine qua non*, the catalyst for the bankruptcy filing, the
17 arbitration award, impede the ability of the public to
18 understand the facts of this case, impede the ability of the
19 regulators to understand this case, and it's too far. For
20 these reasons, the U.S. Trustee moves for the appointment of a
21 Chapter 11 trustee.

22 THE COURT: Let me just ask. I'm going to hit on
23 something you said there at the end, because you've said it a
24 few times. It concerns me a little. The words I remember Mr.
25 Pomerantz using on day one, and maybe using a couple of times

1 thereafter, was that the Redeemer Committee's arbitration
2 award created a liquidity problem at the Debtor's level and
3 that was the impetus for the bankruptcy.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: That is a little bit more of a narrow
6 statement than what I think your last sentence has implied.

7 MS. LAMBERT: Well, --

8 THE COURT: I mean, I hear what you're saying, tell
9 me if I'm hearing wrong, that there are statements in that
10 arbitration award that were the impetus for the bankruptcy
11 filing and the public needs to hear that. But that's not what
12 I heard Mr. Pomerantz say from day one. He said the
13 arbitration award, \$180 million in amount or whatever it was,
14 in that neighborhood, caused a liquidity problem that caused
15 the bankruptcy.

16 MS. LAMBERT: Yes, Your Honor. But the testimony is
17 today that the Debtor's credibility in the market is
18 important, and the Redeemer arbitration award and its basis --
19 I mean, it's not just that it was \$180 million. It's that
20 there was a basis for it -- they caused this bankruptcy [five-
21 second audio recording malfunction at 11:40 a.m.] award.

22 THE COURT: Okay. Well, again, maybe I shouldn't
23 have opened up that can of worms, but I just felt like there
24 was incorrect --

25 MS. LAMBERT: The --

1 THE COURT: -- repeating of the words of the Debtor.

2 MS. LAMBERT: The Court is right to be precise, and
3 it -- I suppose, from the U.S. Trustee's perspective, it's the
4 straw that broke the camel's back, and that's what we meant in
5 terms of a catalyst. And it is a judgment. But normally the
6 public has the opportunity to know what the basis of the
7 judgment is. And the basis of that ruling.

8 THE COURT: All right. Well, again, this is an issue
9 that may come up on another day and the Court will decide
10 whether it needs to come into the record. But, today, I
11 didn't think it was relevant for the motion before the Court.

12 All right. Anything else?

13 MS. LAMBERT: Finally, Your Honor, the evidence is
14 that, historically, the Debtor has had oversight externally as
15 a result of the same kind of problems that led to this, and
16 yet that did not work. And so for all those reasons, the U.S.
17 Trustee moves for the appointment of a trustee.

18 THE COURT: All right. Other arguments?

19 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

20 MR. POMERANTZ: Good morning again, Your Honor. Jeff
21 Pomerantz; Pachulski Stang Ziehl & Jones; on behalf of the
22 Debtor.

23 Just to pick up on the last point of your colloquy with
24 Ms. Lambert, Your Honor was correct. My statements at the
25 beginning of the case were that the reason the case was filed

1 was because of the Debtor's inability to satisfy the award
2 which was about to be confirmed in a judgment. It's not
3 inconsistent with what the testimony you heard today that the
4 disclosure of that award in the current context, where
5 management has completely changed, is totally irrelevant and
6 would be unduly prejudicial, and that is why we have
7 consistently sought to have that sealed and why we have
8 indicated to Your Honor and Your Honor has ruled that it's not
9 relevant for today's hearing.

10 Your Honor, the Trustee seeks appointment of a Chapter 11
11 trustee, notwithstanding Your Honor's January 9th approval of
12 a settlement between the Debtor and the Committee that
13 restructured management. And I think it's important to just
14 highlight some of the things that the settlement that Your
15 Honor approved did.

16 First, it involved a sweeping governance change,
17 highlighted by the establishment of a new board of directors
18 with three individuals who have exceptional reputations and a
19 diverse skillset that makes them unquestionably qualified to
20 manage a complex business such as the Debtor.

21 It also involved the removal of Mr. Dondero as the
22 Debtor's decision-maker, along with his agreement, which is
23 the subject, as Your Honor pointed out, of a separate court
24 order, not to interfere with the board's performance of its
25 duties, along with his agreement not to terminate substantial

1 contracts his affiliated entities have with the Debtor.

2 The settlement also established detailed operating
3 protocols which provide significant transparency regarding the
4 Debtor's operations and ensures, among other things, that the
5 Committee will have visibility into any related transactions
6 before they are consummated.

7 The settlement also granted standing to the Committee to
8 investigate and prosecute certain insider claims, along with
9 broad access to the Debtor's books and records, including
10 attorney-client information necessary to prosecute those
11 claims. While perhaps not unprecedented, this type of
12 authority being granted to Committee at this early in the case
13 is rarely granted and is quite unusual.

14 It is against this backdrop, Your Honor, that the Court
15 must evaluate the Trustee's motion. The applicable standard,
16 as you have heard, is under 1104 of the Bankruptcy Code, which
17 provides that the Court shall appoint a trustee for cause or
18 if the appointment is in the best interest of parties in
19 interest or for other cause.

20 As Your Honor wrote in the *Patman Drilling* case years ago,
21 "Appointment of a Chapter 11 trustee is a draconian remedy,
22 and there is a strong presumption that Chapter 11 -- a debtor
23 shall remain in possession."

24 And notwithstanding the Trustee's argument to the
25 contrary, the courts in the Fifth Circuit, including Your

1 Honor in *Patman Drilling*, follow *Cajun Electric* and require a
2 movant to demonstrate that appointment of a trustee is
3 justified by clear and convincing evidence.

4 Not only has the U.S. Trustee not met his burden, but the
5 facts demonstrate overwhelmingly that allowing the Debtor to
6 remain in possession is clearly in the best interests of all
7 parties in interest. In fact, no stakeholder supports the
8 U.S. Trustee's motion, and the Creditors' Committee, which
9 comprises the vast majority of unsecured claims in this case,
10 opposes the motion.

11 This bankruptcy case has been pending for over three
12 months and has been marked by significant acrimony and
13 litigation over governance and control. With the installation
14 of the board, the establishment of the protocols, the case is
15 finally on a positive trajectory, and the Debtor, through the
16 independent board, is now in a position to sit down and
17 cooperatively work with the Committee to develop a plan so
18 that the Debtor can exit Chapter 11 as quickly as possible.
19 Appointment of a Chapter 11 trustee would create further
20 uncertainty, adversely affect operations, and further delay
21 the efforts of the Debtor towards developing an exit strategy.

22 The Trustee has advanced three principal arguments on why
23 the Court should appoint a Chapter 11 trustee, none of which
24 are persuasive.

25 First, the United States Trustee argues that a Chapter 11

1 trustee is the only remedy to address various forms of
2 malfeasance that courts have found the Debtor to have
3 committed in the past. In so arguing to the Court, the U.S.
4 Trustee ignores the court-approved settlement, ignores the
5 existence of the independent board, ignores the removal of Mr.
6 Dondero from any position of control in the Debtor.

7 Section 1104 authorizes the appointment of a trustee for
8 cause, including fraud, dishonesty, incompetence, or gross
9 [mis]management of the affairs by current management. Case
10 law is clear that the focus is on the actions of current
11 management and not prior management. And, in fact, in the
12 *Bayou* case from the Second Circuit, which we identified and
13 cited, the Court refused to appoint a Chapter 11 trustee where
14 new management had been installed and there had been no
15 allegation that new management had committed any of those
16 acts.

17 The Debtor doesn't dispute that, prepetition, the Debtor
18 was involved in litigation where the courts found wrongdoing
19 by the Debtor. However, those findings are irrelevant if the
20 Debtor is under new management. New management, through the
21 independent board, is now in control, managing the Debtor's
22 operation. And importantly, James Dondero is not in a
23 position of control anymore. And as I said, there have been
24 no allegations that current management has engaged in any type
25 of fraud or mismanagement or done anything not to engender

1 confidence by the Court or the creditors. The independent
2 board consists of individuals with sterling reputations with
3 substantial skill.

4 Second, the Trustee argues that the independent board is
5 incapable of effectively managing the Debtor's affairs; the
6 structures implemented in other situations to combat Debtor's
7 bad acts have failed. Essentially, the Debtor [sic] is
8 arguing that other members of management, including the legal
9 team, may remain employed by the Debtor and the board will not
10 be able to prevent the Debtor from engaging in the same type
11 of activities that occurred prior to Chapter 11.

12 There is absolutely no evidence, Your Honor, to support
13 the U.S. Trustee's unfounded allegations. Rather, all the
14 evidence before Your Honor contradicts this argument and
15 demonstrates that the independent board has been and continue
16 to be an independent fiduciary to the estate and ensuring that
17 the Debtor takes only actions that are, in fact, benefiting
18 the estate and all parties in interest.

19 The only evidence before Your Honor regarding this is the
20 testimony you heard from John Dubel, one of the independent
21 directors. He testified as follows. Since his appointment
22 was effective on January 9th, at least one member of the board
23 has been present at the Debtor's headquarters for six of the
24 seven business days. Mr. Dubel himself has worked over 80
25 hours on the Debtor since the 9th. He testified that he

1 believes that other members of the board have put in the same
2 amount of work.

3 The board conducted a board meeting immediately upon its
4 appointment on January 9th and January 10th, and has had many
5 other informal discussions among themselves on a daily basis.

6 Mr. Dubel testified that the board has received
7 comprehensive presentations from counsel, from the CRO and his
8 team, and from each of the Debtor's department heads, and is
9 in daily communications with all such parties. He testified
10 that such presentations have covered the Debtor's structure,
11 organizations, operations, assets and liabilities, and the
12 rights and responsibilities of the board.

13 He testified that the board is reviewing and overseeing on
14 a daily basis implementing -- implementation of the protocols
15 approved by the Court.

16 He testified that, as any good board and fiduciary would
17 do, he has reached out and he has been in contact with the
18 Committee, the Committee members and their advisors on a
19 variety of issues. He's also testified that he has -- that
20 the board has reached out to department heads, who have
21 provided information without question to the board, and that
22 he believes and other members of the board believe that all
23 such information is truthful and accurate information.

24 He's testified that the authority of the board has been
25 communicated to employees, and that he believes and other

1 directors believe that the employees are respecting such
2 authority and that the CRO and the independent board are
3 providing critical interaction with the other Debtor's
4 employees and approval of transactions that are required.

5 He's testified that resolution of the corporate governance
6 will now allow the Debtor to move forward towards pursuing a
7 plan, and that appointment of a trustee would be very divisive
8 to the Debtor's operations and adversely affect operations.

9 In fact, Your Honor, the uncontradicted evidence is that
10 the independent board members are doing exactly what an
11 independent fiduciary like the trustee should or would be
12 doing: assessing the Debtor's operations and assets and
13 liabilities and evaluating how to maximize the Debtor's assets
14 for all stakeholders.

15 Moreover, the Trustee's argument that prior structures
16 implemented were insufficient is irrelevant. Never before has
17 an independent board been installed in this company, and never
18 before has Mr. Dondero been removed completely from a position
19 of authority.

20 It is also telling that two of the litigants who have had
21 significant dealings with the Debtor and its management over
22 the last years -- the Redeemer Committee and ACIS, both
23 members of the Committee -- oppose the U.S. Trustee's motion
24 and believe that the current structure is in the best
25 interests of the Debtor's stakeholders.

1 I would like to turn, Your Honor, to the last of the U.S.
2 Trustee's arguments with respect to the fiduciary duty, which
3 the Trustee says constitutes other cause because of some
4 apparent conflict. First, Your Honor, I would mention that
5 there is nothing in the pleadings regarding the fiduciary duty
6 issue. When --

7 MS. LAMBERT: Your Honor, I object.

8 MR. POMERANTZ: Excuse me.

9 MS. LAMBERT: I couldn't put it in the pleadings
10 because it didn't exist.

11 THE COURT: I'm not sure --

12 MR. POMERANTZ: Your Honor?

13 THE COURT: -- I understand the objection. He's
14 about to say what was in your pleadings.

15 MS. LAMBERT: Right. And he's saying that I should
16 have put it in my pleading, which was filed before there was
17 any management agreement, at a time when it looked like there
18 wasn't going to be a management agreement.

19 MR. POMERANTZ: Your Honor, then --

20 THE COURT: Well, --

21 MR. POMERANTZ: All right.

22 THE COURT: -- clarify. You were about to say
23 there's nothing about --

24 MR. POMERANTZ: Yes.

25 THE COURT: -- breach of fiduciary duty in --

1 MR. POMERANTZ: I was going to say, --

2 THE COURT: -- the motion?

3 MR. POMERANTZ: -- Your Honor, that the motion that
4 was filed was before the Committee settlement.

5 THE COURT: Right.

6 MR. POMERANTZ: The Committee settlement happened.
7 We opposed. In our position, we addressed the fiduciary duty
8 issue head-on. The U.S. Trustee chose not to file a reply.

9 THE COURT: Okay.

10 MR. POMERANTZ: The U.S. Trustee stood up and, Your
11 Honor, cited case law on what Delaware fiduciary duty is.
12 There is nothing in their pleadings. And the argument that
13 she -- the Trustee could not --

14 MS. LAMBERT: I again object.

15 MR. POMERANTZ: -- put that in the pleading --

16 MS. LAMBERT: The reason that they raised this in
17 their response is that, and they said in there, we anticipate
18 the U.S. Trustee will raise it, it's because I raised it at
19 the hearing on the management.

20 MR. POMERANTZ: Well, Your --

21 THE COURT: Okay. I overrule --

22 MR. POMERANTZ: Your Honor?

23 THE COURT: -- that objection. You can make your
24 argument.

25 MR. POMERANTZ: I will move on. It -- my only point

1 was there was a little bit of trial by ambush here, with
2 counsel standing up at the podium, talking about case law and
3 talking about Delaware fiduciary duties. That's not in the
4 record. But I'll move on, Your Honor.

5 Second, this issue was raised at the January 9th hearing
6 and Your Honor ruled that there was no conflict. So, in some
7 sense, it is res judicata to the issues that are here.

8 And most importantly, Your Honor, the Committee, as you
9 know, has been extremely active in this case, is represented
10 by competent professionals. There is no way that the
11 Committee would have allowed management to come in if they
12 believed that management would be subject to competing duties.

13 Nevertheless, Your Honor, I'd like to address the argument
14 head-on. The Debtor is a limited partnership. The limited
15 partnership is managed by Strand, which is the general
16 partner. And the management of the Debtor is carried out by a
17 board that has been installed at Strand at the general
18 partnership level.

19 When the Debtor filed its bankruptcy, its managers at
20 Strand owed a fiduciary duty to the bankruptcy estate. The
21 managers owe a fiduciary duty to the bankruptcy estate in the
22 same way that a trustee, if appointed, would owe a fiduciary
23 duty to the bankruptcy estate. And the argument that Jim
24 Dondero is an equity holder at Strand and somehow creates a
25 conflict is a red herring. Strand is a single-purpose entity.

1 All it does is manage the Debtor. Strand has an obligation to
2 manage the Debtor appropriately. If the board at Strand is
3 fulfilling its duties to the Debtor, it's fulfilling Strand's
4 duties to the Debtor.

5 So, in other words, Your Honor, what the board does that
6 is in honor of its fiduciary duties: makes sure Strand is
7 complying with its obligations and makes sure Strand is not
8 subject to any claims that they have not fulfilled their
9 obligations under the management agreement.

10 This was the situation in a case before Judge Isgur in
11 2014 in the *Houston Regional Sports* case, which we cite in our
12 papers at 505 B.R. 468. The debtor, a limited partnership,
13 was managed by a general partnership. The partners, ultimate
14 partners, disagreed in how the company should proceed, and the
15 company found itself subject to an involuntary bankruptcy
16 proceeding. One of the partners, the Houston Astros -- I
17 guess this is rag on Houston Astros week -- was --

18 THE COURT: Don't mention that, please.

19 MR. POMERANTZ: -- appointed a board member to the
20 general partner and argued to Judge Isgur that that board
21 member had duties to it as the general partner and that
22 because of that, and since its consent was needed for any
23 restructuring, that any Chapter 11 would have to fail.

24 Judge Isgur said no, no, no. A general partner, a board
25 member of a general partner, regardless of that it was

1 appointed by the Houston Astros, who may have different views,
2 had the obligations to the estate and to fulfill its the
3 obligations to the estate, and that if they did anything in
4 violation of that, it would create liability.

5 So that Judge Isgur directly challenged and opposed the
6 conclusion that there's somehow a different fiduciary duty.
7 Now, he did sort of, in a footnote, say that he wasn't finally
8 determining fiduciary duty issues, but he did not find any
9 conflict.

10 The same is true here. And the argument that there is
11 somehow this conflict, somehow these competing interests,
12 somehow that the board may act in favor of Jim Dondero that's
13 not in favor the board and that's different than a trustee,
14 that is essentially a red herring. It's hornbook law. When
15 an estate files bankruptcy, its managers owe a fiduciary duty
16 to the estate.

17 And who do we have on our board? We have a former judge.
18 What better to have on a board, considering what its fiduciary
19 duties are, as a former judge, a former bankruptcy judge who
20 is well-familiar with what fiduciary duties exist and to whom
21 they exist?

22 So, Your Honor, we don't think there's a conflict, and
23 there's certainly not a conflict that would rise to the level
24 of "other cause" that the Trustee is trying to fit and
25 shoehorn its motion for appointment of a trustee.

1 In conclusion, Your Honor, the Trustee has not carried its
2 burden of establishing that cause exists for the appointment
3 of a Chapter 11 Trustee, that "other cause" exists, or that it
4 is in the best interest of parties in interest. The corporate
5 governance structure approved by the Court renders moot the
6 concerns about the prepetition conduct and Debtor's prior
7 management, and there's nothing been adduced through the
8 testimony to lead to the conclusion that any of the members of
9 the -- employees of the Debtor are not doing what they're
10 supposed to be doing, reporting to the independent board, and
11 that the independent board cannot fulfill their duties.

12 Appointment of a Chapter 11 trustee would adversely impact
13 the Debtor's operations, jeopardize restructuring efforts.
14 And for all of these reasons, Your Honor, the Debtor requests
15 that the Court deny the Trustee's motion.

16 THE COURT: All right. Mr. Twomey, anything from
17 you?

18 CLOSING ARGUMENT ON BEHALF OF THE OFFICIAL COMMITTEE

19 MR. TWOMEY: Thank you, Your Honor. I will be brief,
20 but I do want to provide the Committee's perspective on this,
21 given in particular 1104's focus on stakeholders.

22 As Your Honor is aware, the Committee represents the
23 primary economic stakeholders in this case. Even more than
24 most cases, the unsecured creditors in this case comprise the
25 vast majority of creditors, given how little secured debt

1 there is. And Your Honor, the Committee which represents
2 those unsecured creditors strongly disputes the notion that
3 appointment of a Chapter 11 trustee would be in the best
4 interest of stakeholders, for many of the same reasons as Mr.
5 Clemente discussed at the prior hearing in support of the
6 settlement.

7 The Committee believes the settlement approved by this
8 Court a week and a half ago, and the corporate governance
9 structures embodied therein, provide the Debtor with the best
10 opportunity to maximize value in this case.

11 As described earlier, the Committee believes that the
12 board members are highly qualified, with complementary
13 skillsets. It's hard to imagine that there's a single trustee
14 out there that could match their combined experience and
15 expertise.

16 Any Chapter 11 trustee would face the same challenges that
17 the board is facing, and those challenges just wouldn't
18 magically go away by appointment of a trustee.

19 In addition, appointment of a Chapter 11 trustee at this
20 point would lead to more delay getting up to speed, additional
21 cost for the trustee trying to get up to speed in the case,
22 and it obviously would basically undo the settlement that the
23 Committee and the Debtor spent so much time trying to pull
24 together.

25 As Your Honor has heard today, the board clearly has

1 rolled up their sleeves. They're becoming heavily involved in
2 the case. And the Committee also has information and
3 oversight rights and standing to pursue certain claims under
4 the settlement that provides an additional check on all of
5 this process going forward.

6 So, Your Honor, in light of the foregoing, especially the
7 settlement that Your Honor approved a little over ten days
8 ago, the U.S. Trustee simply can't meet its burden of showing,
9 under these circumstances, that cause warrants appointment of
10 a Chapter 11 trustee or that appointment of a Chapter 11
11 trustee would be in the best interest of stakeholders.

12 So, Your Honor, the Committee respectfully requests that
13 the motion be denied.

14 THE COURT: Counsel for UBS, did you have something?

15 CLOSING ARGUMENT ON BEHALF OF THE UBS PARTIES

16 MS. POSIN: Yes, Your Honor. Thank you, Your Honor.
17 Kim Posin of Latham & Watkins, counsel for creditors and
18 Unsecured Creditors' Committee members, UBS Securities, LLC,
19 and UBS AG London Branch.

20 Your Honor, just very briefly, I wanted to say that UBS
21 has a very substantial claim against Debtors and this estate.
22 We believe our claim to be in excess of \$1 billion. And that
23 results from a November 2019 judgment in the New York Supreme
24 -- or Superior Court -- Supreme Court, excuse me, on a breach
25 of contract claim.

1 So, as a very significant creditor of this estate, we have
2 spent a substantial amount of time with the Committee and with
3 Committee counsel over the last few weeks creating this new
4 governance structure that the Court has put into place in the
5 last week and a half.

6 We are hopeful and we fully expect that, now the new
7 governance is in place, that the Debtors will be able to
8 proceed with a path forward and avoid the distractions and,
9 you know, influences that may have hindered their decision-
10 making processes to date or before the new governance
11 structure was put into place.

12 While we appreciate the U.S. Trustee's concerns with the
13 pre-existing management structure, we believe that that broken
14 structure has now been fixed. And unless and until the new
15 governance structure proves to be unworkable or detrimental to
16 the Debtor's estate or to its creditors in some fashion, the
17 -- there is no need and it would be inappropriate to appoint a
18 Chapter 11 trustee.

19 In fact, we agree with Mr. Twomey and Mr. Pomerantz that
20 the appointment of a Chapter 11 trustee at this point in these
21 cases would be detrimental, it would be disruptive, it would
22 cause delays, and there's no assurances that any Chapter 11
23 trustee that could be appointed would be -- would have
24 anywhere near the qualifications and capabilities of the new
25 board members.

1 So, Your Honor, we believe it is in the best interests of
2 all creditors, not just the numbers of this Committee, to deny
3 the motion, to allow the new governance structure to proceed,
4 and to give the board members an opportunity to manage the
5 Debtor's decision-making processes to preserve value and
6 hopefully to reach a resolution of this case in an appropriate
7 manner as efficiently and effectively as possible.

8 THE COURT: All right. Thank you.

9 MS. POSIN: Thank you.

10 THE COURT: Anyone else? Any rebuttal? All right.
11 We'll take a 15-minute break. It's 12:02. We'll come back at
12 12:17 and I'll give you a ruling.

13 THE CLERK: All rise.

14 (A recess ensued from 12:02 p.m. until 12:34 p.m.)

15 THE COURT: All right. We are going back on the
16 record in the Highland case. This is the Court's ruling on
17 the United States Trustee's motion for appointment of a
18 trustee.

19 The Court has bankruptcy subject matter jurisdiction
20 pursuant to 28 U.S.C. Section 1334. This is a statutory core
21 proceeding pursuant to 28 U.S.C. § 157. The Court concludes
22 it has constitutional authority to make a final ruling in this
23 contested matter. And the Bankruptcy Code section that
24 governs the merits of the motion is Section 1104.

25 Based on the totality of the evidence, the Court believes

1 -- well, let me back up. Based on case authority, the Court
2 believes the legal standard is that there must be clear and
3 convincing evidence establishing the need for a trustee. But
4 even if I am misremembering the procedural history of *Cajun*
5 *Electric*, and even if the Fifth Circuit later, on a
6 rehearing, adopted a preponderance of the evidence standard
7 that had been suggested in a prior dissent, I would still find
8 here, under a preponderance of the evidence standard, that
9 there are not grounds under Section 1104(a)(1) or (2) for the
10 appointment of a trustee in this case. So the motion of the
11 U.S. Trustee is denied.

12 I frequently say in court hearings, some folks know, that
13 facts matter. It's kind of a mantra of mine. It seems like a
14 very obvious statement, I know. But facts, evidence, really
15 does matter. And here are some of the facts involved that
16 are, frankly, quite atypical compared to what bankruptcy
17 courts frequently see with trustee motions, motions to appoint
18 a Chapter 11 trustee.

19 First, as I've noted a couple of times before, we have a
20 well-constituted and well-represented Official Unsecured
21 Creditors' Committee. Three of the four members of the
22 Committee have extensive multi-year experience litigating with
23 this debtor. They are collectively owed many millions of
24 dollars. Actually, one Committee member, UBS, represented
25 today it thinks it's owed a billion dollars.

1 They are, beyond any doubt, sophisticated, well-
2 represented parties. And with all of their background and
3 breadth of knowledge about this debtor and its now-former
4 control person, Jim Dondero, with all of their history of
5 distrust and acrimony, they do not at this juncture support a
6 Chapter 11 trustee.

7 In fact, as we all know, the Committee and its
8 professionals worked mightily for several weeks with the
9 Debtor's professionals to come up with a new corporate
10 governance structure that, in their reasonable view, could
11 serve as a much more favorable vehicle than a Chapter 11
12 trustee.

13 They, as we all know, negotiated and chose three new
14 independent board members of the general partner of the
15 Debtor, Strand, which general partner, of course, ultimately
16 controls the Debtor and has fiduciary duties to the Debtor as
17 a general partner. And this new board not only has all the
18 attributes, benefits of independence and an understanding of
19 fiduciary duties, the Court has issued an order defining its
20 role as such, but, in this Court's opinion, this new board has
21 at least two distinct advantages over a Chapter 11 trustee.

22 First, with no offense to any of the Chapter 11 trustee
23 candidates out there that might be able to serve, the three
24 board members bring a fabulous skillset to the process. A
25 retired bankruptcy judge, an individual with tremendous high-

1 yield investment and portfolio management experience, and an
2 individual with significant experience as an independent
3 director in difficult, large restructuring cases.

4 Second, the Debtor and the Committee professionals believe
5 that a new board, with the ability to retain or terminate
6 employees as they deem fit, would be less disruptive overall
7 and could potentially preserve enterprise value better than
8 the more drastic mechanism of a Chapter 11 trustee.

9 Moreover, in connection with this overhaul of governance,
10 corporate governance, the UCC, the Official Unsecured
11 Creditors' Committee, also negotiated mechanisms for
12 transparency in the Debtor's operation of its business, and
13 the Committee, Official Unsecured Creditors' Committee, was
14 given standing to pursue certain actions.

15 So, back to my mantra. The bottom line is facts matter,
16 and the facts are that we have sophisticated, well-heeled
17 economic stakeholders who have worked mightily to essentially
18 overhaul the entire corporate governance as to this debtor.
19 They have sanitized the problems.

20 Again, some of these Unsecured Creditors' Committee have a
21 history with this debtor. They have a history with putting
22 checks and balances in place and those not ideally working.
23 It is with this background that they have worked mightily for
24 several weeks with Debtor's professionals to come up with this
25 new corporate governance structure that, in their reasonable

1 view, provides the appropriate oversight and control that the
2 mechanisms perhaps in prior situations did not provide.

3 The U.S. Trustee relies on the strict wording of Section
4 1104 in urging its motion. Specifically, the wording that,
5 quote, The Court shall order the appointment of a trustee for
6 cause, including fraud, dishonesty, incompetence, or gross
7 [mis]management of the affairs of the debtor by current
8 management, either before or after the commencement of the
9 case, or similar cause.

10 The Court believes this statutory provision is aimed at
11 problems or malfeasance with current management. All of this
12 has been fixed. It's a very different scenario than when this
13 case was filed. If there are problems with remaining
14 employees, like in-house lawyers or treasurers or others, the
15 board has the ability to terminate these individuals. But I
16 had no evidence that there are specific problems with any
17 particular remaining individuals.

18 Simply because I or another Court may have made statements
19 in prior rulings about unreliable testimony or may have found
20 evidence of fraudulent transfers is not a problem that taints
21 this completely-overhauled management structure. Again, this
22 was a complete overhaul. The facts and timing are such today
23 that Mr. Dondero is no longer current management. Current
24 management are the words used in Section 1104.

25 This case is no different than numerous other large

1 Chapter 11 cases when, often before the petition date but
2 sometimes after, old board members resign, new board members
3 are brought in, CEOs are ousted. It's common. It avoids the
4 possible need for a Chapter 11 trustee. It brings integrity
5 to the process and hopefully preserves the ability to
6 reorganize. Creditors sometimes demand it. The debtor's
7 professionals sometimes suggest it. Sometimes, current
8 management resigns before being told they'll need to. This is
9 one of the realities with distressed companies.

10 A new board and new management are not only a pragmatic
11 solution, but this Court concludes are totally within the
12 parameters and the provisions and overall structure of Chapter
13 11.

14 At bottom, the professionals for the Debtor and the
15 Official Unsecured Creditors' Committee have fixed the
16 problem, the problems with the current management that existed
17 as of the petition date. I approved the new governance
18 structure pursuant to Sections 363 and 105, and now we don't
19 have the cause that 1104 refers to.

20 Moreover, I have no evidence that a trustee is in the best
21 interest of parties pursuant to Section 1104(a)(2). So, no
22 cause for a Chapter 11 trustee.

23 I reserve the right to supplement or amend in a form of
24 order, but I will ask Debtor's counsel to submit a form of
25 order.

1 All right. Well, turning to the remaining business, I
2 know we had two or three other motions, and there were no
3 objections to those motions.

4 MR. LITVAK: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. LITVAK: Max Litvak; Pachulski Stang Ziehl &
7 Jones; on behalf of the Debtor.

8 THE COURT: Okay.

9 MR. LITVAK: I'm here to present those last three
10 items on the agenda, which are 7, 8, and 9.

11 THE COURT: All right.

12 MR. LITVAK: And Your Honor, if I may suggest that we
13 go in reverse order.

14 THE COURT: All right. I'm pulling out my agenda to
15 the appropriate --

16 MR. LITVAK: Yes, Your Honor. Number 9 is the Mercer
17 retention application.

18 THE COURT: Okay. That is the compensation expert
19 professional, correct?

20 MR. LITVAK: Exactly right, Your Honor. We have no
21 objections to this application, and Mercer has already, some
22 time ago, actually, commenced rendering services for -- to the
23 Debtor with respect to compensation issues.

24 THE COURT: All right. Again, we did not have any
25 written objection. Anybody want to say anything about this

1 application?

2 All right. Well, notice has been proper. We have no
3 objections. They appear to be well-qualified. I approve this
4 under 327 and 328 of the Bankruptcy Code.

5 MR. LITVAK: Your Honor, would you like to see a
6 proposed form of order, or -- it is essentially the same one
7 that we filed with the application, except we have updated the
8 caption because the application was actually originally filed
9 in Delaware.

10 THE COURT: All right. No. You may simply upload it
11 electronically, please.

12 MR. LITVAK: Yes, Your Honor. Will do. Thank you.

13 Moving to Number 8 on the agenda, Your Honor, is the bonus
14 motion. It is the Debtor's motion to pay our ordinary course
15 obligations under employee bonus plans. And Your Honor, there
16 are no pending objections with respect to this motion. The
17 U.S. Trustee has filed no objection. We did negotiate
18 resolution with the Creditors' Committee that I wanted to tell
19 you about.

20 THE COURT: Okay.

21 MR. LITVAK: We have agreed, for purposes of today,
22 to exclude four statutory insiders.

23 THE COURT: All right.

24 MR. LITVAK: So, from our perspective, there are no
25 -- no insiders who are covered by the motion. Or covered with

1 respect to the proposed order that we'd be submitting to you
2 today, which has been reviewed and approved by the Creditors'
3 Committee. There are a few others that are being pulled out
4 as well.

5 But the net result of it, Your Honor, is that we are
6 asking for approval of ordinary course plans in an amount
7 that's substantially reduced from what was initially asked
8 for, the initial request for relief.

9 Specifically, Your Honor, the order for relief here today
10 is with respect to what we've called an annual bonus plan and
11 also what we've called a -- as a deferred bonus plan. The
12 annual bonus plan was actually approved almost a year ago, in
13 February 2019. It relates to employee performance in 2018
14 calendar year. As I mentioned, it's all ordinary course. But
15 the payments are in installments. So it's deferred
16 compensation, which actually is a substantial portion of
17 employee compensation in the industry as well as for this
18 Debtor. Employees agree to take reduced salaries with the
19 expectation that they're going to be compensated substantially
20 with respect to bonuses.

21 And that is, in fact, what happened here, and what has
22 happened in the ordinary course. And in February 2019, the
23 company approved bonuses for employees for their performance
24 in 2018, but employees will only be entitled to receive those
25 bonuses to the extent they continue to be employed with the

1 Debtor on deferred payment dates. And there are four
2 installments. Two were made prepetition and two remain to be
3 paid. And what we're asking for today, Your Honor, is for
4 your authority to continue to make those payments in the
5 ordinary course.

6 So the third installment comes due on February, in
7 February 2020, and then the fourth installment comes due in
8 August 2020. So this year, next month, and then a few months
9 down the road.

10 The deferred bonus plan goes back even further. It was
11 approved in February 2017 for the 2016 calendar year. And it,
12 in the ordinary course, is deferred 39 months, and those
13 payments are actually tied in with certain publicly-traded
14 allocated -- allocated publicly-traded stock. So an employee
15 is awarded a certain amount, and that value is represented in
16 publicly-traded stock, which is actually set aside, held by
17 the company for the benefit of that employee.

18 If the employee sticks around for 39 months, then on the
19 39th month there will be a vesting. And the next vesting will
20 be in May, May 2020 for the February 2017 awards.

21 And the stock in many cases has increased in value, just
22 as the stock market has increased in value, generally
23 speaking. So the amounts that were awarded in February 2017
24 have actually increased in value, and the employees would be
25 expecting that, that if they're continuing to perform and do

1 their job and they're still employed on that date of when
2 there is a vesting, that they would be entitled to that stock
3 at the value -- at the market value of that stock on the
4 vesting date.

5 Your Honor, another important thing that's significant
6 about the Debtor's bonus plans is that they are not
7 guaranteed. Even -- even when they're awarded. An employee
8 has to continue to perform at a very high level or they can be
9 terminated. Frankly, an employee can continue to perform at a
10 high level and still be terminated. So someone can be
11 terminated without cause, and then they will not be entitled
12 to the bonus, unless they're there on the actual payment date.
13 So, come February 28th, the employees that are there, the
14 board will decide which employees are there. Presumably, it's
15 the bulk of the employees. Then those employees will be
16 entitled to what they have been awarded prepetition. And
17 that's what we're asking the Court to approve today.

18 We're not asking Your Honor to approve anything with
19 respect to 2019 bonuses yet. Frankly, the board is still
20 getting its arms around that and making determinations as to
21 what bonuses will be payable.

22 Your Honor, the board, the independent board, has closely
23 evaluated the Debtor's employee compensation structure and
24 reached a decision that most aspects of the bonus should be
25 approved, to avoid potentially catastrophic consequences for

1 this estate.

2 The board has considered input from the Creditors'
3 Committee. The board has decided to make certain
4 modifications to the bonus plans as they were proposed in the
5 initial filing. So the initial motion that we filed was
6 actually filed in Delaware, I believe on November 26, 2019.
7 And the matter was initially set for hearing on December 17th
8 in Delaware. Then venue was transferred, and we have
9 subsequently renoticed the hearing a couple of times to today,
10 ultimately.

11 The bonus amounts -- as I mentioned, Your Honor, the board
12 has decided with respect to the modifications to exclude the
13 four statutory insiders as well as a few others, and the board
14 intends to address the compensation of those employees
15 separately.

16 The bonus amounts that are requested today, Your Honor,
17 after reductions, now aggregate \$1.8 million in February, \$1.2
18 million in May, and \$1.7 million in August, for a grand total
19 of approximately \$4.6 million, Your Honor. That would cover
20 approximately 40 employees.

21 In the original motion, we actually asked for over \$10
22 million, so this is more than cutting it in half. The board
23 has had the benefit of a compensation expert, which is Mercer,
24 who has confirmed that the Debtor's bonus, bonus plans, are
25 well within market, and that if such bonuses are not paid, the

1 Debtor's employees would be severely undercompensated.

2 The bottom line, Your Honor, is that the board has
3 concluded, in its sound business judgment, that continuing to
4 honor the Debtor's ordinary course bonus obligations, as
5 modified, to employees is critical. The failure to do so is
6 likely to cause an employee exodus and will adversely
7 prejudice the Debtor's efforts to maximize value for all
8 constituents.

9 Your Honor, we're asking you to approve the payments, the
10 bonus payments, under Sections 105 and 363 of the Bankruptcy
11 Code as a sound exercise of business judgment. Also, under
12 Section 1107 of the Bankruptcy Code in that the Debtor is
13 exercising its fiduciary duty to try and maximize value,
14 consistent with a couple opinions that we've run across in
15 this district from Judge Lynn.

16 Most recently, Your Honor, there is a decision called *In*
17 *re Tusa* -- T-U-S-A hyphen -- *Expo Holdings*, 2008 Bankr. LEXIS
18 2852. It's Judge Lynn's opinion from 2008 where he clarifies
19 an earlier opinion, *In re CoServ*, 273 B.R. 487. He basically
20 reaches the conclusion, Your Honor, that, under Section 1107,
21 the Debtor has a fiduciary duty to maximize value, and
22 maintaining relationships with employees is a necessity.

23 So, under the necessity of payment doctrine, we would ask
24 Your Honor to approve these payments. Even though they were
25 approved prepetition, they are coming due postpetition. We

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 20**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
§
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

1 would ask the Court to approve that.

2 Further, Your Honor, because we have carved out insiders,
3 we do not believe that Sections 503(c)(1) or (c)(2) of the
4 Bankruptcy Code apply at all to what we're asking for today,
5 and that 503(c)(3) also doesn't apply. Even though that
6 section is not limited to insiders, we don't think it applies
7 because this is an ordinary course program and 503(c)(3) talks
8 about outside the ordinary course.

9 Here, the bonus plans are entirely consistent with the
10 ordinary course operations of the Debtor and completely
11 consistent with prepetition practice.

12 Your Honor, in addition to the bonus plans, just as a
13 minor point, there is what is called a dividend reinvestment
14 plan where the Debtor will contribute -- gross up, effectively
15 -- an employee contribution into an investment fund, which is
16 actually with an affiliate called NexPoint. So, basically,
17 employees of the Debtor are given the opportunity to invest in
18 a couple of mutual funds that are run by affiliates. If they
19 choose to do that, then the Debtor will gross up the value of
20 those employees' investments as an employee benefit. So it's
21 really just another form of compensation to employees. It's a
22 15 percent gross-up. And with respect to possible prepetition
23 obligations under the DRIP, they're very nominal. Less than
24 \$30,000, if any. So we are asking approval in the motion up
25 to \$30,000, and then authority to continue the program in the

1 ordinary course.

2 The Debtor also has certain of its own funds invested in
3 these mutual funds, and those mutual funds throw off
4 dividends. And the Debtor in the ordinary course reinvests
5 the dividends in those funds. And the Debtor is asking for
6 authority to continue to do that.

7 These are not huge numbers, Your Honor, but it's -- it's
8 maybe \$10,000 to \$20,000 a month.

9 For these reasons, Your Honor, the Debtor would urge you
10 to approve the motion. If you need any further factual
11 support, I'm prepared to offer it, but the motions are
12 uncontested, as far as we know.

13 THE COURT: All right.

14 MR. LITVAK: Or the motion is.

15 THE COURT: All right. Well, I certainly didn't see
16 written objections. Do we have comments from, first, the
17 Committee? Are you willing to accept these facts as
18 unrefuted, or do you have a desire to examine witnesses on
19 this?

20 MR. TWOMEY: Absolutely not, Your Honor. Just wanted
21 to confirm for Your Honor that the Committee did originally
22 have issues with the scope of the relief requested in the
23 motion as it was filed back in November, but the Committee and
24 its advisors have worked with the Debtor, primarily through
25 their directors and advisors, to narrow the scope of the

1 relief requested to the point where it is, in fact, acceptable
2 to the Committee, as outlined by Mr. Litvak. So, the
3 Committee is now comfortable with the narrowed relief as just
4 outlined and is comfortable with the Court approving that
5 requested relief.

6 THE COURT: All right. Well, we appreciate your role
7 --

8 MR. TWOMEY: Thank you, Your Honor.

9 THE COURT: -- in negotiating some narrowing of the
10 relief.

11 Anyone else? U.S. Trustee or anyone else have issues?
12 All right. Ms. Lambert, you had something?

13 MS. LAMBERT: No. No issues, Your Honor. It is our
14 understanding that any new bonus program will be subject to a
15 separate motion.

16 THE COURT: All right. I think that's what I
17 inferred, but maybe you should clarify on the record.

18 MR. LITVAK: Your Honor, I would like to clarify
19 that, because we -- we actually have not reached that
20 determination. We are evaluating what the bonus plan will
21 look like, and then we'll confer with the board, do some
22 research of our own, and make that determination. But if it
23 would make Ms. Lambert happy, I'm sure we could agree to
24 communicate to her our decision.

25 THE COURT: All right. So think what I'm hearing is

1 you're reserving the right to take the position that any new
2 bonus program would be ordinary course of business and
3 wouldn't need court approval?

4 MR. LITVAK: Yes, Your Honor.

5 THE COURT: All right. Well, then I am going to
6 accept you at your word made on the record that you will
7 communicate, you'll give notice to the U.S. Trustee if any new
8 bonus plan is -- the Debtor desires to implement one and takes
9 the position it doesn't need court approval, and then if she
10 disagrees or the Committee disagrees, someone can file a
11 motion to, whatever the motion would be worded, to have the
12 Court weigh in on the subject.

13 MR. LITVAK: Yes, ma'am.

14 THE COURT: Okay. All right.

15 MR. LITVAK: Your Honor, I do have a proposed form of
16 order, along with a redline against the original form of order
17 that we had filed, if you'd care to see that with respect to
18 the bonus motions.

19 THE COURT: You --

20 MR. LITVAK: If I may approach.

21 THE COURT: You can approach on that.

22 (Pause.)

23 THE COURT: Thank you.

24 MR. LITVAK: The redline primarily reflects changes
25 that were requested by the Creditors' Committee, Your Honor.

1 THE COURT: Okay.

2 MR. LITVAK: And clarifying that the motion is
3 granted as presented at the hearing today minus the few
4 employees, insiders that I had mentioned.

5 THE COURT: All right. Well, the Court is going to
6 approve the bonus motion as narrowed here on the record today.
7 The Court believes that, based on the unrefuted facts, there's
8 a sound exercise of business judgment reflected in this
9 proposal, and that it would certainly be a preservation of
10 value by keeping these bonuses in place that were negotiated
11 or put in place prepetition. So the Court thinks this form of
12 order looks fine and the motion is hereby approved.

13 MR. LITVAK: Thank you very much, Your Honor.

14 With that, I'll move to the last item on the agenda, which
15 is Number 7, the cash management motion, which was filed some
16 time ago as a first-day filing. Judge Sontchi did enter an
17 interim order. We've been operating under the interim order
18 ever since. It's been over three months now.

19 And at the last hearing, we were prepared to present the
20 final order, but the U.S. Trustee, as I understand it, stood
21 up and made a speaking objection to the effect that the Debtor
22 should be required to bond a couple of brokerage accounts.

23 So the Debtor has two brokerage accounts that are at
24 issue. There is a Jefferies account and then there's an
25 account at Maxim. And there is a significant amount in terms

1 of value of securities there. At Jefferies, we're looking at
2 in the range of \$80 million, and at Maxim \$30 million. At
3 Jefferies, there is a margin balance, so basically a
4 prepetition secured claim by Jefferies against the estate of
5 \$30 million.

6 We have gone to these brokers to ask them if they would be
7 willing to participate in a bond or surety relationship of
8 some sort with a third party. We have also gone out and
9 obtained one quote so far with respect to how much that would
10 cost. The one quote was in the range of \$200,000 or \$300,000.

11 The board -- I've discussed this with the board. It is
12 the board's view that spending that money to buy a surety bond
13 is not a good use of the estate's limited resources. But
14 further, as a practical matter, Your Honor, we have gone to
15 Jefferies, and they are unwilling to enter into surety -- they
16 would be required to sign an indemnity agreement with a
17 surety. So if a surety is ever called upon to pay because the
18 securities that are supposed to be there for some reason are
19 not there, then Jefferies would be obligated to reimburse the
20 surety. That's the indemnity. And further, Jefferies would
21 be required to become an approved depository here. They're
22 not willing to do that.

23 So, Your Honor, I think we're at the position, from the
24 Debtor's perspective, that we would ask you to, to the extent
25 that the U.S. Trustee still has an objection, that we would

1 ask you to approve a waiver of the 345 requirement for cause,
2 the cause being that the Debtor does not believe that this is
3 a good use of estate resources. The Debtor is in the business
4 of doing just this, which is money management, investing in
5 securities. This is not a retail business that, on the side,
6 is trying to make some money off securities. This is what the
7 Debtor does. So it is a very unique set of facts here.

8 The Debtor also doesn't have the ability to move the
9 accounts, particularly the one at Jefferies, because Jefferies
10 has a significant margin balance which secures them. So
11 they're not going to let us move the money out. So we're kind
12 of stuck.

13 And it has never been an issue before, Your Honor.
14 Jefferies, incidentally, has, we found out from their website
15 -- it is obviously a highly-regulated entity, as is Maxim --
16 Jefferies has significant insurance in place. Beyond the SIPC
17 coverage for securities accounts, which is tapped at \$500,000,
18 Jefferies has another -- an excess policy of \$24-1/2 million
19 on top of that, and maybe more.

20 So, Your Honor, from the Debtor's perspective, we would
21 ask the Court to give us the waiver here under the unique
22 circumstances here of 345 and that the Debtor be permitted to
23 continue to maintain those two brokerage accounts in the
24 ordinary course.

25 THE COURT: All right. Others wish to be heard?

1 MS. LAMBERT: So, to be clear, Your Honor, the United
2 States Trustee didn't ask them to bond the amounts. The U.S.
3 Trustee asked that the insurance parallel the specific
4 insurance, or the bonding, parallel that, so that if the
5 actual stocks are not there, there's something to go against,
6 and so, therefore, making it parallel to the same kind of
7 posting of collateral with the Fed in case an institution
8 fails.

9 So, it is also possible to get insurance, just as
10 Jefferies has, for the Debtor. And they're still outstanding
11 on several requests. But if Jefferies won't sign the
12 indemnification agreement, they won't sign it. So that's the
13 issue. I mean, could they get insurance separately? I don't
14 know. They haven't tried. But I will want the Court -- I
15 mean, like Judge Houser will never ever grant this kind of
16 relief. I want the Court to be aware that the estate is at
17 risk if there's a problem at Jefferies or if there's a problem
18 at the other institution.

19 THE COURT: All right. Anyone else wish to weigh in?

20 And I'm going to go back to my mantra. Facts matter. I'm
21 not sure Judge Houser has ever had this type of entity. You
22 know, it's not a retail store, it's not a restaurant, it's not
23 an apartment complex. It's a debtor whose reason for existing
24 is money management and investing. Not that it doesn't ever
25 make mistakes, but, again, I think the unique circumstances of

1 this debtor in this case merit a waiver of the Section 345(b)
2 requirement.

3 I think it would not be an exercise of reasonable
4 judgment, under the facts I have before me, to require, you
5 know, a \$200,000 or \$300,000 cost surety bond. So I grant the
6 motion and grant the waiver.

7 And as with any order, I won't require this blue sky
8 language, but certainly if, you know, Jefferies and Maxim, you
9 know, it's well publicized, they go into distress themselves
10 and we need to revisit this ruling, the Court would certainly
11 be willing to revisit the issue if the world changes, and I
12 think that's a good thing to do.

13 All right. Before we end matters on this motion, I left
14 my notes on my desk, but I had in my brain that at one time
15 there were four stray issues that the Committee had. And I
16 just want to double-check these four stray issues were
17 resolved with the settlement. I know there was an issue with
18 regard to a couple, I mean, well, four recurring commitments
19 of the Debtor. One regarding that life settlement entity,
20 where the premium was something like a million dollars a month
21 that Debtor was paying. There was another, you know,
22 Singapore office and a Korea investment company. And I can't
23 remember, I think the other was just general overhead
24 provided. Have those issues been resolved, wrapped up in the
25 settlement? I did not go back and double-check the

1 settlement.

2 MR. POMERANTZ: Your Honor, Jeff Pomerantz. We had
3 interim approval under the cash management to do certain
4 things.

5 THE COURT: Uh-huh.

6 MR. POMERANTZ: But Your Honor is correct that any
7 continued intercompany cash management issues were covered by
8 the protocols. So that is where we will be seeking authority
9 to do any other type of intercompany transactions. It will
10 not be pursuant to this cash management order, but it was
11 important for this cash management order to become final
12 because it did govern the case before the case got transferred
13 here and we took action as we were permitted to do under the
14 interim order.

15 THE COURT: Okay. So without asking you to recite
16 every single sentence of the settlement motion and order,
17 there's some sort of oversight and approval mechanism for
18 those payments, those obligations?

19 MR. POMERANTZ: Correct. Correct. Correct.
20 Intercompany transactions, related-party transactions, is a --

21 THE COURT: Just that general umbrella?

22 MR. POMERANTZ: -- is the general umbrella.

23 THE COURT: Okay.

24 MR. POMERANTZ: And there's a certain process and
25 procedure how we would get approval from that, giving

1 visibility to the Creditors' Committee.

2 THE COURT: Okay. Counsel, did you want to add
3 anything?

4 MR. TWOMEY: Just to confirm that's correct, Your
5 Honor. We had an operating protocol that was approved as part
6 of the settlement. And so, pursuant to that, these types of
7 transactions will be, you know, for example, run by the
8 Committee, and only if there are issues will we have to come
9 back to the Court.

10 THE COURT: The general umbrella --

11 MR. TWOMEY: Yes.

12 THE COURT: -- of intercompany transactions? All
13 right. I bet Retired Judge Nelms' ears perked up when he
14 heard about life settlements. If you don't understand that
15 comment, I'm sure he'll love to talk to you about *Life*
16 *Partners*.

17 MR. POMERANTZ: Yes. We've had those discussions,
18 Your Honor.

19 THE COURT: Okay.

20 MR. POMERANTZ: Your Honor, I think the only thing
21 remaining to be done is a couple of dates.

22 THE COURT: Okay.

23 MR. POMERANTZ: We thought it would be helpful to set
24 sort of, you know, essentially omnibus dates.

25 THE COURT: Okay.

1 MR. POMERANTZ: We may have things relating to the
2 continued bonus programs to bring before the Court. May not.
3 And just so people generally could know when to file things.
4 So we've conferred with the Creditors' Committee counsel. I
5 didn't have the opportunity to confer with the Trustee. But
6 we have a date in February, perhaps either February 19th or
7 20th.

8 THE COURT: Okay.

9 MR. POMERANTZ: And then also a date in March, either
10 the 10th, 11th, or 12th.

11 THE COURT: Okay. Let me see what we can do.

12 (Pause.)

13 THE COURT: Okay. We can give you 2/19 at 9:30 in
14 the morning.

15 (Pause.)

16 THE COURT: Okay. We can give you Wednesday, March
17 11th, at 9:30.

18 MR. POMERANTZ: Thank you very much, Your Honor.

19 THE COURT: All right. So, for now, do we want to
20 absolutely set some of these carryover matters? I know we had
21 the retention application.

22 MR. POMERANTZ: We have the retention applications,
23 we have the PensionDanmark, --

24 THE COURT: The Pension --

25 MR. POMERANTZ: -- and then we have the settlement

1 related to the CLO Issuer. So why don't we put all those
2 three on for the 19th at 9:30 a.m.?

3 THE COURT: Okay. I think it's four things. I think
4 there were two retention applications.

5 So, for now, Traci, we're going to set the Foley Gardere
6 and Lynn Pinkerton retention applications on February 19th, as
7 well as the Pension motion to lift stay. I can't remember the
8 exact name of that. And then, okay, you said there's a CLO
9 Issuers motion?

10 MR. POMERANTZ: Well, it was the -- it was the
11 overall settlement motion, if Your Honor recalls, that I
12 mentioned at the beginning of the hearing.

13 THE COURT: Oh, the language --

14 MR. POMERANTZ: That specific issue on the protocols.

15 THE COURT: -- they were hoping to have for
16 protocols?

17 MR. POMERANTZ: Correct.

18 THE COURT: Okay. Yeah. So we'll carry over the
19 settlement motion between the Committee and the Debtor. Even
20 though I've entered an order, we actually have some carryover
21 language. So we'll put that on the calendar again. No, all
22 of those on February 19th. And, again, you'll coordinate with
23 Traci if you have add-on matters that you need --

24 MR. POMERANTZ: Correct, Your Honor. And then we
25 will file the appropriate agenda of that in advance and

1 provide Your Honor with notebooks so that Your Honor will know
2 exactly what was on. I know Traci was -- did a great job of
3 trying to figure it out, and we didn't make her life easier up
4 until the agenda, but we promise to make both yours and her
5 life easier going forward.

6 THE COURT: Well, for my life, the notebook and
7 everything was great when I started looking at it over the
8 weekend, so thank you. Appreciate it.

9 MR. POMERANTZ: Thank you very much, Your Honor.

10 THE COURT: All right. I appreciate everyone's
11 positions and courtesies today. All right.

12 MR. POMERANTZ: Thank you, Your Honor.

13 THE CLERK: All rise.

14 (Proceedings concluded at 1:17 p.m.)

15 --oOo--

16

17

18

19

20

CERTIFICATE

21

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

23

/s/ Kathy Rehling

01/24/2020

24

Kathy Rehling, CETD-444
25 Certified Electronic Court Transcriber

Date

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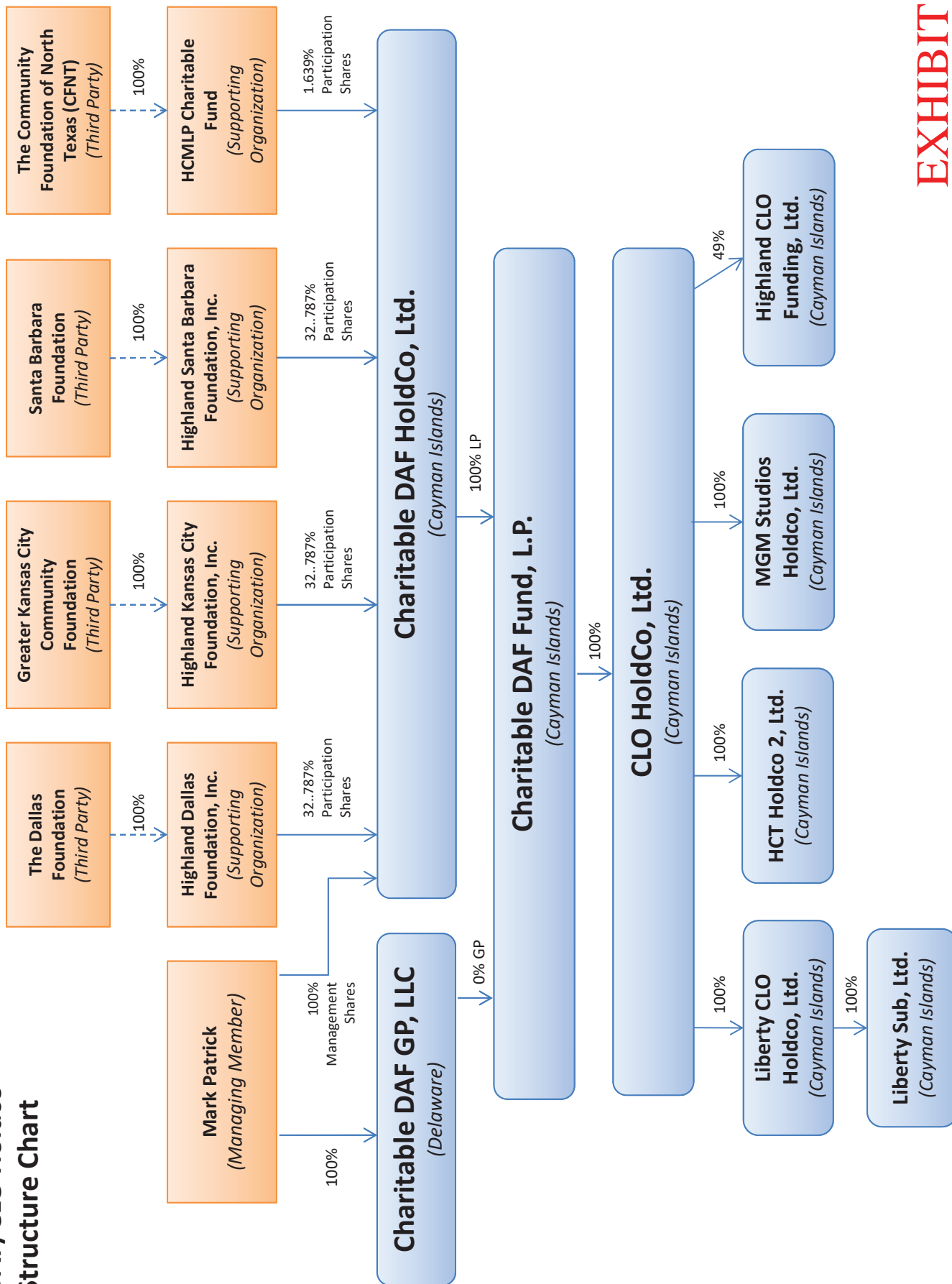


EXHIBIT 1

CLO HOLDCO, LTD.
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON March 31 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Mark E. Patrick be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Grant James Scott be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Mark E. Patrick as a Director of the Company and the appointment of Grant James Scott as a Director of the Company.

BY



Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

EXHIBIT 3

PATRICK_000001

004291

CLO HOLDCO, LTD.
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON April 2 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Mark E. Patrick as a Director of the Company and the appointment of Grant James Scott as a Director of the Company.

BY 
Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN RESOLUTIONS OF THE SOLE DIRECTOR
OF THE COMPANY DATED March 25 2021

1. SHARE TRANSFER

1.1 IT IS NOTED that the Director has received a duly executed share transfer form relating to the transfer by Grant James Scott of 100 Management Shares to Mark E. Patrick.

1.2 IT IS RESOLVED that:

(a) the following share transfer (the "Transfer") be and is hereby ratified, confirmed and approved:

TRANSFEROR	TRANSFeree	NO OF SHARES	DATE OF TRANSFER
Grant James Scott	Mark E. Patrick	100 Management Shares	24 March 2021

(b) the Company's registered office provider be instructed to update the Register of Members of the Company to reflect the Transfer.

2. GENERAL AUTHORISATION

2.1 IT IS RESOLVED that, in connection with or to carry out the actions contemplated by the foregoing resolutions, the Director, officer or (if applicable) any attorney or duly authorised signatory of the Company (any such person being an "Attorney" or "Authorised Signatory" respectively) be, and such other persons as are authorised by any of them be, and each hereby is, authorised, in the name and on behalf of the Company, to do such further acts and things as the Director or officer or such duly authorised other person shall deem necessary or appropriate, including to do and perform (or cause to be done and performed), in the name and on behalf of the Company, all such acts and to sign, make, execute, deliver, issue or file (or cause to be signed, made, executed, delivered, issued or filed) with any person including any governmental authority or agency, all such agreements, documents, instruments, certificates, consents or waivers and all amendments to any such agreements, documents, instruments, certificates, consents or waivers and to pay, or cause to be paid, all such payments, as any of them may deem necessary or advisable in order to carry out the intent of the foregoing resolutions, the authority for the doing of any such acts and things and the signing, making, execution, delivery, issue and filing of such of the foregoing to be conclusively evidenced thereby.

3. RATIFICATION OF PRIOR ACTIONS

3.1 IT IS RESOLVED that any and all actions of the Company, or of the Director or officer or any Attorney or Authorised Signatory, taken in connection with the actions contemplated by the foregoing resolutions prior to the execution hereof be and are hereby ratified, confirmed, approved and adopted in all respects as fully as if such action(s) had been presented to for approval and approved by, the Director prior to such action being taken.

These written resolutions are signed by the sole Director of the Company.

A handwritten signature in cursive script, appearing to read "Mark Patrick", is written over a horizontal line.

Mark E. Patrick

CHARITABLE DAF HOLDCO, LTD

(the "Company")

SHARE TRANSFER FORM

Dated 24 March 2021

I, **Grant James Scott** (the "Transferor"), for good and valuable consideration received by me from **Mark E. Patrick** (the "Transferee"), do hereby:

1. transfer to the Transferee 100 Management Shares (the "Shares") for the par value of \$0.01 each standing in my name in the register of members of the Company to hold unto the Transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of execution of this Share Transfer Form; and
2. consent that my name remains on the register of the Company until such time as the Company enters the Transferee's name in the register of the Company.

SIGNED by TRANSFEROR:

)
)



Name: Grant J. Scott

And the Transferee does hereby agree to take the Shares subject to the same conditions.

SIGNED by TRANSFEE:

)
)



Name: Mark E. Patrick

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AGREEMENT (this "Agreement") is made and entered into as of the 21 day of March, 2021, by and between Grant J. Scott (the "Assignor") and Mark E. Patrick.

WHEREAS, Assignor is the legal and beneficial owner of one hundred percent (100%) of the limited liability company interest (the "Membership Interest") in Charitable DAF GP, LLC, a Delaware limited liability company (the "Company"), and Assignor desires to assign the Membership Interest to Assignee, upon the terms and conditions set forth herein; and

WHEREAS, Assignee desires to accept an assignment of the Membership Interest (such right, title and interest in and to the Membership Interest, together with, if any: (i) Assignor's capital account, (ii) the Assignor's rights in and to specific Company property, (iii) Assignor's rights to participate in the management of the Company, (iv) Assignor's rights to distributions, reimbursements or other payments (including any distributions of cash flow which have not been distributed), (v) rights to profits, losses and other allocations, and (vi) all other rights and benefits of Assignor in the Company with respect to the Membership Interest assigned hereby to Assignee being herein sometimes collectively referred to as the "Assigned Interest").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment and Assumption of Assigned Interest. Assignor does hereby unconditionally and irrevocably assign, transfer, set over and deliver unto the Assignee, its successors and assigns, the Assigned Interest, including, but not limited to the profits, losses, capital and cash flow, if any, allocable to the Assigned Interest, free and clear of any and all liens, security interests, encumbrances, claims, rights of another, rights of first refusal, covenants, conditions, reservations and any and all other restrictions. Assignee does hereby accept the Assigned Interest and agrees to be bound by and assume all obligations under the limited liability company agreement of the Company.
2. Substitute Member. Assignor hereby acknowledges that Assignee is hereby admitted as a substitute member of the Company with respect to the Membership Interest from and after the date hereof as a result of this Agreement.
3. Effective Date. This Agreement is effective as of the date first above mentioned.
4. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, PDF or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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

EXHIBIT 7

PATRICK_000006
004296

ASSIGNOR:



Name: **Grant J. Scott**

ASSIGNEE:



Name: **Mark E. Patrick**

[Signature Page for Assignment of Membership Interest Agreement]

CHARITABLE DAF HOLDCO, LTD
(THE "COMPANY")

WRITTEN SHAREHOLDER RESOLUTIONS OF THE MANAGEMENT
SHAREHOLDER OF THE COMPANY
MADE ON March 25 2021


The undersigned, being the sole holder of Management Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR

1.1 IT IS RESOLVED by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Grant James Scott as a Director of the Company and the appointment of Mark E. Patrick as a Director of the Company.

BY



Mark E. Patrick



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			
						NIL		

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Date printed: 25 March, 2021

[1 / 2]



Registration No.: 263805
 Client No.: KY059904

REGISTER OF DIRECTORS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Name & Address	Office Held	Date of Appointment	Date of Resignation
WNL Limited Walkers Corporate Services Limited; Walker House; 87 Mary Street; George Town; Grand Cayman KY1-9005; Cayman Islands.	Director	04 Nov 2011	04 Nov 2011
Grant James Scott Highland Capital Management, L.P.; 13455 Noel Road, Suite 800; Dallas; Texas 75240; USA.	Director	04 Nov 2011	25 Mar 2021
Mark E. Patrick Highland Capital Management, L.P.; 13455 Noel Rd, Suite 800; Dallas; TX 75240; USA.	Director	25 Mar 2021	

Date printed: 25 March, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 10

CLO HOLDCO, LTD.
(THE "COMPANY")

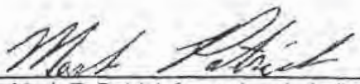
WRITTEN SHAREHOLDER RESOLUTIONS OF THE SOLE
SHAREHOLDER OF THE COMPANY
MADE ON March 24 2021

The undersigned, being the sole holder of Shares of the Company having the right to receive notice of, attend and vote at general meetings hereby resolves the following shareholder resolutions.

1. **REMOVAL OF DIRECTOR AND APPOINTMENT OF NEW DIRECTOR**

1.1 **IT IS RESOLVED** by ordinary resolutions that:

- (a) Grant James Scott be and is hereby removed as a Director of the Company with effect from the date of these resolutions;
- (b) Mark E. Patrick be and is hereby appointed as a Director of the Company with effect from the date of these resolutions until such time as such Director resigns or is removed or otherwise disqualified in accordance with the Articles of Association of the Company;
- (c) the Register of Directors of the Company be amended to note the removal of the Director and the appointment of the new Director, all as set out in these resolutions; and
- (d) the Company's registered office be and is hereby instructed to notify the Registrar of Companies in the Cayman Islands of the removal of Grant James Scott as a Director of the Company and the appointment of Mark E. Patrick as a Director of the Company.

BY 
Mark E. Patrick for and on behalf of

Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.

EXHIBIT 11

PATRICK_000012
004302



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			
						Nil	Nil	25 Mar 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Date printed: 19 May, 2021

[1 / 2]



Registration No.: **263805**
 Date of Incorporation: **27 October 2011**
 Client No.: **KY059904**

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

		dated 07 Nov 2011.					
Member Name	Date	Transfer	Amount	Notes	Shares	Class	Issued Date
Mark E. Patrick	25 Mar 2021	Transfer	100.00	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021	No Cert	NII	7 Nov 2011
					100	100.00	

Notes:

Date printed: 19 May, 2021

[2 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: Management
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
Grant Scott Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas Texas 75240 USA	7 Nov 2011	Allotment	100.00	7 Nov 2011 : Allotment of 100.0 Management share(s) for USD0.01 / share to Mr. Grant Scott pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021				
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Allotment	1.00	7 Nov 2011 : Allotment of 1.0 Management share(s) for USD0.01 / share to WNL Limited pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Repurchase	(1.00)	7 Nov 2011 : Repurchase of 1.0 Management share(s) from WNL Limited pursuant to resolutions	No Cert			
						Nil	Nil	25 Mar 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Date printed: 19 May, 2021

[1 / 2]



REGISTER OF MEMBERS
FOR:
CHARITABLE DAF HOLDCO, LTD

Registration No.: **263805**
Date of Incorporation: **27 October 2011**
Client No.: **KY059904**

		dated 07 Nov 2011.					
Member Name	Date	Transfer	Amount	Notes	Shares	Class	Expiry
Mark E. Patrick	25 Mar 2021	Transfer	100.00	25 Mar 2021 : Transfer of 100.0 Management share(s) from Mr. Grant Scott to Mark E. Patrick pursuant to resolutions dated 25 Mar 2021	No	NII	7 Nov 2011
					100	100.00	

Notes:

Date printed: 19 May, 2021

[2 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: **53083**
 Date of Incorporation: **28 October 2011**
 Client No.: **KY059900**

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF FUND, LP

Share Class: **General Partner**
 Nominal Value: **USD 0.00**
 Voting Rights: **Yes**
 Conditional: **NO**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF GP, LLC The Corporation Trust Company Corporation Trust Center 1209 Orange St New Castle 19801 Wilmington DE USA	25 Oct 2011	New Partner	1.00	25 Oct 2011 : Initial Exempted Limited Partnership Agreement dated 25 Oct 2011	No Cert	Nil	1.00	

Notes:



Registration No.: 249232
 Date of Incorporation: 13 December 2010
 Client No.: KY057017

REGISTER OF MEMBERS
 FOR:
CLO HOLDCO, LTD.

Share Class: **Ordinary**
 Nominal Value: **USD 1.00**
 Voting Rights: **Yes**
 Conditional: **No**

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	13 Dec 2010	Allotment	1.00	13 Dec 2010 : Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010				
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	17 Dec 2010	Transfer	1.00	17 Dec 2010 : Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 17 Dec 2010	No Cert			
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD				
						Nil	Nil	17 Dec 2010

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[1 / 3]



Registration No.: 249232
 Date of Incorporation: 13 December 2010
 Client No.: KY057017

REGISTER OF MEMBERS
 FOR:
CLO HOLDCO, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CHARITABLE DAF FUND, LP Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert	Nil	Nil	7 Nov 2011
CHARITABLE DAF HOLDCO, LTD Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	7 Nov 2011	Transfer	1.00	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CHARITABLE DAF HOLDCO, LTD pursuant to Contribution and Transfer Agreement dated 7 Nov 2011	No Cert	100	1.00	
		Transfer	(1.00)	7 Nov 2011 : Transfer of 1.0 Ordinary share(s) from CHARITABLE DAF HOLDCO, LTD to CHARITABLE DAF FUND, LP pursuant to Contribution and Transfer Agreement dated 7 Nov 2011		Nil	Nil	7 Nov 2011

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 249232

Date of Incorporation: 13 December 2010

Client No.: KY057017

REGISTER OF MEMBERS
FOR:
CLO HOLDCO, LTD.

Notes:

[Redacted content]

Date printed: 19 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

PATRICK_000024



Registration No.: 335493
 Date of Incorporation: 12 April 2018
 Client No.: KY085255

REGISTER OF MEMBERS
 FOR:
LIBERTY SUB, LTD.

Share Class: Ordinary
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited 190 Eigin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	12 Apr 2018	Allotment	1.00	12 Apr 2018: Subscriber's share issued by operation of law on registration	No Cert.			
		Transfer	(1.00)	12 Apr 2018: Transfer of 1.0 Ordinary share(s) from WNL Limited to LIBERTY CLO HOLDCO, LTD. pursuant to resolutions dated 12 April 2018				
LIBERTY CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	12 Apr 2018	Transfer	1.00	12 Apr 2018: Transfer of 1.0 Ordinary share(s) from WNL Limited to LIBERTY CLO HOLDCO, LTD. pursuant to resolutions dated 12 April 2018	No Cert.			
						100	1.00	

Notes:

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Date printed: 21 May, 2021

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INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 249848
 Date of Incorporation: 29 December 2010
 Client No.: KY058111

REGISTER OF MEMBERS
 FOR:
HCT HOLDCO 2, LTD.

Share Class: Ordinary
 Nominal Value: USD 1.00
 Voting Rights: Yes
 Conditional: No

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005 Cayman Islands	29 Dec 2010	Allotment	1.00	29 Dec 2010: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010				
Highland Capital Management Partners, Charitable Trust #2 13455 Noel Road Suite 800 Dallas TX 75240 USA	30 Dec 2010	Transfer	1.00	30 Dec 2010: Transfer of 1.0 Ordinary share(s) from WNL Limited to Highland Capital Management Partners, Charitable Trust #2 pursuant to resolutions dated 30 Dec 2010	No Cert			
		Transfer	(1.00)	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution				
						Nil	Nil	30 Dec 2010

Date printed: 21 May, 2021

[1 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 19



Registration No.: 249848
 Date of Incorporation: 29 December 2010
 Client No.: KY058111

REGISTER OF MEMBERS
 FOR:
HCT HOLDCO 2, LTD.

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	24 Oct 2011	Transfer	1.00	24 Oct 2011: Transfer of 1.0 Ordinary share(s) from Highland Capital Management Partners, Charitable Trust #2 to CLO HOLDCO, LTD. pursuant to resolutions dated Contribution Agreement	No Cert	Nil	Nil	24 Oct 2011
						100	1.00	

Notes:

Date printed: 21 May, 2021

[2 / 2]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED



Registration No.: 293607
 Date of Incorporation: 12 November 2014
 Client No.: KY073541

REGISTER OF MEMBERS
 FOR:
MGM STUDIOS HOLDCO, LTD.

Share Class: Ordinary
 Nominal Value: USD 0.01
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
WNL Limited 190 Eigin Avenue George Town Grand Cayman KY1-9001 Cayman Islands	12 Nov 2014	Allotment	1.00	12 Nov 2014: Subscriber's share issued by operation of law on registration	No Cert			
		Transfer	(1.00)	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD, pursuant to resolutions dated 12 Nov 2014				
CLO HOLDCO, LTD. Intertrust Corporate Services (Cayman) Limited One Nexus Way Camana Bay Grand Cayman KY1-9005 Cayman Islands	12 Nov 2014	Transfer	1.00	12 Nov 2014: Transfer of 1.0 Ordinary share(s) from WNL Limited to CLO HOLDCO, LTD, pursuant to resolutions dated 12 Nov 2014	No Cert			
						100	1.00	12 Nov 2014

Notes:

Date printed: 21 May, 2021

[1 / 1]

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

EXHIBIT 20

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
CHARITABLE DAF GP, LLC**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Charitable DAF GP, LLC (the "Company"), dated to be effective as of January 1, 2012, by Grant J. Scott, the new managing member (the "Managing Member"), James D. Dondero, the former Managing Member, and any persons admitted to the Company pursuant hereto (collectively with the Managing Member, the "Members").

WHEREAS, the Company was formed by filing a Certificate of Formation with the Secretary of State of the State of Delaware on October 25, 2011, pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. §§18-101, et seq., as amended from time to time (the "Act"), and has entered into this Agreement;

WHEREAS, the former Managing Member entered into that certain Limited Liability Company Agreement dated October 25, 2011 (the "Original Agreement");

WHEREAS, the Company now desires to amend and restate the Original Agreement in its entirety pursuant to the terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Name and Address. The name of the Company is "Charitable DAF GP, LLC." Its principal office is located at 4140 Park Lake Avenue, Suite 600, Raleigh, North Carolina 27612, or at such other location as the Managing Member in the future may designate.

2. Purposes of the Company. The Company is organized for the purpose of engaging in any lawful act or activity for which limited liability companies may be organized under the Act. In connection with the foregoing, the Company serves as the general partner of (or in a similar capacity with respect to) Charitable DAF Fund, LP and/or any other private investment partnerships pursuant to the limited partnership agreement in effect from time to time among the Company and the limited partners of each private investment partnership. The Company shall have no economic interest in the assets, profits or losses of Charitable DAF Fund, LP or the right to receive distributions from Charitable DAF Fund, LP except as may be required by law.

3. Registered Office; Registered Agent. The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. The registered office or agent of the Company may be changed from time to time by the Managing Member in its sole discretion.

EXHIBIT 21

PATRICK 000001
004315

4. Member. The name and address of the Managing Member is as follows:

<u>Name</u>	<u>Address</u>
Grant J. Scott, <i>Managing Member</i>	4140 Park Lake Avenue, Suite 600 Raleigh, North Carolina 27612

5. Management of the Company and Officers. The business and affairs of the Company shall be managed by the Managing Member, who shall have the exclusive power and authority, on behalf of the Company, to take any action of any kind not inconsistent with the provisions of this Agreement and to do anything and everything it deems necessary or appropriate to carry on the business and purposes of the Company. The Managing Member will be the “manager” (within the meaning of the Act) of the Company. Except as authorized by the Managing Member, those persons, if any, admitted to the Company after the date hereof shall be non-managing Members and shall have no right to participate in the management or control of the business of the Company. The Managing Member may, from time to time, designate one or more persons to be officers of the Company (each, an “Officer” and collectively, the “Officers”). Each Officer shall hold office for the term for which such Officer is designated and until his or her successor shall be duly designated and shall qualify or until his or her death, resignation or removal (with or without cause) by the Managing Member or as otherwise provided for in this Agreement. If an Officer is employed by the Company or any of its affiliates, such designation as an Officer shall terminate automatically upon termination of his or her employment with the Company and/or such affiliates. Any Officer so designated shall have such authority and perform such duties as the Managing Member is permitted to perform under this Agreement and may, from time to time, delegate to such person. The Managing Member may assign titles to particular Officers, and unless the Managing Member decides otherwise, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office. Any person may hold any number of offices. No Officer need be a manager, a Member, a Delaware resident or a United States citizen. Designation of such a person as an Officer of the Company shall not of itself create any contract rights in such person.

6. Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the determination of the Managing Member or upon the effective date of a decree of judicial dissolution under the Act.

7. Initial Capital Contributions; Percentage Interests. The Managing Member has made a capital contribution to the Company in the amount set forth in the books and records of the Company. The capital account (the “Capital Account”) of each Member shall be in an amount equal to such Member’s initial capital contribution, adjusted from time to time for additional contributions, withdrawals, allocations of appreciation and depreciation and other appropriate items.

8. Additional Contributions. No Member shall have any obligation to make additional capital contributions to the Company.

9. Allocations; Tax Matters. The Managing Member intends that the Company be treated as a disregarded entity for U.S. federal income tax purposes and not be treated as an association taxable as a corporation for Federal tax purposes. If applicable, the Company shall maintain the Capital Accounts for each Member in accordance with the principles of Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder. The Company’s income, gains, deductions, and losses shall be allocated to the Members’ Capital Accounts as shall be determined by the Managing Member. If

applicable, allocations for Federal income tax purposes shall be made to the Members in a similar manner. If applicable, the Managing Member is hereby designated as the "Tax Matters Partner" of the Company for purposes of Section 6231(a)(7) of the Code.

10. Withdrawals.

(a) Without the written consent of the Managing Member, no Member may withdraw capital from the Company.

(b) Without the written consent of the Managing Member, no Member may voluntarily withdraw as a Member of the Company.

(c) The Managing Member may terminate the interest of any Member, at any time by written notice.

11. Payments to Withdrawing Members. A withdrawn Member, or the legal representative of a Member that has died or become disabled, shall in all events be entitled to be paid as soon as reasonably practicable after the date of such withdrawal, death or disability the balance in his Capital Account (less any amount owing to the Company by such Member and unless otherwise agreed to with the Managing Member). Unless otherwise consented to by the Managing Member, a withdrawn Member shall not be entitled to any further allocation of any other net income in which the Member would otherwise thereafter have shared.

12. Transfer. A Member may not sell, assign, pledge, transfer or otherwise dispose of all or any part of his or her interest in the Company without the consent of the Managing Member, and any purported sale, assignment, pledge, transfer or other disposition of all or any part of a Member's interest in the Company without the Managing Member's consent shall be null and void.

13. Admission of Additional or Substitute Members. The Company may admit substitute or additional members at the Managing Member's discretion.

14. Liability of the Members. The Members shall not have any liability for the obligations or liabilities of the Company except to the extent expressly provided in the Act.

15. Exculpation and Indemnification. To the fullest extent permitted by applicable law, a Covered Person (defined below), shall be entitled to exculpation and indemnification from the Company and its Members for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such a Covered Person in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, unless such action or inaction was made in bad faith or constitutes fraud, willful misconduct or gross negligence; *provided, however*, that any indemnity under this Section 16 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

"Covered Person" means the Members (including the Managing Member), any affiliate of the Members, any representatives or agents of the Members, any Officer of the Company or their respective affiliates.

16. Fiscal Year. The fiscal year of the Company shall end on December 31.

17. Benefits of Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or of any Member.

18. Headings. The titles of Sections of this Agreement are for convenience of reference only and shall not define or limit any of the provisions of this Agreement.

19. Counterparts. This Agreement may be executed by the parties hereto in counterparts, each of which shall be considered an original, and all of which shall together constitute one and the same instrument.

20. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles of such State.

21. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.

22. Amendments. The terms and provisions of this Agreement may be modified or amended at any time and from time to time by the Managing Member in its sole discretion.

[Signatures on Following Page]

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

New Managing Member:


Dated: March 21, 2012



GRANT J. SCOTT

Former Managing Member:

Dated: March 21, 2012



JAMES D. DONDERO

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "CHARITABLE DAF GP, LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF OCTOBER, A.D. 2011, AT 11:23 O'CLOCK A.M.

5056341 8100

111131792

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9113377

DATE: 10-25-11

EXHIBIT 22

PATRICK_000036
004320

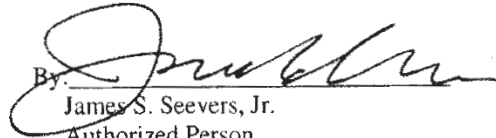
State of Delaware
Secretary of State
Division of Corporations
Delivered 11:26 AM 10/25/2011
FILED 11:23 AM 10/25/2011
SRV 111131792 - 5056341 FILE

CERTIFICATE OF FORMATION
OF
CHARITABLE DAF GP, LLC

The undersigned hereby executes this Certificate of Formation of Charitable DAF GP, LLC (the "**Company**"), for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the Company is **Charitable DAF GP, LLC**.
2. The address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, State of Delaware 19901. Its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned, an authorized person of the Company, has caused this Certificate of Formation to be duly executed as of the 24th day of October, 2011.

By: 
James S. Seevers, Jr.
Authorized Person

WK -263805

Certificate Of Incorporation

*I. FLOSSIEBELL M. MARAGH Assistant Registrar of Companies of the Cayman Islands
DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said
Law in respect of registration were complied with by*

Charitable DAF HoldCo, Ltd

*an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect
from the 27th day of October Two Thousand Eleven*

*Given under my hand and Seal at George Town in the
Island of Grand Cayman this 27th day of October
Two Thousand Eleven*



[Signature]
Assistant Registrar of Companies,
Cayman Islands.

EXHIBIT 23

004322

WK-249232

Certificate Of Incorporation

I, V. DAPHENE WHITELOCKE Assistant Registrar of Companies of the Cayman Islands DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all requirements of the said Law in respect of registration were complied with by

CLO HoldCo, Ltd.

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the 13th day of December Two Thousand Ten

Given under my hand and Seal at George Town in the Island of Grand Cayman this 13th day of December Two Thousand Ten



[Signature]
Assistant Registrar of Companies,
Cayman Islands.

EXHIBIT 24

WK-53083

Certificate of Registration of Exempted Limited Partnership

I, JOY A. RANKINE Assistant Registrar of Exempted Limited Partnership in the Cayman Islands DO HEREBY CERTIFY, pursuant to the Exempted Limited Partnership Law, 1991 that all the requisitions of the said Law in respect of registration were complied with by

Charitable DAF Fund, LP

an Exempted Limited Partnership registered in the Cayman Islands on the 28th day of October Two Thousand Eleven

Given under my hand and Seal at George Town in the Island of Grand Cayman this 28th day of October Two Thousand Eleven



**Assistant Registrar of Exempted Limited Partnership
Cayman Islands.**

004324

EXHIBIT 25

PATRICK_000040

DATED NOVEMBER 7, 2011

AMENDED AND RESTATED

EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF

CHARITABLE DAF FUND, LP

WARNING

THE TAKING OR SENDING BY ANY PERSON OF AN ORIGINAL OF THIS DOCUMENT INTO THE CAYMAN ISLANDS MAY GIVE RISE TO THE IMPOSITION OF CAYMAN ISLANDS STAMP DUTY

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**AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT (the “**Agreement**”) is made on November 7, 2011

BETWEEN

- (1) Charitable DAF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands and having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as general partner (the “**General Partner**”); and
- (2) Charitable DAF HoldCo, Ltd, a Cayman Islands exempted Company having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands as limited partner (the “**Limited Partner**”); and
- (3) Each individual, partnership, corporation, limited liability company, trust or other entity (each, a “**Person**”) admitted as a limited partner or general partner (collectively, the “**Partners**”) of the Partnership (as defined below) in accordance with this Agreement, including any Persons hereafter admitted as Partners in accordance with this Agreement and excluding any Persons who cease to be Partners in accordance with this Agreement; and
- (4) Walkers Nominees Limited having its registered office at Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9005, Cayman Islands as the initial limited partner (the “**Initial Limited Partner**”) solely for the purposes of withdrawing as such.

WHEREAS, Charitable DAF Fund, LP (the “**Partnership**”) was formed and registered as an exempted limited partnership pursuant to and in accordance with the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the “**Law**”), and since its formation has been governed by the Initial Limited Partnership Agreement of the Partnership, dated October 25, 2011 (the “**Initial Agreement**”); and

WHEREAS, the Partnership was formed in order to own, operate and make certain investments directly or indirectly on behalf of certain entities exempt from taxation under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”) and the parties hereto desire for the Partnership to be for the economic benefit of the Limited Partner and its Indirect Charitable Owners (as defined below) as set forth herein; and

WHEREAS, the parties hereto wish to amend and restate the Initial Agreement in its entirety and enter into this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby adopt this Agreement to be their Limited Partnership Agreement, as follows:

IT IS AGREED:

**ARTICLE I
GENERAL PROVISIONS; COMPENSATION AND EXPENSES**

- 1.1 Continuation. The parties hereto continue the Partnership as an exempted limited partnership formed on October 25, 2011 pursuant to the Law.
- 1.2 Name. The business of the Partnership shall be carried on under the name of Charitable DAF Fund, LP.
- 1.3 Purpose and Powers. The purpose of the Partnership shall be to invest and trade, directly or indirectly, in securities of all types and other investment vehicles and instruments. At least initially, a majority of the Partnership’s assets shall be invested in shares of CLO HoldCo, Ltd., a Cayman Islands exempted company (“**CLO HoldCo**”), but the Partnership may make investments in other types of securities, investment vehicles and instruments in the sole discretion of the General Partner for the purpose of benefitting, directly or indirectly, the Indirect Charitable Owners.
- 1.4 Registered Office. The registered office of the Partnership is c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands.
- 1.5 Partners. The name and addresses of the Partners are as follows:

Name	Address
Charitable DAF GP, LLC	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands
Charitable DAF HoldCo Ltd (Limited Partner)	c/o Walkers Corporate Services Limited Walker House 87 Mary Street George Town Grand Cayman KY1-9005, Cayman Islands

- 1.6 Powers.
- (a) Subject to the terms and conditions of this Agreement, the General Partner shall have full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership, shall make all decisions regarding the business of the Partnership, and shall have all of the rights, powers and

obligations of a general partner of a limited partnership under the laws of the Cayman Islands. Except as otherwise expressly provided in this Agreement, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in the General Partner's sole discretion, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership; provided, however that the Partnership's assets and investments shall be for the benefit of the Limited Partners and not for the economic benefit of the General Partner.

- (b) Except as otherwise provided herein, the Limited Partners, in their capacity as Limited Partners, shall not participate in the management of or have any control over the Partnership's business nor shall the Limited Partners have the power to represent, act for, sign for or bind the General Partner or the Partnership. The Limited Partners hereby consent to the exercise by the General Partner of the Powers conferred on it by this Agreement.
- 1.7 Term. The Partnership was established on October 25, 2011 and shall continue until terminated in accordance with this Agreement or any amendment or modification thereof.
- 1.8 Admission of New Partners. The General Partner may at any time admit one or more new Partners on such terms as it may determine in its sole discretion; provided that any such new Limited Partner shall have as its equity owners solely Indirect Charitable Owners.
- 1.9 Taxable Year. The Taxable Year of the Partnership shall be a calendar fiscal year, or such other fiscal year as the General Partner shall determine in their sole discretion from time to time.
- 1.10 Liability of Partners.
- (a) The General Partner shall be liable for all of the debts, liabilities and obligations of the Partnership.
 - (b) Except to the extent otherwise required by law or this Agreement, a Limited Partner shall not be personally liable for any obligations of the Partnership to third parties nor for the return of any distributions from the Partnership to the Limited Partner. A Limited Partner may be liable for the tax audit and related expenses referred to in Section 6.1.
- 1.11 Limitation on Assignability of Partners' Interests.
- (a) A Limited Partner may not assign his interest in whole or in part to any person, without the prior written consent of the General Partner, except by operation of law, nor shall he be entitled to substitute for himself as a Limited Partner any other person, without the prior written consent of the General Partner, which in either case may be given or withheld in the sole discretion of the General Partner. Any attempted assignment or substitution not made in accordance with this section shall be void *ab initio*.

- (b) The General Partner may not assign their interests in the Partnership to any entity that is not under common control with the General Partner without the consent of a majority-in-interest of the Limited Partners. Notwithstanding the foregoing, the General Partner may freely assign their economic interest in the Partnership in whole or in part.

1.12 Definitions. For the purpose of this Agreement, unless the context otherwise requires:

- (a) General Partner. The term “**General Partner**” shall refer to Charitable DAF GP, LLC, and each other person subsequently admitted as a general partner pursuant to the terms of this Agreement. The General Partner shall give each Limited Partner notice of any change in control of the General Partner. The General Partner shall give each Limited Partner notice of the admission of any additional general partner to the Partnership.
- (b) Indirect Charitable Owners. The term “**Indirect Charitable Owner**” shall refer to the indirect equity owners of the Limited Partners, which shall at all times be entities or organizations exempt from taxation under Section 501(c)(3) of the Code or entities or organizations whose sole beneficiaries are entities or organizations exempt from taxation under Section 501(c)(3) of the Code.
- (c) Limited Partner. The term “**Limited Partner**” shall refer to Charitable DAF HoldCo Ltd (and each person subsequently admitted as a limited partner by the General Partner pursuant to the terms of this Agreement).
- (d) Partner. The term “**Partner**” shall refer to the General Partner or the Limited Partner.

1.13 Service Providers. The General Partner may engage one or more Persons to act, or remove any one or more Persons from so acting, as service providers to the Company (including, without limitation, as manager, administrator, custodian, registrar and transfer agent, investment manager, investment adviser, sponsor and/or prime broker, auditors and legal counsel to the Partnership) in its sole discretion; provided, that any compensation paid to any such service provider that is affiliated with the General Partner shall be in an amount customary for services of a similar nature.

1.14 Partnership Expenses. The Partnership will bear its own operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees (if any), taxes, research costs, legal and accounting expenses and other operating expenses. In addition, the Partnership will bear its pro rata share of CLO HoldCo’s operating, administrative, trading and other expenses, including interest expense, brokerage commissions, management fees, taxes, research costs, legal and accounting expenses and other operating expenses. The Partnership will also bear (or reimburse the General Partner for) its organizational fees and expenses. To the extent the Partnership shares trading expenses with other accounts that may be managed by the General Partner or any affiliates, it will bear a proportionate share of the associated costs. In no event shall the General Partner receive any compensation from the Partnership.

- 1.15 Withdrawal of Initial Limited Partner. The Initial Limited Partner hereby withdraws as a limited partner immediately following the admission of the Limited Partners and thereafter shall have no further rights, liabilities or obligations under or in respect of this Agreement in its capacity as Initial Limited Partner.

ARTICLE II POWERS

- 2.1 Partnership Powers. The Partnership shall have the following powers:

- (a) To purchase, sell, invest and trade, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, syndicated debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; statutory claims; royalty claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (all such items being called herein a "**Financial Instruments**"), and to sell Financial Instruments short and cover such sales;

- (b) To possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, Financial Interests held or owned by the Partnership with the ultimate objective of the preservation, protection, improvement and enhancement in value thereof and to hold such Financial Interests in the name of the Partnership, in the name of any securities broker or firm, in the name of any nominee of such firm, or in the name of any other nominee or any other street name, or any combination thereof;
- (c) To lend, either with or without security, any Financial Instruments, funds or other properties of the Partnership, including by entering into reverse repurchase agreements, and, from time to time, undertake leverage on behalf of the Partnership;
- (d) To borrow or raise moneys and, from time to time, without limit as to amount, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any of the foregoing instruments and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Partnership, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Partnership for its purposes;
- (e) To have and maintain one or more offices within or without the Cayman Islands and in connection therewith to rent or acquire office space, engage personnel and do such other acts and things as may be necessary or advisable in connection with the maintenance of such office or offices;
- (f) To open, maintain and close bank accounts and brokerage accounts, including the power to draw checks or other orders for the payment of monies; and
- (g) To enter into, make and perform all contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of the foregoing objects and purposes.

2.2 Rights, Powers, Limitations on Liability and Indemnification of General Partner.

- (a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the General Partner, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including members of any committee and parties acting as agents for the execution of transactions) (each, a “**Covered Person**” and collectively, “**Covered Persons**”) shall be subject to the provisions of this Section.
- (b) To the fullest extent permitted by law, no Covered Person shall be liable to the Partnership or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the

business of the Partnership, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Partnership, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Partnership whom such Covered Person believes is authorized to make such suggestions on behalf of the Partnership, (iii) any act or omission by the Partnership, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Partnership selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

- (c) Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Partnership or in furtherance of the business of the Partnership in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.
- (d) To the fullest extent permitted by law, the Partnership shall indemnify and save harmless Covered Persons (the “**Indemnitees**”), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Partnership, any investment made under or in connection with this Agreement, or the performance by the Indemnitee of Covered Person’s responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Partnership, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee’s conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee’s conduct constituted willful misconduct or gross negligence.
- (e) Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.
- (f) The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may

otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives.

- (g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.
- (h) **Notwithstanding anything in this Agreement to the contrary, the aggregate maximum amount that a Covered Person may be liable to the Partnership and/or any of the Partners pursuant to this Agreement shall, to the extent not prohibited by law, never exceed the amount of management and incentive fees received by such Covered Person from the Partnership under this Agreement prior to the date that the acts or omissions giving rise to a claim for indemnification or liability shall have occurred. In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits. No Covered Person shall incur any liability for interest on any monies at any time received by such Covered Person or any investment loss or other charge resulting therefrom with respect to amounts invested hereunder.**
- (i) **WAIVER OF CONSUMER RIGHTS: The Partnership and each of the Limited Partners waive all of their respective rights, if any, under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Texas Business & Commerce Code ("DTPA"), a law that gives consumers special rights and protections. After consultation with an attorney of Partnership's own selection, Partnership voluntarily consents to this waiver. This waiver includes any right to recover attorneys' fees under the DTPA. Further, Partnership waives all of its rights to any and all protections afforded by any other state or federal Consumer Protection Acts, including the recovery of attorneys' fees.**
- (j) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Covered Person, the Partnership (and not the applicable Covered Person) shall be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence or reckless or intentional misconduct of any Covered Person. Given the volume of transactions executed on behalf of the Partnership, Limited Partners acknowledge that trading errors (and similar errors) will occur and that the Partnership shall be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Covered Person.

- (k) This Section 2.2 shall survive a Limited Partner's withdrawal as a limited partner of the Partnership and any termination of this Agreement.

**ARTICLE III
CAPITAL ACCOUNTS AND DIVISION OF PROFITS AND LOSSES**

3.1 Capital Contributions.

- (a) Each Partner has made the capital contributions to the Partnership in the amount set forth in the records of the Partnership. The Limited Partner has contributed to the Partnership all of the outstanding equity interests of CLO HoldCo.

3.2 Capital Account; Allocation of Profits and Losses.

- (a) There shall be established for each Partner on the books of the Partnership as of the first day of the fiscal period during which such Partner was admitted to the Partnership a capital account for such Partner in an amount equal to his capital contribution to the Partnership.
- (b) Since the General Partner's capital account and contributions shall be the minimum required by Law, all income, deductions, gains, losses and credits of the Partnership shall be allocated shall be for the benefit of the Limited Partner, except as may otherwise be required by law. In the event any valuation of assets is necessary or appropriate, the General Partner shall determine such value in any reasonable manner determined by the General Partner in its sole discretion consistent with relevant accounting principles and applicable law.
- (c) For purposes of determining the share of any items allocated to any period during the relevant Taxable Year of the Partnership, such shares shall be determined by the General Partner using any method permitted by the Code and the regulations thereunder. All allocations to be made by the General Partner may be overridden if necessary to comply with the Code, the regulations thereunder or other applicable law.
- (d) To the extent that the Partnership pays withholding taxes as to a Partner, such amounts shall be charged to the applicable Partner's capital account; provided, however, that any such amounts may be treated as an advance to the Partner with interest to be charged to that Partner's capital account at a rate determined by the General Partner.
- (e) Each Partner agrees not to treat, on any tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with treatment of such item by the Partnership.

**ARTICLE IV
LEGAL INTERESTS, DISTRIBUTIONS AND PARTIAL
WITHDRAWALS FROM CAPITAL ACCOUNT**

- 4.1 Legal Interest. Each Partner shall have and own during any Taxable Year an undivided interest in the Partnership equal to his opening capital account for such period.

4.2 Distributions.

- (a) Distributions shall be made to the Limited Partner at the times, in a manner (including in kind) and in the aggregate amounts determined by the General Partner, after taking into consideration available cash and the needs of the Indirect Charitable Owners of the Limited Partner for funds to cover their administrative and operating expenses. In determining the amount of cash or securities available for distribution, the General Partner may retain reasonable reserves in such amounts as it determines may be necessary to cover expenses, contingencies and losses. Notwithstanding the foregoing, distributions made in connection with a sale of all or substantially all of the Partnership's assets or a liquidation of the Partnership shall be made in accordance with the capital account balances of the Partners within the time period set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3).
- (b) The General Partner may withhold and pay over to the U.S. Internal Revenue Service (or any other relevant taxing authority) such amounts as the Partnership is required to withhold or pay over, pursuant to the Code or any other applicable law, on account of a Partner's distributive share of the Partnership's items of gross income, income or gain.

For purposes of this Agreement, any taxes so withheld or paid over by the Partnership with respect to a Partner's distributive share of the Partnership's gross income, income or gain shall be deemed to be a distribution or payment to such Partner, reducing the amount otherwise distributable to such Partner pursuant to this Agreement and reducing the capital account of such Partner. If the amount of such taxes is greater than any such distributable amounts, then such Partner and any successor to such Partner's interest shall pay the amount of such excess to the Partnership, as a contribution to the capital of the Partnership.

- 4.3 Withdrawal. Without the consent of the General Partner, no Partner may withdraw as a Partner or make withdrawals from such Partner's capital account. In the event the General Partner permits any such withdrawal, the withdrawal shall be on such terms and conditions as the General Partner shall determine in its sole discretion. The General Partner may terminate all or any part of the interest of any Limited Partner at any time for any reason or no reason by written notice; provided that any new or additional Limited Partner shall be directly or indirectly an entity or organization exempt from taxation under Section 501(c)(3) of the Code.

**ARTICLE V
DURATION OF PARTNERSHIP**

- 5.1 Termination. The Partnership shall be required to be wound up and dissolved upon:

- (a) the service of a notice by the General Partner on the other Partners requiring that the Partnership be wound up and dissolved; or

- (b) the withdrawal by or resignation of the General Partner as general partner of the Partnership; or
- (c) the withdrawal of all Limited Partners.

Upon the occurrence of any such event, the Partnership's affairs shall be wound up by the General Partner or such other Person as the General Partner shall appoint.

- 5.2 Winding Up. Upon the Partnership being required to be wound up and dissolved, the General Partner shall proceed with the liquidation and distribution of the assets of the Partnership, and upon completion of the winding up of the Partnership, shall have the authority to and shall execute and file a dissolution notice and such other documents required to effect the dissolution and termination of the Partnership in accordance with the Law. Before the distribution of all the assets of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. The winding up of the Partnership and payment of creditors shall be effected in accordance with the Law.

ARTICLE VI MISCELLANEOUS

- 6.1 Tax Matters Partner. The General Partner shall at all times constitute, and have full powers and responsibilities, as the Tax Matters Partner of the Partnership. In the event the Partnership shall be the subject of an income tax audit by any Federal, state or local authority, to the extent the Partnership is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and his decision shall be final and binding upon, the Partnership and each Partner thereof, and the Tax Matters Partner shall be indemnified and held harmless by the Partnership and each Partner for any action so taken by him in good faith. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Partnership to the extent of available Partnership funds, and any excess shall be paid by the Partners individually in proportion to their percentage interests in the Partnership.

6.2 Right to Hire.

- (a) Nothing herein shall preclude the General Partner from engaging on behalf of the Partnership the services of any person or firm, whether or not affiliated with the General Partner, including the General Partner, to render for compensation such services to the Partnership as may be necessary to implement the business purposes of the Partnership.
- (b) Each of the Partners consents that the General Partner, the Investment Manager or any Limited Partner or any affiliate (as defined in the Securities Act of 1933, as amended, and the regulations thereunder) of any of them, including without limitation the investment manager of the CLO HoldCo, may engage in or possess an interest in directly or indirectly, any other present or future business venture of any nature or description for his own account, independently or with others,

including but not limited to, any aspect of the securities business or any other business engaged in by the Partnership, and may become the general partner in other partnerships; and neither the Partnership nor any Partner shall have any rights in or to such independent venture or the income or profits derived therefrom.

(c) The General Partner, the Investment Manager and any affiliate or employee of such General Partner or Investment Manager, may hereafter render investment advisory services to other investors with respect to, and/or may own, purchase or sell, securities or other interests in property the same as or similar to those which the General Partner may purchase, hold or sell on behalf of the Partnership.

6.3 Applicable Law, etc. This Limited Partnership Agreement: (i) shall be binding on the executors, administrators, estates, heirs and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the Cayman Islands; and (iii) may be executed in more than one counterpart with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that in the aggregate, they shall have been signed by all of the Partners. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require. The term “gross negligence” and its cognates shall be interpreted in accordance with the laws of the State of Delaware.

6.4 Power of Attorney. Each of the undersigned does hereby constitute and appoint the General Partner, with full power of substitution, his true and lawful representative and attorney in-fact, in his name, place and stead to make, execute, sign and file this Agreement and any amendment to this Agreement authorized by the terms of this Agreement, and all such other instruments, documents and certificates (and any amendments thereto) which may from time to time be required by the laws of the Cayman Islands, the United States of America, or any state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership and to take any further action that the General Partner considers advisable in its sole discretion in connection with the exercise of its authority pursuant to this Agreement. This power of attorney is intended to secure an interest in property and, in addition, the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable.

6.5 Tax Elections Under the Internal Revenue Code. The General Partner shall have the authority to make all tax elections and determinations on behalf of the Partnership under the Internal Revenue Code, the regulations promulgated thereunder or other applicable law to effect any elections, determinations or capital allocations.

6.6 Amendments to Partnership Agreement. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the consent of the General Partner together with the consent of a majority in interest of the Limited Partners, insofar as is consistent with the laws governing this Agreement. Notwithstanding the foregoing, the General Partner shall have the right to effect

amendments to this Agreement without the consent of any Limited Partner, including without limitation, to reflect: a change in the location of the Partnership's principal place of business; a change in the registered office or registered agent; a change in the name of the Partnership; admission of Partners in accordance with this Agreement; a change that is necessary to qualify the Partnership as a limited partnership under the laws of any state or that is necessary or advisable in the opinion of the Tax Matters Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for Federal income tax purposes; a change of the provisions relating to the management fee or other compensation to the Investment Manager or the General Partner so that such provisions conform to any applicable requirements of the U.S. Securities and Exchange Commission and other regulatory authorities; a change (i) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any Federal or state agency or contained in any Federal or state statute, compliance with any of which the General Partner deems to be in the best interests of the Partnership and the Limited Partners, (ii) that is required or contemplated by this Agreement, or (iii) that is necessary or desirable to implement new regulations published by the Internal Revenue Service with respect to partnership allocations of income, gain, loss, deduction and credit; a change to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to the matters or questions arising under this Agreement which will not be inconsistent with the provisions hereof; or a change that does not adversely affect the Limited Partners in any material respect; *provided, that* in no event shall the General Partner effect any amendment to this Agreement that has the effect of giving the General Partner any economic benefits in the assets of the Partnership; *provided further, that* the General Partner shall give notice to the Limited Partners of any such amendment.

- 6.7 Investment Representation. Each Partner hereby acknowledges and represents that it acquired its interest in the Partnership for investment purposes only and not with a view to its resale or distribution.
- 6.8 Notices. All notices, requests or approvals that any party hereto is required or desires to give to any Partner or to the Partnership shall be in writing signed by or on behalf of the party giving the same and delivered personally or sent overnight express mail by a reputable private carrier or by prepaid registered or certified mail, return receipt requested, addressed (i) to the Limited Partner at the addresses set forth beneath his signature to this Agreement; (ii) to the Partnership at the principal place of business of the Partnership with a copy of each such notice sent simultaneously to the General Partner and the Investment Manager at Nextbank Tower, 13455 Noel Road, 8th Floor, Dallas, Texas 75240; or (iii) to the respective party at such other address or addresses as the party may specify from time to time in a writing given to the Partnership in the manner provided in this Section 6.8 of ARTICLE VI. Notice shall be deemed to have been duly given and received (i) on the date of delivery, if personally delivered, (ii) on the next business day subsequent to sending by overnight express mail as aforesaid, or (iii) on the third day subsequent to mailing if mailed as aforesaid; provided that any withdrawal notices shall not be deemed to have been given until actually received by the Partnership.

6.9 General Partner Determinations. Any determinations or calculations made by the General Partner shall, if made in good faith and in the absence of manifest error, be binding upon the Partnership and its Limited Partners.

6.10 Dispute Resolution. The following procedures shall be used to resolve any controversy or claim (“**Dispute**”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation.

(1) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(2) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(3) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(4) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration. If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“**Arbitration Rules**”). In the event of a conflict, the provisions of this document will control.

(1) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the

Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act (“FAA”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

- (2) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (3) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.
- (4) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The

total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (5) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (6) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.


- 6.11 Successors and Assigns. Subject to the limitations set forth in Section 1.11, this Agreement shall inure to the benefit of and be binding upon the parties and to their respective heirs, executors, administrators, successors and permitted assigns. For the avoidance of doubt, any Limited Partner who becomes a former Limited Partner shall remain bound to all terms and conditions of this Agreement.
- 6.12 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.
- 6.13 No Third Party Rights. Except for rights expressly granted hereunder to the Covered Persons, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.
- 6.14 No Right to Partition. Each of the Partners, on behalf of themselves and their shareholders, partners, principals, members, successors and assigns, if any and as permitted hereunder, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

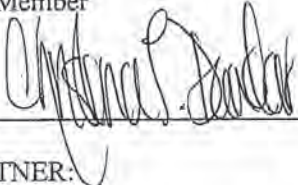
**SIGNATURE PAGE FOR AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: 
James D. Dondero
Managing Member

Witnessed By: 

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: _____

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name:
Title:

Witnessed by: _____

**SIGNATURE PAGE FOR AMENDED AND RESTATED
EXEMPTED LIMITED PARTNERSHIP AGREEMENT OF
CHARITABLE DAF FUND, LP**

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Exempted Limited Partnership Agreement as a Deed effective as amongst the parties as of the day and year first above written.

GENERAL PARTNER:

CHARITABLE DAF GP, LLC

By: _____
James D. Dondero
Managing Member

Witnessed By: _____

LIMITED PARTNER:

CHARITABLE DAF HOLDCO, LTD:

By: _____
Name: Grant Scott
Title: Director

Witnessed By: Candi L. Riggs
Candi L. Riggs

INITIAL LIMITED PARTNER:

WALKERS NOMINEES LIMITED:

By: _____
Name: Rod Palmer
Title:

Witnessed by: Gracie O'Leary

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
MEMORANDUM AND ARTICLES OF ASSOCIATION
OF
CLO HOLDCO, LTD.



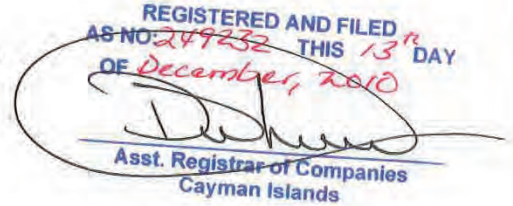
Walker House, 87 Mary Street, George Town
Grand Cayman KY1-9001, Cayman Islands
T 345 949 0100 F 345 949 7886 www.walkersglobal.com

REF: VC/CM/99957

EXHIBIT 27

PATRIK 000082
004346

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION
OF
CLO HOLDCO, LTD.



1. The name of the company is CLO HoldCo, Ltd. (the "Company").
2. The registered office of the Company will be situated at the offices of **Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands** or at such other location as the Directors may from time to time determine.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "Law").
4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.
5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.
6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.
7. The capital of the Company is **US\$50,000.00** divided into **50,000** shares of a nominal or par value of **US\$1.00 each** provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.
8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.



The undersigned, whose name, address and description are set out below, wishes the Company to be incorporated as a company in the Cayman Islands in accordance with this Memorandum of Association, and agrees to take the number of shares in the capital of the Company as set out opposite the undersigned's name.

NAME, ADDRESS AND DESCRIPTION OF SUBSCRIBER	NUMBER OF SHARES TAKEN BY SUBSCRIBER
---	--------------------------------------

Walkers Nominees Limited, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands

ONE SHARE

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory of Walkers Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald
Signature of Witness

Name: Carol MacDonald
Address: 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands
Occupation: Secretary

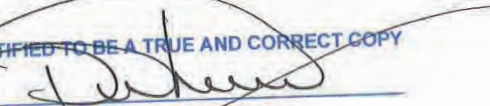
CERTIFIED TO BE A TRUE AND CORRECT COPY
SIG. 
V. Daphene Whitelocke
Assistant Registrar
Date: 13th December, 2010



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COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
CLO HOLDCO, LTD.

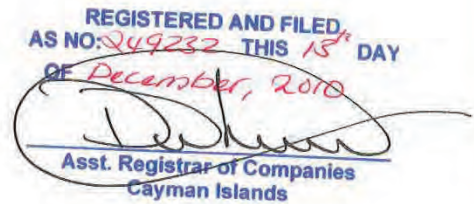


TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to CLO HoldCo, Ltd. (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time;

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company;

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof;

"**Law**" means the Companies Law (as amended) of the Cayman Islands;

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time;

"**Office**" means the registered office of the Company as required by the Law;

"**Ordinary Resolution**" means a resolution:

- (a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and



where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or

- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed;

"paid up" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up;

"Person" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires;

"Register" means the register of Members of the Company required to be kept pursuant to the Law;

"Seal" means the common seal of the Company (if adopted) including any facsimile thereof;

"Secretary" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company;

"Share" means a share in the capital of the Company. All references to "Shares" herein shall be deemed to be Shares of any or all Classes as the context may require. For the avoidance of doubt in these Articles the expression "Share" shall include a fraction of a Share;

"Shareholder" or **"Member"** means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber;

"Share Premium Account" means the share premium account established in accordance with these Articles and the Law;

"signed" means bearing a signature or representation of a signature affixed by mechanical means; and

"Special Resolution" means a special resolution of the Company passed in accordance with the Law, being a resolution:

- (a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

2. In these Articles, save where the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;

- (b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;
 - (c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
 - (d) reference to a dollar or dollars (or \$) and to a cent or cents is reference to dollars and cents of the United States of America;
 - (e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;
 - (f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case; and
 - (g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.
3. Subject to the last two preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

- 4. The business of the Company may be commenced at any time after incorporation.
- 5. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.
- 6. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.
- 7. The Directors shall keep, or cause to be kept, the Register at such place as the Directors may from time to time determine and, in the absence of any such determination, the Register shall be kept at the Office.

SHARES

- 8. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may:
 - (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and
 - (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;

and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.

9. The Directors may authorise the division of Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions, preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors.
10. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.
11. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MODIFICATION OF RIGHTS

12. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Shares of the relevant Class, or with the sanction of a resolution passed at a separate meeting of the holders of the Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that all such Classes would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes.
13. The rights conferred upon the holders of the Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Shares of any Class by the Company.

CERTIFICATES

14. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

15. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or

par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

LIEN

16. The Company has a first and paramount lien on every Share (whether or not fully paid) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that Share. The Company also has a first and paramount lien on every Share registered in the name of a Person indebted or under liability to the Company (whether he is the sole registered holder of a Share or one of two or more joint holders) for all amounts owing by him or his estate to the Company (whether or not presently payable). The Directors may at any time declare a Share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a Share extends to any amount payable in respect of it.
17. The Company may sell, in such manner as the Directors in their absolute discretion think fit, any Share on which the Company has a lien, but no sale shall be made unless an amount in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing, demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Persons entitled thereto by reason of his death or bankruptcy.
18. For giving effect to any such sale the Directors may authorise some Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
19. The proceeds of the sale after deduction of expenses, fees and commission incurred by the Company shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the Person entitled to the Shares immediately prior to the sale.

CALLS ON SHARES

20. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares, and each Shareholder shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on such Shares.
21. The joint holders of a Share shall be jointly and severally liable to pay calls in respect thereof.
22. If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the Person from whom the sum is due shall pay interest upon the sum at the rate of eight percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.
23. The provisions of these Articles as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a Share,

becomes payable at a fixed time, whether on account of the amount of the Share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

24. The Directors may make arrangements on the issue of partly paid Shares for a difference between the Shareholders, or the particular Shares, in the amount of calls to be paid and in the times of payment.
25. The Directors may, if they think fit, receive from any Shareholder willing to advance the same all or any part of the moneys uncalled and unpaid upon any partly paid Shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding without the sanction of an Ordinary Resolution, eight percent per annum) as may be agreed upon between the Shareholder paying the sum in advance and the Directors.

FORFEITURE OF SHARES

26. If a Shareholder fails to pay any call or instalment of a call in respect of partly paid Shares on the day appointed for payment, the Directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
27. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.
28. If the requirements of any such notice as aforesaid are not complied with, any Share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Directors to that effect.
29. A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.
30. A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which at the date of forfeiture were payable by him to the Company in respect of the Shares forfeited, but his liability shall cease if and when the Company receives payment in full of the amount unpaid on the Shares forfeited.
31. A statutory declaration in writing that the declarant is a Director, and that a Share has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts in the declaration as against all Persons claiming to be entitled to the Share.
32. The Company may receive the consideration, if any, given for a Share on any sale or disposition thereof pursuant to the provisions of these Articles as to forfeiture and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of and that Person shall be registered as the holder of the Share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in reference to the disposition or sale.
33. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes due and payable, whether on account of the

amount of the Share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

TRANSFER OF SHARES

34. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.
35. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor.
36. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.
37. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.

TRANSMISSION OF SHARES

38. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only Person recognised by the Company as having any title to the Share.
39. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.
40. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

41. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.
42. The Company may by Ordinary Resolution:

- (a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;
 - (b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;
 - (c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and
 - (d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.
43. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION AND PURCHASE OF SHARES

44. Subject to the Law, the Company may:
- (a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may, before the issue of such Shares, determine;
 - (b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder; and
 - (c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law, including out of its capital, profits or the proceeds of a fresh issue of Shares.
45. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.
46. The redemption or purchase of any Share shall not be deemed to give rise to the redemption or purchase of any other Share.
47. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

GENERAL MEETINGS

48. The Directors may, whenever they think fit, convene a general meeting of the Company.
49. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later

than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

50. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

51. At least seven days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.
52. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

53. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, the appointment and removal of Directors and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.
54. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.
55. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.
56. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

57. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.
58. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.
59. The chairman may with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
60. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason, upon notice in writing to Shareholders. A postponement may be for a stated period of any length or indefinitely as the Directors may determine.
61. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
62. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
63. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
64. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

65. Subject to any rights and restrictions for the time being attached to any Share, on a show of hands every Shareholder present in person and every Person representing a Shareholder by proxy shall, at a general meeting of the Company, each have one vote and on a poll every Shareholder and every Person representing a Shareholder by proxy shall have one vote for each Share of which he or the Person represented by proxy is the holder.
66. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

67. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.
68. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.
69. On a poll votes may be given either personally or by proxy.
70. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.
71. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.
72. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.
73. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
74. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

75. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

76. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.
77. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.
78. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.

79. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.
80. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.
81. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.
82. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR OR PROXY

83. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be an officer of the Company. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.
84. Any Director may appoint any Person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

85. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.
86. The Directors may from time to time appoint any natural person or corporation, whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their

number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.

87. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.
88. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
89. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "**Attorney**" or "**Authorised Signatory**", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.
90. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article .
91. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.
92. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.
93. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

94. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

95. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.
96. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.
97. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

98. The office of Director shall be vacated, if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors;
 - (b) dies or is found to be or becomes of unsound mind;
 - (c) resigns his office by notice in writing to the Company;
 - (d) is removed from office by Ordinary Resolution;
 - (e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or
 - (f) is removed from office pursuant to any other provision of these Articles.

PROCEEDINGS OF DIRECTORS

99. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
100. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication

equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.

101. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.
102. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.
103. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.
104. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.
105. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:
 - (a) all appointments of officers made by the Directors;
 - (b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
 - (c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.
106. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.

107. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.
108. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.
109. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.
110. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.
111. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.
112. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

DIVIDENDS

113. Subject to any rights and restrictions for the time being attached to any Shares, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.
114. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.
115. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.

116. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.
117. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.
118. Subject to any rights and restrictions for the time being attached to any Shares, all dividends shall be declared and paid according to the amounts paid up on the Shares, but if and for so long as nothing is paid up on any of the Shares dividends may be declared and paid according to the par value of the Shares.
119. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.
120. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

121. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.
122. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
123. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.
124. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.
125. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

126. Subject to the Law, the Directors may, with the authority of an Ordinary Resolution:
 - (a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;

- (b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:
 - (i) paying up the amounts (if any) for the time being unpaid on Shares held by them respectively, or
 - (ii) paying up in full unissued Shares or debentures of a nominal amount equal to that sum,and allot the Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid;
- (c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;
- (d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:
 - (i) the allotment to the Shareholders respectively, credited as fully paid, of Shares or debentures to which they may be entitled on the capitalisation, or
 - (ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Shares,and any such agreement made under this authority being effective and binding on all those Shareholders; and
- (e) generally do all acts and things required to give effect to the resolution.

SHARE PREMIUM ACCOUNT

- 127. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share .
- 128. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

- 129. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the

purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.

130. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
131. Any notice or other document, if served by:
- (a) post, shall be deemed to have been served five days after the time when the letter containing the same is posted;
 - (b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;
 - (c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or
 - (d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.

132. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.
133. Notice of every general meeting of the Company shall be given to:
- (a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them; and
 - (b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

INDEMNITY

134. Every Director (including for the purposes of this Article any alternate Director appointed pursuant to the provisions of these Articles), Secretary, assistant Secretary, or other officer for the time being and from time to time of the Company (but not including the Company's auditors) and the personal representatives of the same (each an "**Indemnified Person**") shall be indemnified and

secured harmless against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by such Indemnified Person, other than by reason of such Indemnified Person's own dishonesty, wilful default or fraud, in or about the conduct of the Company's business or affairs (including as a result of any mistake of judgment) or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by such Indemnified Person in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Cayman Islands or elsewhere.

135. No Indemnified Person shall be liable:

- (a) for the acts, receipts, neglects, defaults or omissions of any other Director or officer or agent of the Company; or
- (b) for any loss on account of defect of title to any property of the Company; or
- (c) on account of the insufficiency of any security in or upon which any money of the Company shall be invested; or
- (d) for any loss incurred through any bank, broker or other similar Person; or
- (e) for any loss occasioned by any negligence, default, breach of duty, breach of trust, error of judgement or oversight on such Indemnified Person's part; or
- (f) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities, or discretions of such Indemnified Person's office or in relation thereto;

unless the same shall happen through such Indemnified Person's own dishonesty, wilful default or fraud.

NON-RECOGNITION OF TRUSTS

136. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

137. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

138. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such assets in

trustees upon such trusts for the benefit of the Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

139. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

140. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.
141. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
142. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

143. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

DISCLOSURE

144. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial

authority, or to any stock exchange on which the Shares may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

**NAME, ADDRESS AND DESCRIPTION
OF SUBSCRIBER**

Walkers Nominees Limited, 87 Mary
Street, George Town, Grand Cayman
KY1-9001, Cayman Islands

(Sgd) Virginia Czarnocki

Virginia Czarnocki
as Authorised Signatory for and on behalf of Walkers
Nominees Limited

Dated: 13 December 2010

(Sgd) Carol MacDonald

Signature of Witness

Name: Carol MacDonald

Address: 87 Mary Street, George
Town, Grand Cayman KY1-
9001, Cayman Islands

Occupation: Secretary

CERTIFIED TO BE A TRUE AND CORRECT COPY

SIG. 

V. Daphne Whiteflocke
Assistant Registrar

Date: 13th December 2010

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PATRICIA 2007063
004373

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
AMENDED AND RESTATED
MEMORANDUM AND ARTICLES OF ASSOCIATION
OF
CHARITABLE DAF HOLDCO, LTD
(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)



190 Elgin Avenue, George Town
Grand Cayman KY1-9001, Cayman Islands
T +1 345 949 0100 F +1 345 949 7886 www.walkersglobal.com

REF: SSJ/VT/H0851-120776

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EXHIBIT 28

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004374

THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
AMENDED AND RESTATED
MEMORANDUM OF ASSOCIATION
OF
CHARITABLE DAF HOLDCO, LTD

(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

1. The name of the company is Charitable DAF HoldCo, Ltd (the "**Company**").
2. The registered office of the Company will be situated at the offices of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands or at such other location as the Directors may from time to time determine.
3. The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law (as amended) of the Cayman Islands (the "**Law**").
4. The Company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit as provided by Section 27(2) of the Law.
5. The Company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands; provided that nothing in this section shall be construed as to prevent the Company effecting and concluding contracts in the Cayman Islands, and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.
6. The liability of the shareholders of the Company is limited to the amount, if any, unpaid on the shares respectively held by them.
7. The capital of the Company is US\$50,000.00 divided into 4,999,900 Participating Shares of a nominal or par value of US\$0.01 each 100 Management Shares of a nominal or par value of US\$0.01 each provided always that subject to the Law and the Articles of Association the Company shall have power to redeem or purchase any of its shares and to sub-divide or consolidate the said shares or any of them and to issue all or any part of its capital whether original, redeemed, increased or reduced with or without any preference, priority, special privilege or other rights or subject to any postponement of rights or to any conditions or restrictions whatsoever and so that unless the conditions of issue shall otherwise expressly provide every issue of shares whether stated to be ordinary, preference or otherwise shall be subject to the powers on the part of the Company hereinbefore provided.
8. The Company may exercise the power contained in Section 206 of the Law to deregister in the Cayman Islands and be registered by way of continuation in some other jurisdiction.



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THE COMPANIES LAW (AS AMENDED)
COMPANY LIMITED BY SHARES
AMENDED AND RESTATED
ARTICLES OF ASSOCIATION
OF
CHARITABLE DAF HOLDCO, LTD
(ADOPTED BY SPECIAL RESOLUTION DATED 19 JANUARY 2015)

TABLE A

The Regulations contained or incorporated in Table 'A' in the First Schedule of the Law shall not apply to Charitable DAF HoldCo, Ltd (the "**Company**") and the following Articles shall comprise the Articles of Association of the Company.

INTERPRETATION

1. In these Articles the following defined terms will have the meanings ascribed to them, if not inconsistent with the subject or context:

"**Articles**" means these articles of association of the Company, as amended or substituted from time to time.

"**Branch Register**" means any branch Register of such category or categories of Members as the Company may from time to time determine.

"**Class**" or "**Classes**" means any class or classes of Shares as may from time to time be issued by the Company.

"**Directors**" means the directors of the Company for the time being, or as the case may be, the directors assembled as a board or as a committee thereof.

"**Gross Negligence**" has the meaning ascribed under the laws of the State of Delaware in the United States.

"**Law**" means the Companies Law (as amended) of the Cayman Islands.

"**Management Share**" means a voting non-participating share in the capital of the Company of \$0.01 nominal or par value, that shall be non-redeemable at the option of the holder but redeemable by the Company in accordance with these Articles, and issued subject to and in accordance with the provisions of the Law and these Articles and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Shares.

"**Memorandum of Association**" means the memorandum of association of the Company, as amended or substituted from time to time.



"**Office**" means the registered office of the Company as required by the Law.

"**Ordinary Resolution**" means a resolution:

- (a) passed by a simple majority of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the resolution so adopted shall be the date on which the instrument, or the last of such instruments, if more than one, is executed.

"**paid up**" means paid up as to the par value in respect of the issue of any Shares and includes credited as paid up.

"**Participating Share**" means a non-voting, participating, non-redeemable share in the capital of the Company of \$0.01 nominal or par value issued subject to and in accordance with the provisions of the Law and these Articles, and having the rights and being subject to the restrictions as provided for under these Articles with respect to such Share. All references to "**Participating Shares**" herein shall be deemed to be Participating Shares of any or all Classes or Series as the context may require. For the avoidance of doubt, in these Articles the expression "Participating Share" shall include a fraction of a Participating Share.

"**Person**" means any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having a separate legal personality) or any of them as the context so requires.

"**Principal Register**", where the Company has established one or more Branch Registers pursuant to the Law and these Articles, means the Register maintained by the Company pursuant to the Law and these Articles that is not designated by the Directors as a Branch Register.

"**Register**" means the register of Members of the Company required to be kept pursuant to the Law and includes any Branch Register(s) established by the Company in accordance with the Law.

"**Restricted Person**" means any Person holding Participating Shares:

- (a) in breach of the law or requirements of any country or governmental authority;
- (b) that is not an entity or organisation exempt from taxation under Section 501(c)(3) of the US Internal Revenue Code of 1986, as amended (the "**Code**") or an entity or organisation all of whose beneficiaries are exempt under Section 501(c)(3) of the Code; or
- (c) in circumstances (whether directly or indirectly affecting such Person and whether taken alone or in conjunction with any other Person, connected or not, or any other circumstances) which, in the opinion of the Directors, might result in the Company incurring any liability to taxation or suffering any other pecuniary, legal, regulatory or administrative disadvantage which the Company might not otherwise have incurred or suffered.

"**Seal**" means the common seal of the Company (if adopted) including any facsimile thereof.



"**Secretary**" means any Person appointed by the Directors to perform any of the duties of the secretary of the Company.

"**Share**" means a Management Share or Participating Share or both as the context so requires.

"**Shareholder**" or "**Member**" means a Person who is registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber.

"**Share Premium Account**" means the share premium account established in accordance with these Articles and the Law.

"**signed**" means bearing a signature or representation of a signature affixed by mechanical means.

"**Special Resolution**" means a special resolution of the Company passed in accordance with the Law, being a resolution:

- (a) passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company of which notice specifying the intention to propose the resolution as a special resolution has been duly given and where a poll is taken regard shall be had in computing a majority to the number of votes to which each Shareholder is entitled; or
- (b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed.

"**Treasury Shares**" means Shares that were previously issued but were purchased, redeemed, surrendered or otherwise acquired by the Company and not cancelled.

"**United States**" means the United States of America (including the District of Columbia), its states, territories and possessions.

In these Articles, save where the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;
- (b) words importing the masculine gender only shall include the feminine gender and any Person as the context may require;
- (c) the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative;
- (d) reference to a dollar or dollars or USD (or \$) and to a cent or cents is reference to dollars and cents of the United States of America;
- (e) reference to a statutory enactment shall include reference to any amendment or re-enactment thereof for the time being in force;



- (f) reference to any determination by the Directors shall be construed as a determination by the Directors in their sole and absolute discretion and shall be applicable either generally or in any particular case, and
 - (g) reference to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, lithograph, email, facsimile, photograph or telex or represented by any other substitute or format for storage or transmission for writing or partly one and partly another.
2. Subject to the preceding Articles, any words defined in the Law shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PRELIMINARY

3. The business of the Company may be commenced at any time after incorporation.
4. The Office shall be at such address in the Cayman Islands as the Directors may from time to time determine. The Company may in addition establish and maintain such other offices and places of business and agencies in such places as the Directors may from time to time determine.
5. The expenses incurred in the formation of the Company and in connection with the offer for subscription and issue of Participating Shares shall be paid by the Company. Such expenses may be amortised over such period as the Directors may determine and the amount so paid shall be charged against income and/or capital in the accounts of the Company as the Directors shall determine.
6. The Directors shall keep, or cause to be kept, the Register at such place or (subject to compliance with the Law and these Articles) places as the Directors may from time to time determine. In the absence of any such determination, the Register shall be kept at the Office. The Directors may keep, or cause to be kept, one or more Branch Registers as well as the Principal Register in accordance with the Law, provided always that a duplicate of such Branch Register(s) shall be maintained with the Principal Register in accordance with the Law.

SHARES

7. Subject to these Articles, all Shares for the time being unissued shall be under the control of the Directors who may
- (a) issue, allot and dispose of the same to such Persons, in such manner, on such terms and having such rights and being subject to such restrictions as they may from time to time determine; and
 - (b) grant options with respect to such Shares and issue warrants or similar instruments with respect thereto;
- and, for such purposes, the Directors may reserve an appropriate number of Shares for the time being unissued.
8. The Directors, or the Shareholders by Ordinary Resolution, may authorise the division of Participating Shares into any number of Classes and the different Classes shall be authorised, established and designated (or re-designated as the case may be) and the variations in the relative rights (including, without limitation, voting, dividend and redemption rights), restrictions,



preferences, privileges and payment obligations as between the different Classes (if any) may be fixed and determined by the Directors or the Shareholders by Ordinary Resolution.

9. The Company may insofar as may be permitted by law, pay a commission to any Person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares. Such commissions may be satisfied by the payment of cash or the lodgement of fully or partly paid-up Shares or partly in one way and partly in the other. The Company may also pay such brokerage as may be lawful on any issue of Shares.
10. The Directors may refuse to accept any application for Shares, and may accept any application in whole or in part, for any reason or for no reason.

MANAGEMENT SHARES

11. The Management Shares shall be issued at par value and shall carry the right to receive notice of and to attend, to speak at and to vote at any general meeting of the Company. In the event of a winding up or dissolution of the Company, whether voluntary or involuntary or for the purposes of a reorganisation or otherwise or upon any distribution of capital, the entitlement of the holders of Management Shares shall be determined in accordance with these Articles. Management Shares confer no other right to participate in the profits or assets of the Company.
12. Any Management Shares held by Grant Scott will be automatically redeemed by the Company upon his death or upon the Company receiving written notice from two board certified physicians confirming that he is of unsound mind or otherwise incapacitated ("**Automatic Redemption**").
13. If at the time of an Automatic Redemption, Grant Scott is the sole Director of the Company, such office will be automatically vacated by Grant Scott.
14. Upon an Automatic Redemption, the Company shall issue 100 Management Shares to a successor management shareholder ("**Successor Management Shareholder**") designated by James Dondero ("**Designator**"), or, if he is unable or declines to act, by an individual or individuals designated by James Dondero ("**Successor Designator**"), in either case within 15 days of the Automatic Redemption. If the Designator is:
 - (a) deceased and has not named a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made in accordance with the provisions of the Designator's will, or if his will contains no such provisions, by the qualified personal representative of his estate (the "**Designator's Personal Representative**"); or
 - (b) otherwise incapacitated and has not previously designated a Successor Designator, or if each named Successor Designator is unable or declines to act, the designation of the Successor Management Shareholder shall be made by the Designator's attorney-in-fact appointed for such purpose, under a valid, effective power of attorney instrument (the "**Designator's Attorney**").
15. Any designation of a Successor Management Shareholder must be notified to the Company in writing and signed by either the Designator, the Successor Designator, the Designator's Personal Representative, or the Designator's Attorney, as appropriate, and accompanied by a consent to become a Shareholder signed by the Successor Management Shareholder ("**Issue Notice**"). The issue of the 100 Management Shares to the Successor Management Shareholder shall take effect upon receipt by the Company of the Issue Notice and the Register will be updated accordingly.



16. The Designator may name a Successor Designator (including an individual, or a series of individuals) at any time pursuant to a written notice delivered to the Company during his lifetime or by a provision in his will. Each Successor Designator upon succeeding and replacing the Designator or a prior Successor Designator, may in the same manner as set out above, designate an individual, or a series of individuals, to succeed him as Successor Designator. In the event of a conflict between such instruments, the one bearing the latest date shall control. A Successor Designator will assume such office upon consenting to so act.
17. The Successor Management Shareholder may not be a "disqualified person" (as that term is defined in Section 4946 of the United States Internal Revenue Code of 1986, as amended), other than a foundation manager, with respect to Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., or Highland Kansas City Foundation, Inc.
18. In connection with the appointment of the Successor Management Shareholder, the Company and its registered office service provider will be entitled to rely on the advice of counsel confirming that the designation of the Successor Management Shareholder has been made in accordance with the procedures set out in these Articles.

PARTICIPATING SHARES

19. Participating Shares shall confer upon a Shareholder no right to receive notice of, to attend, to speak at nor to vote at general meetings of the Company but shall confer upon the Shareholders rights in a winding-up or repayment of capital and the right to participate in the profits or assets of the Company in accordance with these Articles.

MODIFICATION OF RIGHTS

20. Whenever the capital of the Company is divided into different Classes the rights attached to any such Class may, subject to any rights or restrictions for the time being attached to any Class, only be materially adversely varied or abrogated with the consent in writing of the holders of not less than two-thirds of the issued Participating Shares of the relevant Class or with the sanction of a resolution passed at a separate meeting of the holders of the Participating Shares of such Class by a majority of two-thirds of the votes cast at such a meeting. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one or more Persons at least holding or representing by proxy one-third in nominal or par value amount of the issued Participating Shares of the relevant Class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Shareholders who are present shall form a quorum) and that, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, every Shareholder of the Class shall on a poll have one vote for each Share of the Class held by him. For the purposes of this Article the Directors may treat all the Classes or any two or more Classes as forming one Class if they consider that the variation or abrogation of the rights attached to such Classes proposed for consideration is the same variation or abrogation for all such relevant Classes, but in any other case shall treat them as separate Classes.
21. The rights conferred upon the holders of the Participating Shares of any Class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Participating Shares of that Class, be deemed to be materially adversely varied or abrogated by, *inter alia*, the creation, allotment or issue of further Participating Shares ranking *pari passu* with or subsequent to them or the redemption or purchase of any Participating Shares of any Class by the Company.



CERTIFICATES

22. No Person shall be entitled to a certificate for any or all of his Shares, unless the Directors shall determine otherwise.

FRACTIONAL SHARES

23. The Directors may issue fractions of a Share and, if so issued, a fraction of a Share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contributions, calls or otherwise), limitations, preferences, privileges, qualifications, restrictions, rights (including, without prejudice to the generality of the foregoing, voting and participation rights) and other attributes of a whole Share. If more than one fraction of a Share of the same Class is issued to or acquired by the same Shareholder such fractions shall be accumulated.

TRANSFER OF SHARES

24. The instrument of transfer of any Share shall be in any usual or common form or such other form as the Directors may, in their absolute discretion, approve and be executed by or on behalf of the transferor and if in respect of a nil or partly paid up Share, or if so required by the Directors, shall also be executed on behalf of the transferee and shall be accompanied by the certificate (if any) of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. The transferor shall be deemed to remain a Shareholder until the name of the transferee is entered in the Register in respect of the relevant Shares.
25. The Directors may in their absolute discretion decline to register any transfer of Shares without assigning any reason therefor including any purported transfer that does not comply with applicable securities or tax laws.
26. The registration of transfers may be suspended at such times and for such periods as the Directors may from time to time determine.
27. All instruments of transfer that are registered shall be retained by the Company, but any instrument of transfer that the Directors decline to register shall (except in any case of fraud) be returned to the Person depositing the same.
28. If it comes to the notice of the Directors that any Shares are held by a Restricted Person the Directors may by notice in writing require the transfer of such Shares in exercise of their powers under these Articles.

TRANSMISSION OF SHARES

29. The legal personal representative of a deceased sole holder of a Share shall be the only Person recognised by the Company as having any title to the Share. In the case of a Share registered in the name of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased holder of the Share, shall be the only Person recognised by the Company as having any title to the Share.
30. Any Person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall upon such evidence being produced as may from time to time be required by the Directors, have the right either to be registered as a Shareholder in respect of the Share or, instead of being registered himself, to make such transfer of the Share as the deceased or bankrupt Person



could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt Person before the death or bankruptcy.

31. A Person becoming entitled to a Share by reason of the death or bankruptcy of a Shareholder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered Shareholder, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

ALTERATION OF SHARE CAPITAL

32. The Company may from time to time by Ordinary Resolution increase the share capital by such sum, to be divided into Shares of such Classes and amount, as the resolution shall prescribe.
33. The Company may by Ordinary Resolution:
- (a) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;
 - (b) convert all or any of its paid up Shares into stock and reconvert that stock into paid up Shares of any denomination;
 - (c) subdivide its existing Shares, or any of them into Shares of a smaller amount provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced Share shall be the same as it was in case of the Share from which the reduced Share is derived; and
 - (d) cancel any Shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any Person and diminish the amount of its share capital by the amount of the Shares so cancelled.
34. The Company may by Special Resolution reduce its share capital and any capital redemption reserve in any manner authorised by law.

REDEMPTION, PURCHASE AND SURRENDER OF SHARES

35. Subject to the Law, the Company may:
- (a) issue Shares on terms that they are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder on such terms and in such manner as the Directors may determine;
 - (b) purchase its own Shares (including any redeemable Shares) on such terms and in such manner as the Directors may determine and agree with the Shareholder;
 - (c) make a payment in respect of the redemption or purchase of its own Shares in any manner authorised by the Law; and
 - (d) accept the surrender for no consideration of any paid up Share (including any redeemable Share) on such terms and in such manner as the Directors may determine.



36. Any Share in respect of which notice of redemption has been given shall not be entitled to participate in the profits of the Company in respect of the period after the date specified as the date of redemption in the notice of redemption.
37. The redemption, purchase or surrender of any Share shall not be deemed to give rise to the redemption, purchase or surrender of any other Share.
38. The Directors may when making payments in respect of redemption or purchase of Shares, if authorised by the terms of issue of the Shares being redeemed or purchased or with the agreement of the holder of such Shares, make such payment either in cash or in specie.

TREASURY SHARES

39. Shares that the Company purchases, redeems or acquires (by way of surrender or otherwise) may, at the option of the Company, be cancelled immediately or held as Treasury Shares in accordance with the Law. In the event that the Directors do not specify that the relevant Shares are to be held as Treasury Shares, such Shares shall be cancelled.
40. No dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the Company's assets (including any distribution of assets to members on a winding up) may be declared or paid in respect of a Treasury Share.
41. The Company shall be entered in the Register as the holder of the Treasury Shares provided that:
 - (a) the Company shall not be treated as a member for any purpose and shall not exercise any right in respect of the Treasury Shares, and any purported exercise of such a right shall be void;
 - (b) a Treasury Share shall not be voted, directly or indirectly, at any meeting of the Company and shall not be counted in determining the total number of issued shares at any given time, whether for the purposes of these Articles or the Law, save that an allotment of Shares as fully paid bonus shares in respect of a Treasury Share is permitted and Shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as Treasury Shares.
42. Treasury Shares may be disposed of by the Company on such terms and conditions as determined by the Directors.

GENERAL MEETINGS

43. The Directors may, whenever they think fit, convene a general meeting of the Company.
44. The Directors may cancel or postpone any duly convened general meeting at any time prior to such meeting, except for general meetings requisitioned by the Shareholders in accordance with these Articles, for any reason or for no reason at any time prior to the time for holding such meeting or, if the meeting is adjourned, the time for holding such adjourned meeting. The Directors shall give Shareholders notice in writing of any postponement, which postponement may be for a stated period of any length or indefinitely as the Directors may determine.
45. General meetings shall also be convened on the requisition in writing of any Shareholder or Shareholders entitled to attend and vote at general meetings of the Company holding at least ten percent of the paid up voting share capital of the Company deposited at the Office specifying the



objects of the meeting for a date no later than 21 days from the date of deposit of the requisition signed by the requisitionists, and if the Directors do not convene such meeting for a date not later than 45 days after the date of such deposit, the requisitionists themselves may convene the general meeting in the same manner, as nearly as possible, as that in which general meetings may be convened by the Directors, and all reasonable expenses incurred by the requisitionists as a result of the failure of the Directors to convene the general meeting shall be reimbursed to them by the Company.

46. If at any time there are no Directors, any two Shareholders (or if there is only one Shareholder then that Shareholder) entitled to vote at general meetings of the Company may convene a general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

47. At least seven clear days' notice in writing counting from the date service is deemed to take place as provided in these Articles specifying the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter provided or in such other manner (if any) as may be prescribed by the Company by Ordinary Resolution to such Persons as are, under these Articles, entitled to receive such notices from the Company, but with the consent of all the Shareholders entitled to receive notice of some particular meeting and attend and vote thereat, that meeting may be convened by such shorter notice or without notice and in such manner as those Shareholders may think fit.
48. The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Shareholder shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. All business carried out at a general meeting shall be deemed special with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, any report of the Directors or of the Company's auditors, and the fixing of the remuneration of the Company's auditors. No special business shall be transacted at any general meeting without the consent of all Shareholders entitled to receive notice of that meeting unless notice of such special business has been given in the notice convening that meeting.
50. No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as otherwise provided by these Articles, one or more Shareholders holding at least a majority of the paid up voting share capital of the Company present in person or by proxy and entitled to vote at that meeting shall form a quorum.
51. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Shareholder or Shareholders present and entitled to vote shall form a quorum.
52. If the Directors wish to make this facility available for a specific general meeting or all general meetings of the Company, participation in any general meeting of the Company may be by means of a telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.



53. The chairman, if any, of the Directors shall preside as chairman at every general meeting of the Company.
54. If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, any Director or Person nominated by the Directors shall preside as chairman, failing which the Shareholders present in person or by proxy shall choose any Person present to be chairman of that meeting.
55. The chairman may adjourn a meeting from time to time and from place to place either:
- (a) with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting); or
 - (b) without the consent of such meeting if, in his sole opinion, he considers it necessary to do so to:
 - (i) secure the orderly conduct or proceedings of the meeting; or
 - (ii) give all persons present in person or by proxy and having the right to speak and / or vote at such meeting, the ability to do so,

but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting, or adjourned meeting, is adjourned for fourteen days or more, notice of the adjourned meeting shall be given in the manner provided for the original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or one or more Shareholders present in person or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
59. A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF SHAREHOLDERS

60. On a show of hands every holder of Management Shares present in person and every Person representing such a Shareholder by proxy shall have one vote, and on a poll every holder of



Management Shares present in person and every Person representing such Shareholder by proxy shall be entitled to one vote in respect of each of the Management Shares held by them

61. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.
62. A Shareholder of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote in respect of Shares carrying the right to vote held by him, whether on a show of hands or on a poll, by his committee, or other Person in the nature of a committee appointed by that court, and any such committee or other Person, may vote in respect of such Shares by proxy.
63. No Shareholder shall be entitled to vote at any general meeting of the Company unless all calls, if any, or other sums presently payable by him in respect of Shares carrying the right to vote held by him have been paid.
64. On a poll votes may be given either personally or by proxy.
65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under Seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Shareholder.
66. An instrument appointing a proxy may be in any usual or common form or such other form as the Directors may approve.
67. The instrument appointing a proxy shall be deposited at the Office or at such other place as is specified for that purpose in the notice convening the meeting no later than the time for holding the meeting or, if the meeting is adjourned, the time for holding such adjourned meeting.
68. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
69. A resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings of the Company (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

70. Any corporation which is a Shareholder or a Director may by resolution of its directors or other governing body authorise such Person as it thinks fit to act as its representative at any meeting of the Company or of any meeting of holders of a Class or of the Directors or of a committee of Directors, and the Person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder or Director.

DIRECTORS

71. The name(s) of the first Director(s) shall either be determined in writing by a majority (or in the case of a sole subscriber that subscriber) of, or elected at a meeting of, the subscribers of the Memorandum of Association.



72. The Company may by Ordinary Resolution appoint any natural person or corporation to be a Director.
73. Subject to these Articles, a Director shall hold office until such time as he is removed from office by Ordinary Resolution.
74. The Company may by Ordinary Resolution from time to time fix the maximum and minimum number of Directors to be appointed but unless such numbers are fixed as aforesaid the minimum number of Directors shall be one and the maximum number of Directors shall be unlimited.
75. The remuneration of the Directors may be determined by the Directors or by Ordinary Resolution.
76. There shall be no shareholding qualification for Directors unless determined otherwise by Ordinary Resolution.
77. The Directors shall have power at any time and from time to time to appoint a natural person or corporation as a Director, either as a result of a casual vacancy or as an additional Director, subject to the maximum number (if any) imposed by Ordinary Resolution.

ALTERNATE DIRECTOR

78. Any Director may in writing appoint another Person to be his alternate and, save to the extent provided otherwise in the form of appointment, such alternate shall have authority to sign written resolutions on behalf of the appointing Director, but shall not be required to sign such written resolutions where they have been signed by the appointing Director, and to act in such Director's place at any meeting of the Directors at which he is unable to be present. Every such alternate shall be entitled to attend and vote at meetings of the Directors as a Director when the Director appointing him is not personally present and where he is a Director to have a separate vote on behalf of the Director he is representing in addition to his own vote. A Director may at any time in writing revoke the appointment of an alternate appointed by him. Such alternate shall not be deemed to be an officer of the Company solely as a result of his appointment as an alternate. The remuneration of such alternate shall be payable out of the remuneration of the Director appointing him and the proportion thereof shall be agreed between them.
79. Any Director may appoint any Person, whether or not a Director, to be the proxy of that Director to attend and vote on his behalf, in accordance with instructions given by that Director, or in the absence of such instructions at the discretion of the proxy, at a meeting or meetings of the Directors which that Director is unable to attend personally. The instrument appointing the proxy shall be in writing under the hand of the appointing Director and shall be in any usual or common form or such other form as the Directors may approve, and must be lodged with the chairman of the meeting of the Directors at which such proxy is to be used, or first used, prior to the commencement of the meeting.

POWERS AND DUTIES OF DIRECTORS

80. Subject to the Law, these Articles and to any resolutions passed in a general meeting, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in setting up and registering the Company and may exercise all powers of the Company. No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors that would have been valid if that resolution had not been passed.



81. The Directors may from time to time appoint any natural person or corporation, whether or not a Director to hold such office in the Company as the Directors may think necessary for the administration of the Company, including but not limited to, the office of president, one or more vice-presidents, treasurer, assistant treasurer, manager or controller, and for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another), and with such powers and duties as the Directors may think fit. Any natural person or corporation so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution. The Directors may also appoint one or more of their number to the office of managing director upon like terms, but any such appointment shall ipso facto determine if any managing director ceases from any cause to be a Director, or if the Company by Ordinary Resolution resolves that his tenure of office be terminated.
82. The Directors may appoint any natural person or corporation to be a Secretary (and if need be an assistant Secretary or assistant Secretaries) who shall hold office for such term, at such remuneration and upon such conditions and with such powers as they think fit. Any Secretary or Assistant Secretary so appointed by the Directors may be removed by the Directors or by the Company by Ordinary Resolution.
83. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.
84. The Directors may from time to time and at any time by power of attorney (whether under Seal or under hand) or otherwise appoint any company, firm or Person or body of Persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys or authorised signatory (any such person being an "Attorney" or "Authorised Signatory", respectively) of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such power of attorney or other appointment may contain such provisions for the protection and convenience of Persons dealing with any such Attorney or Authorised Signatory as the Directors may think fit, and may also authorise any such Attorney or Authorised Signatory to delegate all or any of the powers, authorities and discretion vested in him.
85. The Directors may from time to time provide for the management of the affairs of the Company in such manner as they shall think fit and the provisions contained in the three next following Articles shall not limit the general powers conferred by this Article.
86. The Directors from time to time and at any time may establish any committees, local boards or agencies for managing any of the affairs of the Company and may appoint any natural person or corporation to be a member of such committees or local boards and may appoint any managers or agents of the Company and may fix the remuneration of any such natural person or corporation.
87. The Directors from time to time and at any time may delegate to any such committee, local board, manager or agent any of the powers, authorities and discretions for the time being vested in the Directors and may authorise the members for the time being of any such local board, or any of them to fill any vacancies therein and to act notwithstanding vacancies and any such appointment or delegation may be made on such terms and subject to such conditions as the Directors may think fit and the Directors may at any time remove any natural person or corporation so appointed and may annul or vary any such delegation, but no Person dealing in good faith and without notice of any such annulment or variation shall be affected thereby.



88. Any such delegates as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities, and discretion for the time being vested in them.

BORROWING POWERS OF DIRECTORS

89. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligation of the Company or of any third party.

THE SEAL

90. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of the Seal and if given after may be in general form confirming a number of affixings of the Seal. The Seal shall be affixed in the presence of a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose and every Person as aforesaid shall sign every instrument to which the Seal is so affixed in their presence.
91. The Company may maintain a facsimile of the Seal in such countries or places as the Directors may appoint and such facsimile Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors provided always that such authority may be given prior to or after the affixing of such facsimile Seal and if given after may be in general form confirming a number of affixings of such facsimile Seal. The facsimile Seal shall be affixed in the presence of such Person or Persons as the Directors shall for this purpose appoint and such Person or Persons as aforesaid shall sign every instrument to which the facsimile Seal is so affixed in their presence and such affixing of the facsimile Seal and signing as aforesaid shall have the same meaning and effect as if the Seal had been affixed in the presence of and the instrument signed by a Director or a Secretary (or an assistant Secretary) or in the presence of any one or more Persons as the Directors may appoint for the purpose.
92. Notwithstanding the foregoing, a Secretary or any assistant Secretary shall have the authority to affix the Seal, or the facsimile Seal, to any instrument for the purposes of attesting authenticity of the matter contained therein but which does not create any obligation binding on the Company.

DISQUALIFICATION OF DIRECTORS

93. The office of Director shall be vacated, if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors;
 - (b) dies or is found to be or becomes of unsound mind;
 - (c) resigns his office by notice in writing to the Company;
 - (d) is removed from office by Ordinary Resolution;
 - (e) is removed from office by notice addressed to him at his last known address and signed by all of his co-Directors (not being less than two in number); or



- (f) is removed from office pursuant to any other provision of these Articles, including without limitation, in the circumstance set out in Article 13.

PROCEEDINGS OF DIRECTORS

94. The Directors may meet together (either within or without the Cayman Islands) for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A Director may, and a Secretary or assistant Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
95. A Director may participate in any meeting of the Directors, or of any committee appointed by the Directors of which such Director is a member, by means of telephone or similar communication equipment by way of which all Persons participating in such meeting can communicate with each other and such participation shall be deemed to constitute presence in person at the meeting.
96. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed, if there be two or more Directors the quorum shall be two, and if there be one Director the quorum shall be one. A Director represented by proxy or by an alternate Director at any meeting shall be deemed to be present for the purposes of determining whether or not a quorum is present.
97. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Directors. A general notice given to the Directors by any Director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall be deemed a sufficient declaration of interest in regard to any contract so made. A Director may vote in respect of any contract or proposed contract or arrangement notwithstanding that he may be interested therein and if he does so his vote shall be counted and he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.
98. A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Directors may determine and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established. A Director, notwithstanding his interest, may be counted in the quorum present at any meeting of the Directors whereat he or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and he may vote on any such appointment or arrangement.
99. Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; provided that nothing herein contained shall authorise a Director or his firm to act as auditor to the Company.



100. The Directors shall cause minutes to be made in books or loose-leaf folders provided for the purpose of recording:
- (a) all appointments of officers made by the Directors;
 - (b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
 - (c) all resolutions and proceedings at all meetings of the Company, and of the Directors and of committees of Directors.
101. When the chairman of a meeting of the Directors signs the minutes of such meeting the same shall be deemed to have been duly held notwithstanding that all the Directors have not actually come together or that there may have been a technical defect in the proceedings.
102. A resolution in writing signed by all the Directors or all the members of a committee of Directors entitled to receive notice of a meeting of Directors or committee of Directors, as the case may be (an alternate Director, subject as provided otherwise in the terms of appointment of the alternate Director, being entitled to sign such a resolution on behalf of his appointer), shall be as valid and effectual as if it had been passed at a duly called and constituted meeting of Directors or committee of Directors, as the case may be. When signed a resolution may consist of several documents each signed by one or more of the Directors or his duly appointed alternate.
103. The continuing Directors may act notwithstanding any vacancy in their body but if and for so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number, or of summoning a general meeting of the Company, but for no other purpose.
104. The Directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.
105. Subject to any regulations imposed on it by the Directors, a committee appointed by the Directors may elect a chairman of its meetings. If no such chairman is elected, or if at any meeting the chairman is not present within fifteen minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairman of the meeting.
106. A committee appointed by the Directors may meet and adjourn as it thinks proper. Subject to any regulations imposed on it by the Directors, questions arising at any meeting shall be determined by a majority of votes of the committee members present and in case of an equality of votes the chairman shall have a second or casting vote.
107. All acts done by any meeting of the Directors or of a committee of Directors, or by any Person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.



DIVIDENDS

108. Subject to any rights and restrictions for the time being attached to any Shares, or as otherwise provided for in the Law and these Articles, the Directors may from time to time declare dividends (including interim dividends) and other distributions on Shares in issue and authorise payment of the same out of the funds of the Company lawfully available therefor.
109. Subject to any rights and restrictions for the time being attached to any Shares, the Company by Ordinary Resolution may declare dividends, but no dividend shall exceed the amount recommended by the Directors.
110. The Directors may, before recommending or declaring any dividend, set aside out of the funds legally available for distribution such sums as they think proper as a reserve or reserves which shall, in the absolute discretion of the Directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which those funds may be properly applied and pending such application may in the absolute discretion of the Directors, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.
111. Any dividend may be paid in any manner as the Directors may determine. If paid by cheque it will be sent through the post to the registered address of the Shareholder or Person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address or to such Person and such address as the Shareholder or Person entitled, or such joint holders as the case may be, may direct. Every such cheque shall be made payable to the order of the Person to whom it is sent or to the order of such other Person as the Shareholder or Person entitled, or such joint holders as the case may be, may direct.
112. The Directors when paying dividends to the Shareholders in accordance with the foregoing provisions of these Articles may make such payment either in cash or in specie.
113. Subject to any rights and restrictions for the time being attached to any Participating Shares, all dividends shall be declared and paid in such amounts as may be declared by the Director's in their sole and absolute discretion without a requirement to pay such dividends on a pro-rata basis as to the paid-up or par value of the Shares.
114. If several Persons are registered as joint holders of any Share, any of them may give effectual receipts for any dividend or other moneys payable on or in respect of the Share.
115. No dividend shall bear interest against the Company.

ACCOUNTS, AUDIT AND ANNUAL RETURN AND DECLARATION

116. The books of account relating to the Company's affairs shall be kept in such manner as may be determined from time to time by the Directors.
117. The books of account shall be kept at the Office, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
118. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not



being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by Ordinary Resolution.

119. The accounts relating to the Company's affairs shall only be audited if the Directors so determine, in which case the financial year end and the accounting principles will be determined by the Directors.
120. The Directors in each year shall prepare, or cause to be prepared, an annual return and declaration setting forth the particulars required by the Law and deliver a copy thereof to the Registrar of Companies in the Cayman Islands.

CAPITALISATION OF RESERVES

121. Subject to the Law and these Articles, the Directors may:
- (a) resolve to capitalise an amount standing to the credit of reserves (including a Share Premium Account, capital redemption reserve and profit and loss account), whether or not available for distribution;
 - (b) appropriate the sum resolved to be capitalised to the Shareholders in proportion to the nominal amount of Participating Shares (whether or not fully paid) held by them respectively and apply that sum on their behalf in or towards:
 - (i) paying up the amounts (if any) for the time being unpaid on Participating Shares held by them respectively, or
 - (ii) paying up in full unissued Participating Shares or debentures of a nominal amount equal to that sum,and allot the Participating Shares or debentures, credited as fully paid, to the Shareholders (or as they may direct) in those proportions, or partly in one way and partly in the other, but the Share Premium Account, the capital redemption reserve and profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Participating Shares to be allotted to Shareholders credited as fully paid;
 - (c) make any arrangements they think fit to resolve a difficulty arising in the distribution of a capitalised reserve and in particular, without limitation, where Participating Shares or debentures become distributable in fractions the Directors may deal with the fractions as they think fit;
 - (d) authorise a Person to enter (on behalf of all the Shareholders concerned) into an agreement with the Company providing for either:
 - (i) the allotment to the Shareholders respectively, credited as fully paid, of Participating Shares or debentures to which they may be entitled on the capitalisation, or
 - (ii) the payment by the Company on behalf of the Shareholders (by the application of their respective proportions of the reserves resolved to be capitalised) of the amounts or part of the amounts remaining unpaid on their existing Participating Shares,



and any such agreement made under this authority being effective and binding on all those Shareholders, and

- (e) generally do all acts and things required to give effect to any of the actions contemplated by this Article

SHARE PREMIUM ACCOUNT

- 122. The Directors shall in accordance with the Law establish a Share Premium Account and shall carry to the credit of such account from time to time a sum equal to the amount or value of the premium paid on the issue of any Share.
- 123. There shall be debited to any Share Premium Account on the redemption or purchase of a Share the difference between the nominal value of such Share and the redemption or purchase price provided always that at the discretion of the Directors such sum may be paid out of the profits of the Company or, if permitted by the Law, out of capital.

NOTICES

- 124. Any notice or document may be served by the Company or by the Person entitled to give notice to any Shareholder either personally, or by posting it airmail or air courier service in a prepaid letter addressed to such Shareholder at his address as appearing in the Register, or by electronic mail to any electronic mail address such Shareholder may have specified in writing for the purpose of such service of notices, or by facsimile should the Directors deem it appropriate. In the case of joint holders of a Share, all notices shall be given to that one of the joint holders whose name stands first in the Register in respect of the joint holding, and notice so given shall be sufficient notice to all the joint holders.
- 125. Any Shareholder present, either personally or by proxy, at any meeting of the Company shall for all purposes be deemed to have received due notice of such meeting and, where requisite, of the purposes for which such meeting was convened.
- 126. Any notice or other document, if served by:
 - (a) post, shall be deemed to have been served five clear days after the time when the letter containing the same is posted;
 - (b) facsimile, shall be deemed to have been served upon production by the transmitting facsimile machine of a report confirming transmission of the facsimile in full to the facsimile number of the recipient;
 - (c) recognised courier service, shall be deemed to have been served 48 hours after the time when the letter containing the same is delivered to the courier service; or
 - (d) electronic mail, shall be deemed to have been served immediately upon the time of the transmission by electronic mail.

In proving service by post or courier service it shall be sufficient to prove that the letter containing the notice or documents was properly addressed and duly posted or delivered to the courier service.



127. Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in accordance with the terms of these Articles shall notwithstanding that such Shareholder be then dead or bankrupt, and whether or not the Company has notice of his death or bankruptcy, be deemed to have been duly served in respect of any Share registered in the name of such Shareholder as sole or joint holder, unless his name shall at the time of the service of the notice or document, have been removed from the Register as the holder of the Share, and such service shall for all purposes be deemed a sufficient service of such notice or document on all Persons interested (whether jointly with or as claiming through or under him) in the Share.
128. Notice of every general meeting of the Company shall be given to:
- (a) all Shareholders holding Shares with the right to receive notice and who have supplied to the Company an address for the giving of notices to them, and
 - (b) every Person entitled to a Share in consequence of the death or bankruptcy of a Shareholder, who but for his death or bankruptcy would be entitled to receive notice of the meeting.

No other Person shall be entitled to receive notices of general meetings.

NON-RECOGNITION OF TRUSTS

129. Subject to the proviso hereto, no Person shall be recognised by the Company as holding any Share upon any trust and the Company shall not, unless required by law, be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or (except only as otherwise provided by these Articles or as the Law requires) any other right in respect of any Share except an absolute right to the entirety thereof in each Shareholder registered in the Register, provided that, notwithstanding the foregoing, the Company shall be entitled to recognise any such interests as shall be determined by the Directors.

WINDING UP

130. If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.
131. Subject to any rights and restrictions for the time being attributed to any Class or Series, the assets available for distribution among the Shareholders shall then be applied in the following priority:
- (a) first, in the payment to the holders of Participating Shares and Management Shares, *pari passu*, of a sum equal to the par value of the Participating Shares or Management Shares held by them; and
 - (b) second, in the payment of any balance to holders of Participating Shares, such payment being made in proportion to the number Participating Shares of the relevant Class and Series held.
132. If the Company shall be wound up, the liquidator may, with the sanction of an Ordinary Resolution divide amongst the Participating Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Participating Shareholders or different Classes. The liquidator may, with the like sanction, vest the whole or any part of such



assets in trustees upon such trusts for the benefit of the Participating Shareholders as the liquidator, with the like sanction shall think fit, but so that no Shareholder shall be compelled to accept any assets whereon there is any liability.

AMENDMENT OF ARTICLES OF ASSOCIATION

133. Subject to the Law and the rights attaching to the various Classes, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part.

CLOSING OF REGISTER OR FIXING RECORD DATE

134. For the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at any meeting of Shareholders or any adjournment thereof, or those Shareholders that are entitled to receive payment of any dividend, or in order to make a determination as to who is a Shareholder for any other purpose, the Directors may provide that the Register shall be closed for transfers for a stated period which shall not exceed in any case 40 days. If the Register shall be so closed for the purpose of determining those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders the Register shall be so closed for at least ten days immediately preceding such meeting and the record date for such determination shall be the date of the closure of the Register.
135. In lieu of or apart from closing the Register, the Directors may fix in advance a date as the record date for any such determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of the Shareholders and for the purpose of determining those Shareholders that are entitled to receive payment of any dividend the Directors may, at or within 90 days prior to the date of declaration of such dividend, fix a subsequent date as the record date for such determination.
136. If the Register is not so closed and no record date is fixed for the determination of those Shareholders entitled to receive notice of, attend or vote at a meeting of Shareholders or those Shareholders that are entitled to receive payment of a dividend, the date on which notice of the meeting is posted or the date on which the resolution of the Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of Shareholders. When a determination of those Shareholders that are entitled to receive notice of, attend or vote at a meeting of Shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof.

REGISTRATION BY WAY OF CONTINUATION

137. The Company may by Special Resolution resolve to be registered by way of continuation in a jurisdiction outside the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing. In furtherance of a resolution adopted pursuant to this Article, the Directors may cause an application to be made to the Registrar of Companies to deregister the Company in the Cayman Islands or such other jurisdiction in which it is for the time being incorporated, registered or existing and may cause all such further steps as they consider appropriate to be taken to effect the transfer by way of continuation of the Company.

MERGERS AND CONSOLIDATION

138. The Company may by Special Resolution resolve to merge or consolidate the Company in accordance with the Law.



DISCLOSURE

139. The Directors, or any authorised service providers (including the officers, the Secretary and the registered office agent of the Company), shall be entitled to disclose to any regulatory or judicial authority, or to any stock exchange on which the Shares or any Class or Series may from time to time be listed, any information regarding the affairs of the Company including, without limitation, information contained in the Register and books of the Company.

INDEMNITY

140. To the fullest extent permitted by law, no Director, Secretary, Assistant Secretary, committee member or other officer for the time being and from time to time of the Company (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be liable to the Company or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or Gross Negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).
141. Covered Person may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.
142. To the fullest extent permitted by law, the Company shall indemnify and save harmless Covered Persons (the "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and arise out of or in connection with the business of the Company, any investment made, or the performance by the Indemnitee of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnitee in connection with the Company, provided that an Indemnitee shall not be entitled to indemnification hereunder to the extent the Indemnitee's conduct constitutes willful misconduct or Gross Negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnitee's conduct constituted willful misconduct or Gross Negligence.
143. Expenses incurred by an Indemnitee in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnitee is not entitled to be indemnified hereunder.



144. The right of any Indemnitee to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnitee's successors, assigns and legal representatives

DISPUTE RESOLUTION

145. The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with these Articles or otherwise involving the Company, its Shareholders and/or any Covered Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

(a) Mediation:

- (i) any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect;
- (ii) the mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute;
- (iii) the mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings; and
- (iv) each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration:

if a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in these Articles and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of these Articles will control:

- (i) the arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any



issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the United States Federal Arbitration Act ("FAA"), and resolved by the arbitrators, *provided, however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a State arbitration act of the United States preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures;

- (ii) the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law,
- (iii) the party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive;
- (iv) no discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted;
- (v) all aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a



reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term; and

- (vi) the result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.





Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

Share Class: **Participating**
 Nominal Value: **USD 0.01**
 Voting Rights: Yes
 Conditional: NO

Member Name & Address	Date Entered as a Member	Transaction Type	Number of Shares	Notes	Cert #	% Paid	Total Share Holding	Date Ceased to be a Member
The Highland Capital Management Partners Charitable Trust #2 Highland Capital Management, L.P. 13455 Noel Rd, Suite 800 Dallas TX 75240 USA	7 Nov 2011	Allotment	300.00	7 Nov 2011 : Allotment of 300.0 Participating share(s) for USD0.01 / share to The Highland Capital Management Partners Charitable Trust #2 pursuant to minutes/resolutions dated 07 Nov 2011	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Kansas City Foundation, Inc pursuant to resolutions dated 30 Nov 2011				
		New Certificate	200.00	30 Nov 2011 : New certificate No. 0 issued for remaining balance of 200.0 Participating share(s)	No Cert			
		Transfer	(100.00)	30 Nov 2011 : Transfer of 100.0 Participating share(s) from The Highland Capital Management Partners Charitable Trust #2 to Highland Dallas Foundation, Inc				

Date printed: 19 May, 2021

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

[1 / 3]

004404

EXHIBIT 30
 PATRICK_000122



Registration No.: 263805
 Date of Incorporation: 27 October 2011
 Client No.: KY059904

REGISTER OF MEMBERS
 FOR:
CHARITABLE DAF HOLDCO, LTD

<p>Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT 306 W. 7th St., Suite 1045 Fort Worth TX 76102 USA</p>	<p>13 Aug 2015</p>	<p>Allotment</p>	<p>5.00</p>	<p>13 Aug 2015 : Allotment of 5.0 Participating share(s) for USD0.01 / share to Community Foundation of North Texas ("CFNT"), for the Highland Capital Management, L.P. Charitable Fund at CFNT pursuant to minutes/resolutions dated 12 Aug 2015</p>	<p>No Cert</p>	<p>100</p>	<p>100.00</p>	<p>Partners Charitable Trust #2 to Highland Santa Barbara Foundation, Inc pursuant to resolutions dated 30 Nov 2011</p>	
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Notes:

EXHIBIT 12

EXHIBIT 31

004407

At all relevant times, HCM was headed by CEO and potential party James P. Seery (“Seery”). Seery negotiated a settlement with the several Harbourvest² entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for \$22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value (“NAV”) of those interests. Upon information and belief, the NAV of HCLOF’s assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM’s internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

² “Harbourvest” refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 Global Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.
2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.
3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.
4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.
5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.
6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the “Harbourvest interests”).

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the “HCM Bankruptcy” and the Court is the “Bankruptcy Court”).

The Harbourvest Settlement with Highland Capital Management in Bankruptcy

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around \$15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost \$15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than \$7.5 million). Harbourvest claimed that it had lost over \$100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over \$300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some \$52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities³)—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of \$15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

³ Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing \$45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around \$31,500,000 from the allowed claims.

33. As part of the consideration for the \$45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating \$22.5 million of the net value of the \$45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., \$31.5 million—was realized, because \$22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true “settlement” for Harbourvest's legal claims was closer to \$9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for \$9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for \$22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of \$41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over \$34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the “net asset value” of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks⁴ meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was \$22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

⁴ The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over \$20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay \$22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as \$22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that “[Judge Jernigan] is laughing at you” and “we are coming after you” in response to the latter’s attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery’s plan to liquidate the funds.

54. HCM’s threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court’s sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION *Breaches of Fiduciary Duty*

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.⁵

⁵ See e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§ 206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). See also Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own”) (citing Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the “RIA Agreement”). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF’s attorney-in-fact for certain actions, such as “to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner.” RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets “in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will provided to the General Partner upon request.” RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM’s fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 (“Rule 10b5-1”) explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM’s own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.⁶

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

⁶ See Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) (“[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship.”); see also *SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) (“Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be ‘in the offer or sale of any’ security or ‘in connection with the purchase or sale of any security.’”).

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Harbourvest's 49.98% interest in HCLOF was worth around \$22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of \$24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over \$25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the “Company Agreement”).

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for \$22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of \$22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for \$22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of \$20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a \$22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the illicit purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to 18 U.S.C. § 1961(1)(B) and (D).

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted through the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of \$72,969,492 as of November 30, 2020. Harbourvest's share of that would have been \$36,484,746.

124. The HCLOF net asset value had reached \$86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was \$22.5 million, when it was actually closer to \$43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM’s motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser’s Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios’ securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing “equitization” of CSS Medical’s debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly \$30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one’s conduct of an enterprise to include “fraud in connection with a [bankruptcy case]”. The Advisers’ Act antifraud provisions require full transparency and accountability to an advisers’ investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a “scheme or artifice ... for obtaining money or property by means of false ... pretenses, [or] representations[.]”

132. Accordingly, because Defendants’ conduct violated the wire fraud and mail fraud laws, and the Advisers’ Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, 18 U.S.C. § 1964.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys’ fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff’s contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as \$22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

- a. Actual damages;
- b. Disgorgement;
- c. Treble damages;
- d. Exemplary and punitive damages;
- e. Attorneys' fees and costs as allowed by common law, statute or contract;
- f. A constructive trust to avoid dissipation of assets;
- g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Plaintiffs

From: Rhett Miller [rhett.miller@nexbank.com]
Sent: 3/23/2021 5:38:27 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patric]
CC: Michelle Johnson [michelle.johnson@nexbank.com]; Kevin Olding [kevin.olding@nexbank.com]; Blake Haas [Blake.Haas@nexbank.com]; Isaac J. Brown [isaac.brown@wickphillips.com]; Shawn Raver [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4f4ebee30fcd40028ad898ef79624586-Shawn Raver]
Subject: NexBank Loan to CLO Holdco, Ltd. - Potential Director Change

Mark:

I understand there may be a transition from Grant Scott being the Director of CLO Holdco, Ltd.

In order to process a waiver under our loan documents we will need to know: (1) the effective date of his resignation; (2) who will take his place as the new Director; and (3) a formal request from the Borrower for a waiver.

Let me know if you have any questions.

R



Rhett Miller
EVP & Chief Credit Officer
NexBank Capital, Inc.
2515 McKinney Avenue, Suite 1100
Dallas, TX 75201

o: 972-934-4705
c: 214-676-0366
rhett.miller@nexbank.com

EXHIBIT 34

004435

PATRICK_000915

From: Mark Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F754733CCFBC4B15B32F78F40FD4ABF5-MARK PATRIC]
Sent: 3/24/2021 8:23:35 PM
To: Grant Scott [gscott@scottlawgroupllc.com]
Subject: Re: Document Sign Request

Thank you Grant.

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From: Grant Scott <gscott@scottlawgroupllc.com>
Sent: Wednesday, March 24, 2021 3:02:33 PM
To: Mark Patrick <MPatrick@highgateconsultants.com>
Cc: Grant Scott <gscott@scottlawgroupllc.com>
Subject: FW: Document Sign Request

Mark,

I've signed the documents. Thank you for all your hard work. I'm sorry this will drag on for you for the next few months.

Please let me know what else you might need from me.

Regards,
Grant

From: Mark Patrick <MPatrick@highgateconsultants.com>
Sent: Wednesday, March 24, 2021 1:18:58 PM
To: Grant Scott <gscott@scottlawgroupllc.com>
Subject: Document Sign Request

Grant,

The process of fully institutionalizing the DAF will take much longer than I ever previously imagined (it may take months now), and therefore, I attach for your counter-signature next to mine, what is the only viable interim solution.

Mark

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EXHIBIT 35

004436

PATRICK_001109

From: Chris Rice [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=313621177B3D4075AD0E6653D0326F44-CHRIS RICE]
Sent: 3/25/2021 10:43:30 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patric]; Frank Waterhouse [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc6eb5ff9f3746ae83b52b7544607a70-Frank Water]
CC: Hayley Eliason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e65b657b43164d49981d54391777f521-Hayley Elia]; Will Mabry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7e647812dd3743f8917226d33650d622-Will Mabry]; gscott@scottlawgroupllc.com
Subject: RE: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

Mark –

Below, please find a revised total that we will send to NexPoint Advisors LP tomorrow.

Principal	\$350,000.00
Interest	\$460.85
Total	\$350,460.85

Thanks

Chris Rice | Manager – Fund Analysis
Skyview Group
crice@highgateconsultants.com
(m) 801-669-1297

From: Mark Patrick <MPatrick@highgateconsultants.com>
Sent: Thursday, March 25, 2021 4:39 PM
To: Frank Waterhouse <FWaterhouse@highgateconsultants.com>
Cc: Hayley Eliason <HEliason@highgateconsultants.com>; Will Mabry <WMabry@highgateconsultants.com>; Chris Rice <CRice@highgateconsultants.com>; gscott@scottlawgroupllc.com
Subject: Re: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

I approve this loan being repaid.

Grant - please execute as directed. (Thank you for your patience during this transition period)

Mark

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From: Frank Waterhouse <FWaterhouse@highgateconsultants.com>
Sent: Thursday, March 25, 2021 4:37:18 PM
To: Mark Patrick <MPatrick@highgateconsultants.com>
Cc: Hayley Eliason <HEliason@highgateconsultants.com>; Will Mabry <WMabry@highgateconsultants.com>; Chris Rice <CRice@highgateconsultants.com>; gscott@scottlawgroupllc.com <gscott@scottlawgroupllc.com>
Subject: \$350K Loan Repayment from CLO Holdco to NexPoint Advisors

EXHIBIT 36
004437

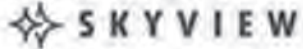
PATRICK_000520

Mark-

CLO Holdco took a loan of \$350k in July of last year from NexPoint Advisors. Given the cash situation has improved dramatically recent, we are asking for your approval for this loan to be repaid. If you approve, the team will work to make the payment. Please let me know if you have any other questions.

Regards

Frank Waterhouse
Chief Financial Officer



Skyview Group
fwaterhouse@skyview-group.com
214-550-4638

004438

PATRICK_000521

From: Chris Rice [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=313621177B3D4075AD0E6653D0326F44-CHRIS RICE]
Sent: 4/29/2021 3:31:19 PM
To: Mark Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f754733ccfbc4b15b32f78f40fd4abf5-Mark Patrick]
CC: Frank Waterhouse [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc6eb5ff9f3746ae83b52b7544607a70-Frank Water]
Subject: RE: Update on the accounts
Attachments: RE: CLO Holdco LTD Accounts

We're still working with JPM and Jefferies to get everything transitioned over completely. Once that is done, we can focus on getting the account holders updated.

For NexBank, Trini said that compliance was going to request an individual form for each of the accounts (see attached). I just have not had the time to fill out the forms for all the accounts yet, but it is on my radar.

Chris Rice | Manager – Fund Analysis



CRice@Skyviewgroup.com
(m) 801-669-1297

From: Mark Patrick <MPatrick@skyviewgroup.com>
Sent: Thursday, April 29, 2021 10:27 AM
To: Chris Rice <CRice@skyviewgroup.com>
Cc: Frank Waterhouse <FWaterhouse@skyviewgroup.com>
Subject: Update on the accounts

How is that going and what is left to do?

Sent via the Samsung Galaxy S21 Ultra 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

EXHIBIT 37

004439

PATRICK_000970

From: Mark Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F754733CCFBC4B15B32F78F40FD4ABF5-MARK PATRIC]
Sent: 4/5/2021 4:04:26 PM
To: Grant Scott [gscott@scottlawgroupllc.com]
Subject: Nexbank accounts and director on HDF amd HKCF

Grant,

We are still in the process of changing the account access to myself. I hope this wont take longer than one week.

Further, in the near future Dallas Foundation will appoint a director to replace you on the board of HDF. The same is being done for Highland Kansas City Foundation. This may take 2-4 weeks.

During this interim period, we may make requests of you and are fine compensating you until a completed transition happened.

Please reach out to Chris Rice for wire payments for your services, although you should feel no obligation to be paid or not paid. The decision rests with you.

I appreciate your continued help during this transition.

Mark

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EXHIBIT 38

004440

PATRICK_001356

From: Grant Scott [gscott@scottlawgroupllc.com]
Sent: 4/1/2021 7:06:59 PM
To: Chris Rice [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=313621177b3d4075ad0e6653d0326f44-Chris Rice]
CC: Grant Scott [gscott@scottlawgroupllc.com]
Subject: RE: Wire Instructions

Hi,

Because of my reduced role going forward, which will completely terminate at some point, I think it's best to avoid any further trustee fees.

Okay?

Thanks,
G

From: Chris Rice <CRice@highgateconsultants.com>
Sent: Thursday, April 1, 2021 3:04 PM
To: Grant Scott <gscott@scottlawgroupllc.com>; 'Scott, Grant' <gscott@myersbigel.com>
Cc: Will Mabry <WMabry@highgateconsultants.com>
Subject: Wire Instructions

Grant –

When they moved the NexBank accounts around last month, the old wire templates got deleted, and I do not have your wire instructions on file.

Can you please provide me with your preferred wire instructions for delivery/receipt of the trustee fee?

Thanks

Chris Rice | Manager – Fund Analysis
Skyview Group
crice@highgateconsultants.com
(m) 801-669-1297

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EXHIBIT 39
004441

PATRICK_001090

SECOND AMENDED AND RESTATED SERVICE AGREEMENT

THIS SECOND AMENDED AND RESTATED SERVICE AGREEMENT (this “*Agreement*”) entered into to be effective from the 1st day of January, 2017 (the “*Effective Date*”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“*HCMLP*”), Charitable DAF Fund, L.P., a Cayman Islands exempted limited partnership (the “*Fund*”), Charitable DAF GP, LLC, a Delaware limited liability company (the “*General Partner*”), and any affiliate of the General Partner that becomes a party hereto. Each of the signatories hereto is individually a “*Party*” and collectively, the “*Parties*”.

RECITALS

A. HCMLP, the Fund and the General Partner entered into that certain Shared Services Agreement dated January 1, 2012 (the “*Original Agreement*”);

B. The Parties amended and restated the Original Agreement in its entirety on the terms as set forth in that certain Amended and Restated Agreement effective as of July 1, 2014 (the “*Existing Agreement*”);

C. The Parties desire to amend and restated the Existing Agreement in its entirety on the terms set forth herein;

C. Since the inception of the Fund, the Parties have intended that the Fund and the General Partner would incur reasonable arm’s-length fees in connection with the operation of the Fund and management and reporting activities with respect to Fund assets;

D. HCMLP has incurred and will continue to incur substantial expenses on behalf of the Fund and the General Partner in performing the Services (as defined below);

E. The Parties agree that it is in their mutual best interests for HCMLP to continue to provide the Services to the General Partner, the Fund and other Recipients (as defined below) and for HCMLP to be provided sufficient financial incentives to continue to provide the Services;

F. The General Partner and the Fund desire to provide HCMLP sufficient compensation for performing the Services and to reimburse HCMLP for expenses incurred on their behalf;

G. During the Term (as defined below), HCMLP will provide to the General Partner, on behalf of the Fund and/or its subsidiaries, certain services as more fully described herein, subject to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, and the Existing Agreement is hereby amended and restated in its entirety as follows:

ARTICLE I DEFINITIONS

“*Advisory Agreement*” means that certain Second Amended and Restated Investment Advisory Agreement, dated effect as of the Effective Date, by and among the Parties, as amended, restated, modified and supplemented from time to time.

“*Affiliate*” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “*control*” (including, with correlative meanings, the terms “*controlled by*” and “*under common control with*”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“*Agreement*” has the meaning set forth in the preamble.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“*Dispute*” has the meaning set forth in Section 7.14.

“*Effective Date*” has the meaning set forth in the preamble.

“*Enforcement Court*” has the meaning set forth in Section 7.14.

“*Existing Agreement*” has the meaning set forth in the recitals.

“*Fund*” has the meaning set forth in the preamble.

“*General Partner*” has the meaning set forth in the preamble.

“*Governmental Entity*” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“*HCMLP*” has the meaning set forth in the preamble.

“*Liabilities*” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“*Loss*” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term “*Loss*” will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“*Management Fee*” has the meaning set forth in the Advisory Agreement.

“*New Service*” has the meaning set forth in Section 2.03.

“*Original Agreement*” has the meaning set forth in the recitals. “*Party*” or “*Parties*” has the

meaning set forth in the preamble.

“**Person**” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“**Recipient**” means the General Partner, the Fund, and any of the Fund’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Services.

“**Service Provider**” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Services.

“**Service Standards**” has the meaning set forth in Section 4.01.

“**Services**” shall have the meaning set forth in Section 2.01.

“**Subsidiary**” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“**Tax**” or “**Taxes**” means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Services; and (ii) tax-related surcharges or fees that are related to the Services identified and authorized by applicable tariffs.

“**Term**” has the meaning set forth in Section 5.01.

ARTICLE II SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Services, each as requested by Recipient and as described more fully on Annex A attached hereto (the “**Services**”).

Section 2.02 Changes to the Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Service in order to reflect new procedures, processes or other methods of providing such Service, including modifying the applicable fees for such Service to reflect the then current fair market value of such service (a “**Change**”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “**Change Request**”).

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Service in any material respect or increase Recipient’s cost for such Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the

implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Services not otherwise specifically listed in Section 2.01 (a “*New Service*”). Any agreement between the Parties on the terms for a New Service must be in accordance with the provisions of Article III and Article IV hereof, will be deemed to be an amendment to this Agreement and such New Service will then be a “*Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III PAYMENT OF FEES; TAXES

Section 3.01 Management Fee. The Fund shall pay the Service Provider the Management Fee in accordance with the terms and subject to the conditions set forth in the Advisory Agreement.

Section 3.02 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Services provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Services as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Services, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 3.02 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE IV SERVICE PROVIDER RESPONSIBILITIES

Section 4.01 Service Provider General Obligations. Service Provider will provide the Services to Recipient, subject to the requirements under Sections 3.01 and 3.02 herein and subject to reimbursement of permitted expenses in accordance with the Investment Advisory Agreement entered into concurrently herewith, on a non-discriminatory basis and will provide the Services in the same manner as if it were providing such services on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 4.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records with respect to the Services in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Services, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 4.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE V TERM AND TERMINATION

Section 5.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 7.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 5.02.

Section 5.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VI
LIMITED WARRANTY

Section 6.01 Limited Warranty. Service Provider will perform the Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Services under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Services for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Service, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE VII
MISCELLANEOUS

Section 7.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or Recipient or their respective successors or assigns. The Parties understand and agree that this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. No Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Services.

Section 7.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 7.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 7.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 7.05 Governing Law. Subject to Section 7.14, this Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 7.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 7.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 7.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 7.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 7.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Chief Legal Officer
Fax: (972) 628-4147

If to the General Partner or the Fund, addressed to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Fax: (919) 854-1401

Section 7.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 7.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 7.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 7.14 Jurisdiction; Venue; Waiver of Jury Trial. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“*Dispute*”) shall be submitted exclusively to the U.S. District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, and any appellate court thereof (“*Enforcement Court*”). Each Party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including administrative, arbitration, or litigation, other than the Enforcement Court. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) “or” is not exclusive; (vii) “including” and “includes” will be deemed to be followed by “but not limited to” and “but is not limited to, “respectively; (viii) any definition of or reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: 6/21/17

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

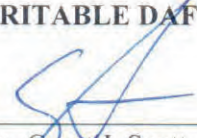
IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers to be effective from the Effective Date.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____
Name: James Dondero
Title: President
Date:

CHARITABLE DAF GP, LLC

By:  _____
Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By:  _____
Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

Annex A

Services

Finance & Accounting

- Book keeping
- Cash management
- Cash forecasting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management
- Valuation

Tax

- Tax audit support
- Tax planning
- Tax prep and filing

Legal

- Document review and preparation

Trading

- Trade execution
- Risk management
- Trade settlement
- General operations

Facilities

Public Relations Support

Information Technology Infrastructure Support

SECOND AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTMENT ADVISORY AGREEMENT (this “*Agreement*”), dated to be effective from January 1, 2017 (the “*Effective Date*”) is entered into by and between **Charitable DAF Fund, L.P.**, a Cayman Islands exempted limited partnership (the “*Fund*”), **Charitable DAF GP, LLC**, a limited liability company organized under the laws of the State of Delaware (the “*General Partner*”), the general partner of the Fund, and **Highland Capital Management, L.P.**, a limited partnership organized under the laws of the State of Delaware (the “*Investment Advisor*”). Each of the signatories hereto is sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the Fund, the General Partner and the Investment Advisor entered into that certain Investment Advisory Agreement dated January 1, 2012 (the “*Original Agreement*”);

WHEREAS, the Parties amended and restated the Original Agreement in its entirety on the terms set forth in that certain Amended and Restated Investment Advisory Agreement dated July 1, 2014 (the “*Existing Agreement*”);

WHEREAS, the parties desire to amend and restate the Existing Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree, and the Existing Agreement is hereby amended and restated in its entirety, as follows:

1. Investment Advisory Services. Subject to Section 7, the Investment Advisor shall act as investment advisor to the Fund, the General Partner with respect to the Fund and its subsidiaries and shall provide investment advice with respect to the investment and reinvestment of the cash, Financial Instruments and other properties comprising the assets and liabilities of the Fund and its subsidiaries.

2. Custody. The Financial Instruments shall be held in the custody of Jefferies & Company, Inc. or one or more banks selected by the General Partner (each such bank, a “Custodian”). The General Partner will notify the Investment Advisor promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the General Partner. At no time shall the Investment Advisor have possession of or maintain custody over any of the Financial Instruments. The Investment Advisor shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

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3. Authority of the Investment Advisor. Subject to Section 7 of this Agreement, the Investment Advisor shall advise the General Partner on behalf of the Fund and/or its subsidiaries with respect to:

(a) investing, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "**Financial Instruments**"), and the sale of Financial Instruments short and covering such sales.

(b) engaging in such other lawful Financial Instruments transactions;

(c) research and analysis;

(d) purchasing Financial Instruments and holding them for investment;

(e) entering into contracts for or in connection with investments in Financial Instruments;

(f) investing in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;

(g) possessing, transferring, mortgaging, pledging or otherwise dealing in, and exercising all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Fund and/or its subsidiaries;

(h) lending, either with or without security, any Financial Instruments, funds or other properties of the Funds, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Fund;

(i) opening, maintaining and closing accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;

(j) opening, maintaining and closing accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combining purchase or sale orders on behalf of the Fund with orders for other accounts to which the Investment Advisor or any of its affiliates provides investment services (“*Other Accounts*”) and allocating the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts;

(l) entering into arrangements with brokers to open “average price” accounts wherein orders placed during a trading day are placed on behalf of the Fund and Other Accounts and are allocated among such accounts using an average price;

(m) organizing one or more corporations and other entities formed to hold record title, as nominee for the Fund and/or its subsidiaries (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Fund and/or its subsidiaries;

(n) causing the Fund and/or its subsidiaries to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Investment Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engaging personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants and investment bankers); and

(p) voting of Financial Instruments, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

4. Policies of the Fund. The activities engaged in by the Investment Advisor on behalf of the Fund and/or its subsidiaries shall be subject to the policies and control of the General Partner.

The Investment Advisor shall submit such periodic reports to the General Partner regarding the Investment Advisor's activities hereunder as the General Partner may reasonably request and a representative of the Investment Advisor shall be available to meet with the General Partner and/or any other representative of the Fund or its subsidiaries as reasonably requested by the General Partner.

In furtherance of the foregoing, the General Partner hereby appoints the Investment Advisor as the Fund's attorney-in-fact, with full power of authority to act in the Fund's name and on its behalf with respect to the Fund, as follows:

(a) to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner;

(b) to execute and combine purchase or sale orders on behalf of the Fund with orders for Other Accounts and allocate the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts; *provided, however*, that such purchase or sale orders shall be market rates;

(c) to direct the Custodian to deliver funds or the Financial Instruments, but only in the course of effecting trading and investment transactions for the Fund and subject to such restrictions as may be contained in the custody agreement between the Custodian and the Fund;

(d) to enter into contracts, provide certifications or take any other actions necessary to effect any of the foregoing transactions; and

(e) to select brokers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker-dealer's expertise in the relevant market or sector; the extent to which the broker-dealer makes market in the security or has an access to such market; the broker-dealer's skill in positioning the relevant market; the broker-dealer's facilities, reliability, promptness and financial stability; the broker-dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; and other factors deemed appropriate by the Investment Advisor.

5. Valuation of Financial Instruments. Financial Instruments will be valued in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided to the General Partner upon request.

6. Status of the Investment Advisor. The Investment Advisor shall, for all purposes, be an independent contractor and not an employee of the General Partner or the Fund or its subsidiaries, nor shall anything herein be construed as making the Fund or its subsidiaries or the General Partner, a partner, member or co-venturer with the Investment Advisor or any of its affiliates or clients. The Investment Advisor shall have no authority to act for, represent, bind or obligate the Fund or its subsidiaries or the General Partner except as specifically provided herein.

7. Investments. ALL ULTIMATE INVESTMENT DECISIONS WITH RESPECT TO THE FUND AND ITS SUBSIDIARIES SHALL AT ALL TIMES REST SOLELY WITH THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY, IT BEING EXPRESSLY UNDERSTOOD THAT THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY SHALL BE FREE TO ACCEPT AND OR REJECT ANY OF THE ADVICE RENDERED BY THE INVESTMENT MANAGER HEREUNDER FOR ANY REASON OR FOR NO REASON.

8. Reimbursement by the General Partner. The Investment Advisor may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the General Partner with respect to the Fund and/or its subsidiaries (any such appointee, a "*Sub-Advisor*"), including, but not limited to, any affiliate of the Investment Advisor, but payment for any such services shall be assumed by the Investment Advisor, and, therefore, neither the General Partner nor the Fund or any of its subsidiaries shall have any liability therefor; *provided, however*, that the Investment Advisor, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the General Partner with respect to the Fund and/or its subsidiaries hereunder, and the Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

9. Expenses.

(a) The Fund shall pay or reimburse the Investment Advisor and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Fund, any taxes imposed upon the Fund (including, but not limited to, collateralized debt obligations managed by the Investment Advisor or its affiliates), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Investment Advisor. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Investment Advisor's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Fund are paid by the Investment Advisor or by any Sub-Advisor, the Fund shall reimburse the Investment Advisor (or Sub-Advisors, as applicable) for such expenses so long as such expenses are at market rates.

10. Fees.

(a) The Fund shall pay the Investment Advisor a quarterly fee (the “**Management Fee**”) equal to 2.0% per annum (0.5% per quarter) of the Net Assets (as defined below) of the Fund, payable in advance at and calculated as of the first business day of each calendar quarter. For purposes of calculating the Management Fee, the Net Assets of the Fund will be determined before giving effect to any of the following amounts payable by the Fund generally or in respect of any Investment which are effective as of the date on which such determination is made: (i) any fee payable to the Investment Advisor as of the date on which such determination is made; (ii) any capital withdrawals or distributions payable by the Fund which are effective as of the date on which such determination is made; and (iii) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdback or other amounts specially allocated ending as of the date on which such determination is made. The Management Fee shall be prorated for partial periods and any applicable excess fees should be returned to the Fund by the Investment Advisor. Capital contributions made to the Fund after the commencement of a calendar quarter shall be subject to a prorated Management Fee based on the number of days remaining during such quarter.

(b) Subject to clauses (c) and (d) below, at the end of each Calculation Period (as defined below), an amount equal to 20% of the net capital appreciation of the Fund’s Investments (as defined below) after deducting the Management Fee shall be paid to the Investment Advisor (the “**Performance Fee**”); *provided, however*, that the net capital appreciation upon which the calculation of the Performance is based shall be reduced to the extent of any unrecovered balance remaining in the Loss Recovery Account (as defined below) maintained on the books and records of the Fund. The amount of the unrecovered balance remaining in the Loss Recovery Account at the time of calculating the Performance Fee shall be the amount existing immediately prior to its reduction pursuant to the second clause of the second sentence of clause (c) below.

(c) There shall be established on the books of the Fund a memorandum account (the “**Loss Recovery Account**”), the opening balance of which shall be zero. At the end of each Calculation Period, the balance in the Loss Recovery Account shall be adjusted as follows: first, if there has been, in the aggregate, net capital depreciation of the Fund’s Investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period (or with respect to the initial Calculation Period, since the Effective Date), an amount equal to such net capital depreciation shall be credited to the Loss Recovery Account, and, second, if there has been, in the aggregate, net capital appreciation of the Fund’s investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period, an amount equal to such net capital appreciation, before taking into account any Performance Fee to be paid to the Investment Advisor, shall be debited to and reduce any unrecovered balance in the Loss Recovery Account, but not below zero. Solely for purposes of this paragraph, in determining the Loss Recovery Account, net capital appreciation and net capital

depreciation for any applicable Calculation Period shall be calculated by taking into account the amount of the Management Fee paid for such period.

(d) In the event that all or a portion of the Fund's capital is distributed or withdrawn while there exists an unrecovered balance in the Loss Recovery Account, the unrecovered balance in the Loss Recovery Account shall be reduced as of the beginning of the next Calculation Period by an amount equal to the product obtained by multiplying the balance in such Loss Recovery Account by a fraction, the numerator of which is the amount distributed or withdrawn with respect to the immediately preceding distribution or withdrawal date, and the denominator of which is the total fair value of the Fund's Investment immediately prior to such distribution or withdrawal.

(e) For purposes of this Section 10, the net capital appreciation and net capital depreciation of the Fund's Investments for any given period will be calculation in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided upon the General Partner's request. As soon as reasonably practicable following the end of a Calculation Period, the Investment Advisor shall deliver, or cause to be delivered, to the General Partner a statement showing the calculation of the Performance Fee, if any, with respect to such Calculation Period. The Performance Fee, if any, shall be payable within three (3) business days of the General Partner's receipt of such statement.

(f) Payments due to the Investment Advisor shall be made by wire transfer to:

Bank Name: Compass Bank
ABA#: 113010547
FBO: Highland Capital Management, L.P. (Master Operating Account)
Acct#: 0025876342

(g) For purposes of this Section 10, the following terms have the definitions set forth below:

"Calculation Period" means the period commencing on the Effective Date (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period, and ending as of the close of business on the first to occur of the following: (i) the last day of a calendar year; (ii) the distribution or withdrawal of capital of the Fund (but only with respect to such distributed or withdrawn amount); (iii) the permitted transfer of all or any portion of a partner's interest in the Fund; and (iv) the final capital distribution of the Fund following its dissolution;

"Investments" means all investments, securities, cash, receivables, financial instruments, contracts and other assets, whether tangible or intangible, owned by the Fund;

“*Net Assets*” means, with respect to the Fund as of any date, the excess of the total fair value of all Investments over the total liabilities, debts and obligations of the Fund, in each case, calculated on an accrual basis in accordance with accounting principles generally accepted in the United States and the then current valuation policy of the Service Provider, a copy of which will be provided to the General Partner upon request; and

“*Services Agreement*” means that certain Second Amended and Restated Service Agreement, dated effective as of the Effective Date, by and among the Parties, as amended, restated, modified and supplemented from time to time.

11. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Investment Advisor, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including parties acting as agents for the execution of transactions) (each, a “*Covered Person*” and collectively, “*Covered Persons*”) shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the General Partner or the Fund or any of its subsidiaries or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the General Partner or the Fund, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the General Partner or the Fund, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the General Partner or the Fund or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on behalf of the General Partner or the Fund or any of its subsidiaries, (iii) any act or omission by the General Partner or the Fund or any of its subsidiaries, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the General Partner or the Fund or any of its subsidiaries selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the General Partner or the Fund or any of its subsidiaries or in furtherance of the business of the General Partner or the Fund or any of its subsidiaries in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the General Partner and the Fund and its subsidiaries shall indemnify and hold harmless Covered Persons (the “*Indemnified*”

Party”), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnified Party and arise out of or in connection with the business of the General Partner or the Fund or any of its subsidiaries, any investment made under or in connection with this Agreement, or the performance by the Indemnified Party of Covered Person’s responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnified Party in connection with the General Partner or the Fund or any of its subsidiaries, provided that an Indemnified Party shall not be entitled to indemnification hereunder to the extent the Indemnified Party’s conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Party’s conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnified Party in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the General Partner prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnified Party is not entitled to be indemnified hereunder.

(f) The right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnified Party’s successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Investment Advisor and each Indemnified Party will generally not be liable to the General Partner or the Fund for any act or omission (or alleged act or omission), absent bad faith, willful misconduct, fraud or gross negligence, and the General Partner and the Fund will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the General Partner, the Fund or its subsidiaries, absent bad faith, willful misconduct, fraud or gross negligence. As a result of these provisions, the General Partner, the Fund and its subsidiaries, as applicable (not the Investment

Advisor or any other Indemnified Party) will be responsible for any Losses resulting from trading errors and similar human errors, absent bad faith, willful misconduct, fraud or gross negligence or the ability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Investment Advisor and its affiliates on behalf of the Fund and/or its subsidiaries, the General Partner acknowledges that trading errors (and similar errors) will occur and that the General Partner will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Investment Advisor or its affiliates.

12. Activities of the Investment Advisor and Others. The Investment Advisor, and its affiliates may engage, simultaneously with their investment management activities on behalf of the Fund, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Fund. Notwithstanding the foregoing, the Investment Advisor and its affiliates shall devote as much time to provide advisory service to the General Partner with respect to the management of the Fund's assets as the Investment Advisor deems necessary and appropriate. In addition, the Investment Advisor or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, the investment advice provided by the Investment Advisor to the General Partner with respect to the Fund. The Investment Advisor may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from advice given to, or securities recommended or bought for, the Fund, even though their investment objectives may be the same or similar. The Investment Advisor may recommend transactions in securities and other assets in which the Investment Advisor has an interest, including securities or other assets issued by affiliates of the Investment Manager. Each of the General Partner and the Fund acknowledges that it has received, reviewed and had an opportunity with respect to (a) a copy of Part 2 of the Investment Advisor's Form ADV, and (b) the supplemental disclosures attached hereto as Exhibit A, each of which further describes conflicts of interest relating to the Investment Advisor, its affiliates and their respective advised accounts.

13. Term. This Agreement shall remain in effect through an initial term concluding December 31, 2017 and shall be automatically extended for additional one-year terms thereafter, except that it may be terminated by the Investment Advisor, on the one hand, or by the General Partner and the Fund, on the other hand, upon at least 90 days' prior written notice to the General Partner or the Investment Advisor, as the case may be, prior to General Partner's fiscal year-end.

14. Miscellaneous.

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Investment Advisor, to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Telephone Number: (972) 628-4100
Facsimile Number: (972) 628-4147

If to the General Partner or the Fund, to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Telephone Number: (919) 854-1407
Facsimile Number: (919) 854-1401

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Fund. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the General Partner, the Fund, the Investment Advisor, each Indemnified Party and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (*e.g.*, officers, partners and personnel of the Investment Advisor and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; provided; however, that the Investment Advisor may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(e) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed in that State.

(f) Jurisdiction; Venue; Waiver of Jury Trial. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“*Dispute*”) shall be submitted exclusively to the U.S. District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, and any appellate court thereof (“Enforcement Court”). Each Party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including administrative, arbitration, or litigation, other than the Enforcement Court. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Nothing in this Section 14(f) shall be construed to limit either party’s right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10, 11 and 14 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons’ firm or company may require in the context thereof.


(k) Arm's-Length Agreement. The General Partner and the Fund have approved this Agreement and reviewed the activities described in Section 12 and in the Investment Advisor's Form ADV and the risks related thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: 6/21/17

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____

Name: James Dondero
Title: President
Date:

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

EXHIBIT A

Supplemental Disclosures

Potential Conflicts of Interest

The scope of the activities of Highland Capital Management, L.P. (the “*Investment Adviser*”), its affiliates, and the funds and clients managed or advised by the Investment Adviser or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on Charitable DAF Fund, L.P. and its subsidiaries (collectively, the “*Fund*”) in the future that cannot be foreseen or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts. Additional conflicts are described in the Investment Adviser’s Form ADV. You are urged to review the Investment Adviser’s Form ADV in its entirety prior to investing in the Fund.¹

Highland Group & Highland Accounts. None of the Investment Adviser, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “*Highland Group*”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Adviser is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Adviser or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations and collateralized loan obligations that invest in leveraged loans (collectively, “*CDOs*”) and other vehicles managed by members of the Highland Group (collectively, “*Highland Accounts*”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Adviser may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Adviser has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the

¹ The Investment Adviser’s latest Form ADV filed and Part 2 Brochures can be accessed here: https://adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=110126

Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained by the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Adviser will devote to the Fund only as much time as the Investment Adviser deems necessary and appropriate to manage the Fund's business.

The Investment Adviser undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities. It is the policy of the Investment Adviser to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Adviser has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order for any accounts cannot be fully allocated under prevailing market conditions, the Investment Adviser may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Adviser will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the U.S. Investment Advisers Act of 1940, as amended. The Investment Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Fund fairly or equitably in the short-term or over time and there can be no assurance that the Fund will be able to participate in all investment opportunities that are suitable for it.

The Investment Adviser and/or its affiliates may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day for the Fund, the Highland Accounts or affiliates of the Investment Adviser are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Highland Group Trading. As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor's or issuer's securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor's or issuer's securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund's investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund's portfolio, the Investment Adviser may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Adviser in accordance with its fiduciary duties to its other clients, the Investment Adviser may take, or be required to take, actions which adversely affect the interests of the Fund.

The Highland Group has invested and may continue to invest in investments that would also be appropriate for the Fund. Such investments may be different from those made by the Fund. The Highland Group does not have any duty, in making or maintaining such investments, to act in a way that is favorable to the Fund or to offer any such opportunity to the Fund, subject to the Investment Adviser's internal allocation policy. The investment policies, fee arrangements and other circumstances applicable to such other accounts and investments may vary from those applicable to the Fund and its investments. The Highland Group may also provide advisory or other services for a customary fee with respect to investments made or held by the Fund, and neither the Fund nor its investors shall have any right to such fees. The Highland Group may also have ongoing relationships with, render services to or engage in transactions with other clients who make investments of a similar nature to those of the Fund, and with companies whose securities or properties are acquired by the Fund.

As further described below, in connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Adviser to effect a transaction for the Fund, and the Fund's investments may be constrained as a consequence of the Investment Adviser's inability to use such information for

advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Adviser will devote as much time to the Fund as the Investment Adviser deems appropriate to perform its duties in accordance with the Fund's advisory agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Adviser's other accounts.

Various Activities of the Investment Adviser and its Affiliates. The directors, officers, personnel, employees and agents of the Investment Adviser and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories or provide banking, agency, insurance and/or other services, and receive arm's length fees in connection with such services, for the Fund or its investments or other entities that operate in the same or a related line of business as the, for other clients managed by the Investment Adviser or its affiliates, or for any obligor or issuer in respect of the CDOs, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund. The Fund may compete with other Highland Accounts for capital and investment opportunities.

There is no limitation or restriction on the Investment Adviser or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Adviser and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Adviser's investment committee, the Investment Adviser or its affiliates have to other clients.

The Investment Adviser and its affiliates may participate in creditors or other committees with respect to the bankruptcy, restructuring or workout of an investment of the Fund or another account. In such circumstances, the Investment Adviser or its affiliates may take positions on behalf of themselves or another account that are adverse to the interests of the Fund.

The Investment Adviser and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CDOs, Highland Accounts and other investments purchased by the Fund. Such transactions shall be subject to fees that are intended to be no greater than arm's-length fees, and the Fund shall have no right to any such fees. There is no expectation for preferential access to transactions involving CDOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Adviser and/or its affiliates and the Fund shall not have any right to any such fees.

Investments in Highland Accounts Managed by the Investment Manager or its Affiliates. The Fund may invest a significant portion of its capital in Highland Accounts. The Investment Adviser or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Highland Accounts. If the Fund invests in Highland Accounts in secondary transactions, the Fund will indirectly pay the fees (senior and subordinated) of such Highland Accounts and any

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 21**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

In re: § Chapter 11
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
Debtor. §
§
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?

3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*Vol. 1
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1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];

2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);

3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;

4. Docket Sheet kept by the Bankruptcy Clerk;

5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ((related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
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004704				
004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
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36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

004882

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

carried interest. If the Fund provides all of the equity for a Highland Account, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Adviser or its affiliates will have conflicting division of loyalties and responsibilities regarding the Fund and a Highland Account, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of a Highland Account or to other interests of the Investment Adviser.

Multiple Levels of Fees. The Investment Adviser and the Highland Accounts are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if investors in the Fund were able to invest directly in the Highland Accounts or their respective underlying investments. Investors in the Fund should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a Highland Account may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (e.g., break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees).

Cross Transactions and Principal Transactions. The Investment Adviser may effect client cross-transactions where the Investment Adviser causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Adviser may engage in a client cross-transaction involving the Fund any time that the Investment Adviser believes such transaction to be fair to the Fund and such other client.

The Investment Adviser may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Adviser and/or its affiliates, in each case in accordance with applicable law, which will include the Investment Adviser obtaining independent consent on behalf of the Fund prior to engaging in any such principal transaction between the Fund and the Investment Adviser or its affiliates.

The Investment Adviser may advise the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Adviser's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Adviser or its affiliates. In each such case, the Investment Adviser and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Fund and the other parties to such trade. Under certain circumstances, the Investment Adviser and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Adviser's valuation procedures to another client managed or advised by the Investment Adviser or such affiliates. In addition, the Investment Adviser may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Adviser may obtain independent consent

in writing on behalf of the Fund, which consent may be provided by the managing member of the General Partner or any other independent party on behalf of the Fund, if any such transaction requires the consent of the Fund under Section 206(3) of the U.S. Investment Advisers Act of 1940, as amended.

Material Non-Public Information. There are generally no ethical screens or information barriers among the Investment Adviser and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Adviser, any of its personnel or its affiliates were to receive material non-public information about a particular obligor or issuer, or have an interest in causing the Fund to acquire a particular security, the Investment Adviser may be prevented from advising the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Adviser. Notwithstanding the maintenance of certain internal controls relating to the management of material nonpublic information, it is possible that such controls could fail and result in the Investment Adviser, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material nonpublic information could have adverse effects on the Investment Adviser's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Adviser's ability to perform its portfolio management services to the Fund. In addition, while the Investment Adviser and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Adviser's ability to operate as an integrated platform could also be impaired, which would limit the Investment Adviser's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Conflicts Relating to Equity and Debt Ownership by the Fund and Affiliates. In certain circumstances, the Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Adviser to reconcile the conflicting interests in the Fund and such other accounts in a way that protects the Fund's interests. Additionally, the Investment Adviser or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Adviser in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Adviser's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Other Fees. The Investment Adviser and its affiliates are permitted to receive consulting fees, investment banking fees, advisory fees, breakup fees, director's fees, closing fees, transaction fees and similar fees in connection with actual or contemplated investments. Such fees will not reduce

or offset the Management Fee. Conflicts of interest may also arise due to the allocation of such fees to or among co-investors.

Soft Dollars. The Investment Adviser's authority to use "soft dollar" credits generated by the Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Adviser may give the Investment Adviser an incentive to select brokers or dealers for transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Adviser rather than giving exclusive consideration to the interests of the Fund.

November 30, 2020

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott

RE: Termination of Second Amended and Restated Investment Advisory Agreement, dated January 1, 2017, by and among Highland Capital Management, L.P. (“HCMLP”), Charitable DAF Fund, L.P., and Charitable DAF GP, LLC (the “Agreement”).

To Whom It May Concern:

As set forth in Section 13 of the Agreement, the Agreement is terminable at will upon at least 90 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective 90 days from the date hereof. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

November 30, 2020

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott

RE: Termination of Second Amended and Restated Service Agreement, dated January 1, 2017, by and among Highland Capital Management, L.P. (“HCMLP”), Charitable DAF Fund, L.P., and Charitable DAF GP, LLC (the “Agreement”).

To Whom It May Concern:

As set forth in Section 5.02 of the Agreement, the Agreement is terminable at will upon at least 60 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

EXHIBIT 2

EXHIBIT 44

004477

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

5 For the Official Committee: Paige Holden Montgomery
6 of Unsecured Creditors: SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
7 Dallas, TX 75201
(214) 969-3500

8 For Acis Capital Rakhee V. Patel
9 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
10 Dallas, TX 75201
(214) 745-5250

11 For Acis Capital Brian Patrick Shaw
12 Management GP, LLC: ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
13 Dallas, TX 75201
(214) 239-2707

14 For Redeemer Committee of Mark A. Platt
15 the Highland Crusader FROST BROWN TODD, LLC
Fund: 100 Crescent Court, Suite 350
Dallas, TX 75201
16 (214) 580-5852

17 For Redeemer Committee of Terri L. Mascherin
18 the Highland Crusader JENNER & BLOCK, LLP
Fund: 353 N. Clark Street
19 Chicago, IL 60654-3456
(312) 923-2799

20 For Redeemer Committee of Marc B. Hankin
21 the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
22 New York, NY 10022-3098
(212) 891-1600

23

24

25

1 APPEARANCES, cont'd.:

2 For UBS Securities, LLC: Andrew Clubok
3 Latham & Watkins, LLP
4 555 Eleventh Street, NW,
5 Suite 1000
6 Washington, DC 20004
7 (202) 637-2200

8 For UBS Securities: Kimberly A. Posin
9 LATHAM & WATKINS, LLP
10 355 South Grand Avenue, Suite 100
11 Los Angeles, CA 90071-1560
12 (213) 891-7322

13 For Certain Employees: David Neier
14 WINSTON & STRAWN, LLP
15 200 Park Avenue
16 New York, NY 10166
17 (212) 294-6700

18 Recorded by: Michael F. Edmond, Sr.
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JULY 14, 2020 - 1:34 P.M.

2 THE COURT: ... to get lawyer appearances. First,
3 for the Debtor, do we have some Pachulski lawyers on the
4 phone? Please make your appearance.

5 MR. POMERANTZ: Good morning, Your Honor. It's
6 Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones. Also with
7 me are John Morris, and then listening in are Greg Demo and
8 Ira Kharasch.

9 THE COURT: All right. Thank you all. And do we
10 have any Hayward lawyers on the phone?

11 MR. ANNABLE: Yes, Your Honor.

12 THE COURT: I presume that was Mr. Annable.

13 MR. ANNABLE: Yes, Your Honor. Sorry. My mic's not
14 picking up. It's Zachery Annable and Melissa Hayward --

15 THE COURT: All right.

16 MR. ANNABLE: -- as local counsel for the Debtor.

17 THE COURT: Okay. Thank you. For the Unsecured
18 Creditors' Committee, who do we have from Sidley Austin?

19 MR. CLEMENTE: Good afternoon, Your Honor. Matthew
20 Clemente from Sidley Austin, and Paige Montgomery is also on
21 the phone.

22 THE COURT: All right. Thank you. All right. I'll
23 go to some of our usual appearances. Do we have lawyers for
24 the Redeemer Committee this afternoon? (No response.) All
25 right.

1 MS. MASCHERIN: Yes. Excuse me, Your Honor.

2 THE COURT: Yes?

3 MS. MASCHERIN: This is Terri Mascherin. I wasn't
4 sure whether I had the microphone on mute or not.

5 THE COURT: Okay.

6 MS. MASCHERIN: I apologize. Terri Mascherin, Jenner
7 & Block. My colleague, Marc Hankin, is on the phone. And I
8 believe that Mark Platt is also on the line.

9 THE COURT: All right. Thank you. What about UBS?
10 Anyone wanting to appear for UBS?

11 MR. CLUBOK: Yes. Good afternoon, Your Honor. This
12 is Andrew Clubok from Latham & Watkins, LLP. And my partner,
13 Kimberly Posin, is on as well.

14 THE COURT: Okay. Thank you. What about for Acis?
15 Any lawyers appearing for Acis?

16 MS. PATEL: Yes. Good afternoon, Your Honor. Rakhee
17 Patel of the Winstead firm and Brian Shaw of the Rogge Dunn
18 Group appearing on behalf of Acis.

19 THE COURT: All right. Do we have Mr. Lynn or Mr.
20 Bonds for James Dondero? (No response.) Maybe not. All
21 right. Is there anyone else who wishes to appear for today's
22 hearings?

23 MR. NEIER: Good afternoon, Your Honor. David Neier
24 of Winston & Strawn making a reappearance, but this time for
25 several employees of Highland: Mr. Leventon, Mr. Sevilla, Mr.

1 Ellington, several others.

2 THE COURT: Oh, okay. Thank you. Any other
3 appearances today?

4 (No response.)

5 THE COURT: All right. I'll assume everyone else is
6 just going to observe.

7 Well, we have two employment applications. Mr. Pomerantz,
8 how did you want to proceed on those?

9 MR. POMERANTZ: So, Your Honor, we have the two
10 motions to present, Your Honor. I'm happy to say that neither
11 of them are opposed.

12 Before I present the motions to Your Honor, I wanted to
13 ask if Your Honor would like to address the mediation issues
14 at the conclusion of the hearing or prior to the presentation
15 of the motions.

16 THE COURT: At the conclusion. Thank you.

17 MR. POMERANTZ: Thank you, Your Honor.

18 Your Honor, the first motion on the docket today is a
19 Motion to Appoint James Seery as the Debtors' chief executive
20 officer and chief restructuring officer, effective as of March
21 15th, which is about the time that Mr. Seery began performing
22 the services as the chief executive officer.

23 While there's a good argument that the retention of a
24 chief executive officer is in the ordinary course of business
25 and does not require court approval, the Debtor, out of an

1 abundance of caution, filed the motion, and the motion seeks
2 approval of the agreement which is attached to the motion.

3 The second motion, Your Honor, is a Motion to Approve the
4 Retention of DSI as the Debtors' Financial Advisor. And as
5 the Court is aware, Mr. Sharp, a managing director of DSI, was
6 approved as the Debtors' Chief Restructuring Officer pursuant
7 to this Court's January 10th order.

8 Although Mr. Seery is proposed to replace Mr. Sharp as the
9 Debtors' Chief Restructuring Officer, Mr. Seery still requires
10 the financial assistance and advisory support that DSI has
11 been providing to him, the Board, and the Debtor for several
12 months.

13 While each of these motions, as I mentioned, Your Honor,
14 are unopposed, we plan to put on the testimony of James Seery,
15 John Dubel, and Brad Sharp to provide the Court with the
16 evidentiary basis to support the relief that is requested.
17 And with the testimony, Your Honor, we intend to accomplish
18 several things.

19 First, Your Honor, in light of our exchange at the hearing
20 on July 8th, we thought it'd be appropriate for Mr. Seery to
21 provide a more fulsome response to Your Honor regarding the
22 nature and extent of the Debtors' operations and assets and
23 the variety of significant activities that the Board in
24 general and Mr. Seery as the chief executive officer has been
25 performing over the last several months.

1 We think this is very important, Your Honor, given that
2 the Debtor has substantial and multiple complex business
3 operations that it oversees that are in -- that are in
4 subsidiaries outside of Chapter 11 or are in entities managed
5 by the Debtor and also not in Chapter 11. And the Court, we
6 appreciate, especially in light of Your Honor's comments, does
7 not have the benefit of seeing what is really going on. So
8 we're hoping, by Mr. Seery's testimony, it will provide Your
9 Honor with a much clear picture, and, quite frankly, a better
10 job doing it than I was able to do last week.

11 Mr. Seery's testimony will support the need for the
12 retention of the chief executive officer and why his
13 particular background and qualifications made him the
14 appropriate choice for the role.

15 Second, Mr. Dubel, as the chairman of the compensation
16 committee of the Board, will testify regarding the process
17 undertaken by the compensation committee that led to the
18 conclusion to ask Mr. Seery to become the chief executive
19 officer and the agreement -- under the terms and conditions
20 set forth in the agreement.

21 Lastly, Mr. Sharp will testify regarding the activities he
22 and DSI have been performing since the commencement of the
23 case, the assistance they have been providing to Mr. Seery
24 over the last few months, and how the nature and extent of the
25 services they are providing will essentially remain the same

1 if Your Honor approves the motion to employ Mr. Seery.

2 Before I turn the virtual podium over to my partner, John
3 Morris, to present the testimony, Your Honor, I thought I
4 would provide the Court with a brief summary of the events
5 leading to the Debtors' filing of the motion.

6 THE COURT: Okay.

7 MR. POMERANTZ: As Your Honor will recall, the Court
8 entered an order on January 9th approving a settlement between
9 the Debtor and the Committee, and a significant part of that
10 settlement involved modifications to the Debtors' corporate
11 governance that resulted in the installation of the
12 Independent Board.

13 The term sheet that was attached in the settlement motion
14 specifically contemplated that the Independent Board, in
15 consultation with the Committee, would determine whether it
16 was appropriate to retain a chief executive officer, and
17 further went on to say that the chief executive officer could
18 be a member of the Board.

19 And the retention of a chief executive officer was on
20 everyone's minds from the beginning, because since Mr.
21 Dondero's authority as the CEO of the Debtor was being
22 terminated in connection with the settlement, the Debtor and
23 the Committee contemplated that, in order to manage a dynamic
24 and widespread asset management platform like Highland's, that
25 the retention of a chief executive officer may very well be

1 necessary.

2 I will leave it to Mr. Seery and Mr. Dubel to explain to
3 the Court what transpired during the early stages of the case
4 and the decision-making process that led to Mr. Seery starting
5 to act as the Debtors' chief executive officer. And I would
6 also leave it to Mr. Dubel to discuss the sequence of events
7 which led from the appointment of him as the chief executive
8 officer through the filing of the motion that brings us here
9 today, which events will include the establishment of a
10 compensation committee; the commissioning of a report from the
11 Debtors' compensation expert, Mercer; the procurement of the
12 Debtors' [sic] and officers insurance coverage to cover Mr.
13 Seery and Mr. Dubel; the negotiations over the (inaudible) of
14 Mr. Seery; and lastly, the negotiations with the Committee
15 which has resulted in the motion being fully consensual.

16 I'll also leave it to Mr. Seery to explain his personal --
17 professional background and why he was qualified to fill that
18 role.

19 The agreement, Your Honor, between Mr. Seery and the
20 Debtor includes the following material provisions.

21 First, there would be base compensation at the rate of
22 \$150,000 a month, retroactive to March 15th. And while Mr.
23 Seery will remain on the Board as part of his role as the
24 chief executive officer, the \$150,000 per month would cover
25 his services not only as a CEO but also a member of the Board.

1 In other words, the Board fees that were agreed to back in
2 January of \$60,000 a month, \$50,000 a month, and \$30,000 a
3 month would be replaced by the \$150,000 a month commencing on
4 March 15th.

5 While the compensation committee and Mr. Seery reached
6 agreement on the structure of potential bonus compensation,
7 the Committee has not agreed to that proposed structure. As a
8 result, the compensation committee and Mr. Seery decided that
9 approval sought in this motion would only be the monthly
10 compensation and the other non-economic terms, but would not
11 include the bonus compensation. Any bonus compensation sought
12 to be paid to Mr. Seery would be pursuant to a separate motion
13 filed, if at all, a lot later in the case.

14 The Committee was also uncomfortable with the open-ended
15 nature of the agreement and wanted some control in being able
16 to seek to terminate it. To accommodate the Committee, Mr.
17 Seery and the Debtor agreed to the following: After 90 days
18 from the date the Court enters an order approving this
19 agreement, if the Court is inclined to do so, the Committee
20 may provide the Debtor with notice that it does not want the
21 agreement to continue. The Debtor would then have two weeks
22 to file a motion on normal notice seeking to extend the date
23 of the agreement, and Mr. Seery would be entitled to his base
24 compensation until the Court ruled on the motion.

25 Also, the Committee asked us that be made clear in the

1 order, which we've done, that Mr. Seery's retention would
2 terminate on the effective date on the plan, subject, of
3 course, of his right to seek bonus compensation pursuant to a
4 separate motion. The agreement also contains standard
5 reimbursement and indemnification provisions.

6 Your Honor, those conclude my initial remarks. I'm happy
7 to take questions. And then, at the appropriate time, I
8 return it over to Mr. Morris, who will put on the testimony of
9 Mr. Seery, Mr. Dubel, and Mr. Sharp.

10 THE COURT: All right. I'd like to pretty quickly
11 get to the evidence. So, I'll ask: Does anyone have a
12 burning desire to make an opening statement? If so, please
13 let's keep it brief.

14 (No response.)

15 THE COURT: All right. I assume everyone is content
16 to wait until the end and speak up in any way they want to
17 speak up.

18 Mr. Morris, are you ready to call your witness?

19 MR. MORRIS: I am, Your Honor. Can you hear me right
20 now?

21 THE COURT: I can. Thank you.

22 MR. MORRIS: Okay. Your Honor, this is John Morris
23 from Pachulski Stang Ziehl & Jones for the Debtor. As the
24 Debtors' first witness, we call James Seery.

25 THE COURT: All right. Mr. Seery, I need to swear

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1 you in by video. So could you take your phone off mute and
2 please raise your right hand. Can you say Testing 1, 2, so I
3 know you're there?

4 MR. SEERY: Testing 1, 2.

5 THE COURT: All right.

6 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: All right. Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor. Before I begin
9 my questioning of Mr. Seery, the Debtor had filed its witness
10 list and its exhibit list. We provided copies of the exhibits
11 to the Court and to the Committee, and I would like to just
12 move into evidence Debtors' Exhibits 1 through 7 at this time.

13 THE COURT: All right. So I have in front of me
14 Docket Entry No. 822 with Exhibits 1 through 7. Any
15 objection? (No response.) All right. 1 through 7 are
16 admitted.

17 (Debtors' Exhibits 1 through 7 are received into
18 evidence.)

19 MR. MORRIS: Thank you, Your Honor. And just as an
20 overview, so you have a sense of where we're going with Mr.
21 Seery's testimony, I am going to begin with some very brief
22 background questionings and then have Mr. Seery answer some
23 questions concerning the overview of the company and the
24 corporate structure of the company. You may have heard some
25 of this before, but I think in the context of a motion such as

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1 the appointment of a CEO, I think it would be helpful to hear
2 it all.

3 When I finish with that, we're going to move into the area
4 of the Board and the work that the Board has done and Mr.
5 Seery's work as a member of the Board.

6 And then we'll transition into really the meat of the
7 discussion here, and that is what has he done in his capacity
8 as CEO. And to be clear, he's not the CEO, he doesn't call
9 himself the CEO, but he's functioned as the CEO, and I think
10 that's the point that we want to present to the Court. And we
11 want to present to the Court the fact that he functioned as a
12 CEO really from day one of the process. And we're not going
13 to get into, you know, every single thing he's done, because
14 we'd be here for an awfully long time, but we do intend to
15 highlight a couple of the transactions that he worked on and
16 give you a sense of his role in trying to develop a plan and
17 resolving claims.

18 And I think, with that, you'll have a better understanding
19 of Mr. Seery, his role, and why we believe it's a proper
20 exercise of the Debtors' business judgment to appoint him as
21 CEO.

22 THE COURT: All right. Sounds good.

23 MR. MORRIS: All right.

24 DIRECT EXAMINATION

25 BY MR. MORRIS:

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1 Q Mr. Seery, can you hear me?

2 A I can. Can you hear me?

3 Q Yes, I can.

4 MR. MORRIS: Your Honor, just one other point. I
5 have a legal assistant on the phone here. She's participating
6 in the WebEx. Her name is La Asia Canty. La Asia is going to
7 handle the exhibits when and if we need to put them up on the
8 screen. So we've tried to practice that, and hopefully it
9 will go smoothly, but I may turn to Ms. Canty from time to
10 time with some help with the exhibits.

11 THE COURT: All right. Fine.

12 BY MR. MORRIS:

13 Q Okay. Mr. -- what is your current relationship to the
14 Debtor?

15 A I'm an Independent Director of Strand, which is the
16 general partner of the Debtor.

17 Q All right. And when did you become the Independent
18 Director of Strand?

19 A On January 9th, along with John Dubel and Russ Nelms.

20 Q The Court has previously heard about your background, but
21 from a high level, can you just hit the highlights for the
22 Court as to your experience, et cetera?

23 A To go swiftly -- and if Your Honor wants me to go further,
24 I certainly can -- I was a restructuring and finance lawyer
25 for 10 years, handling virtually every type of restructuring

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1 matter as well as financing in distressed matters during that
2 time.

3 In 1999, I went to the business side and I began to manage
4 distressed assets at Lehman Brothers as well as a leverage
5 finance business. That grew into my running the risky finance
6 business as well as the loan business at Lehman globally,
7 which included high-grade loans, high-yield loans, trading and
8 sales of those products, a big part of distressed, all of
9 restructuring, all of asset management, and all of the hedging
10 of the portfolio that we had.

11 From there, I left Lehman with a small group and sold it
12 to Barclay's. I moved on and ran a hedge fund with two former
13 partners of mine who are the founding partners called River
14 Birch Capital. It was a long-short credit fund; mostly
15 credit, though we did structured finance as well, and we also
16 handled some equities.

17 Q Okay. Let's spend a few minutes, as a preview, talking
18 about the Debtor and its business. And let's start with the
19 basics. Is there a way you can summarize the business of the
20 Debtor?

21 A I think, from a high level, the best way to think about
22 the Debtor is that it's a registered investment advisor. As a
23 registered investment advisor, which is really any advisor of
24 third-party money over \$25 million, it has to register with
25 the SEC, and it manages funds in many different ways.

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1 The Debtor manages approximately \$200 million current
2 values -- it was more than that at the start of the case -- of
3 its own assets. It doesn't have to be a registered investment
4 advisor for those assets, but it does manage its own assets,
5 which include directly-owned securities; loans from mostly
6 related entities, but not all; and investments in certain
7 funds which it also manages.

8 In addition, the Debtor manages about roughly \$2 billion
9 in -- \$2 billion in total managed assets, around \$2 billion in
10 CLO assets, and then other entities, which are hedge funds or
11 PE style.

12 In addition, the Debtor provides shared services for
13 approximately \$6 billion of assets. Those are assets that are
14 owned by related entities but not owned by Debtor-owned or
15 managed entities. And those are a combination of back office
16 services, which include timely reporting, asset management,
17 legal and compliance support, trading and research support,
18 but not the actual management of the assets.

19 The Debtors run -- and I think the way to think about it
20 is on a functional basis; at least, that's the way I think
21 about it -- and there's really six areas. There's corporate
22 management; finance, accounting and tax; trading and research;
23 private equity and fund investing; compliance and legal; and
24 then structured equity, which really includes all of the CLO
25 businesses.

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1 The goals of the Debtor generally are what you'd expect
2 out of an asset manager. A little bit different than most
3 because the Debtor does own assets, which is a little
4 different than when money asset managers typically hold assets
5 away from the asset manager. But number one, discharge
6 Highland's, which I'll call Highland (inaudible), LP, duties
7 to investors in the funds. Those are fiduciary duties under
8 the Investment Advisors Act. Each day, you've got to make
9 sure that you do that first and foremost.

10 Number two, create positive MPD in each of the funds that
11 we manage, either through sales, purchases, or hedging.

12 Next, make sure that we report timely finances of our own
13 assets, including in the funds, but also, to the third-party
14 investors. Maximize the value of HCMLP's owned assets. And
15 then operate as efficiently as possible for the lowest cost.

16 That's essentially how the Debtor -- how we think about
17 the Debtor from a functional perspective. It's got about 70
18 employees laid out in those areas that I mentioned, and each
19 of those employees every day usually think about those goals
20 and try to discharge their duties by focusing on those goals.

21 Q Thank you, Mr. Seery. And can you describe for the Court
22 how those 70 or so employees are organized? Is there an
23 internal corporate structure that you're working with?

24 A Yeah. The way -- the way -- I apologize. The way we
25 think about it is, as I said, corporate management, which is

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1 really HR and overseeing the function that it's filling every
2 day, that's been really -- because Mr. Dondero was removed
3 from management. It used to all roll up to him. That's been
4 effectively rolling up to me since February.

5 Finance, accounting, and tax. Each of these businesses
6 every day require certain amounts of liquidity. Each of them
7 have requirements that they have to pay out to investors.
8 Each of them have expenses. And all of them have different
9 kinds of tax either obligations or reporting. Those are
10 managed by Frank Waterhouse as the CFO. (inaudible), sorry.

11 Trading and research. With respect to the assets, they're
12 not -- they're not static assets. Many of them do get traded
13 on a regular basis. A gentleman, Joe Sowin, heads up the
14 trading of the liquid assets. John Povish (phonetic) heads up
15 the research and the trading of the more illiquid assets, but
16 not PE. In addition, we have PE assets that require some
17 management every day, including Board seats. That's a
18 gentleman by the name of Cameron Baynard, and also he will
19 fund investments in that area. J.P. Sevilla is responsible
20 for working with Cameron on those investments and leading that
21 team.

22 Importantly, because of the nature of what the Debtor
23 does, the fiduciary obligations, as well as the
24 responsibilities to each investor and the legal overlay, we
25 have a robust compliance and legal department. That's headed

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1 by Thomas Surgent and Scott Ellington. Scott: more focused
2 on transactional issues with respect to legal. He is actually
3 general counsel. Everything that has do with compliance, the
4 interrelatedness of the funds, trading between funds or
5 positions that are shared across funds, which are many, runs
6 through Thomas Surgent and his team.

7 And finally, structured equity. Sitting on top of the
8 structured finance business that we have, understanding those
9 assets, particularly of two billion-ish assets in CLOs, that's
10 headed by Hunter Covitz.

11 Q Can you describe for the Court your interaction with each
12 of the department heads that you just identified?

13 A Well, depending on the nature of the issue each day, I
14 have at least -- I'd say generally at least weekly contact
15 with most, often daily contact with most. So, for example,
16 when there are trading issues, particularly as the market was
17 extremely volatile with respect to unliquid securities, Joe
18 Sowin and I were on the phone several times a day.

19 Relating to the COVID issues, Brian Collins, who heads the
20 HR group, and I were on the phone several times a day.

21 Relating to structured equity, depending on what's
22 happening with a particular fund or what's happening in loan
23 prices, I speak to Hunter Covitz. And it goes down the line.

24 So it really depends on each of the areas and what's going
25 on in the business, but I try to touch base with each of those

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1 department heads on a regular basis.

2 Frank Waterhouse, of course, is at least weekly. We have
3 a standing call every week to make sure that we're focused on
4 liquidity, which is always a concern in a Chapter 11, and
5 Frank and his team are on that call and prepare weekly
6 materials for us.

7 Q Okay.

8 MR. MORRIS: Your Honor, before I move to the next
9 area of questions, the work of the Board, I just wanted to see
10 if the Court had any questions on the corporate organizational
11 structure, the internal structure of the business, or any of
12 the matters that Mr. Seery touched on?

13 THE COURT: I do not. And I do have in front of me a
14 demonstrative aid that Mr. Annable sent over ahead of time, so
15 I appreciate that as well.

16 MR. MORRIS: Okay. Your Honor, I think Mr. Seery
17 covered much of what's on that document, but if you'd like him
18 to go through that, we're happy to do it.

19 THE COURT: No, that's fine.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Then let's shift gears a little bit and start talking
23 about the work of the Independent Board itself. The
24 Independent Board was appointed in mid-January; is that right?

25 A Yeah. It was the first -- January 9th, the first week of

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1 January, and we started working that afternoon.

2 Q Okay. Can you describe for the Court what the -- the
3 Board's initial focus? What were you focused on?

4 A Well, if you think about the areas that I just mentioned
5 previously, the Board initially, for lack of a better term,
6 gang-tackled everything. So we tried to make sure that we had
7 a broad base of understanding among the three of us with
8 respect to the business.

9 I, because of my background, had a lot more familiarity
10 with asset management, these type of asset security
11 businesses. But we wanted to make sure that each of us was at
12 least facile with the main areas that we had to understand.
13 First was operations. How does the company run each day?
14 Particularly, how was it going to run without Mr. Dondero?
15 And I went through some of those functional areas and how we
16 thought about those and who head each of those.

17 Next in the -- I don't mean to say it's second, because
18 it's always first, but liquidity. What did the Debtors'
19 liquidity look like? How are we going to manage that
20 liquidity, not just for the near-term, but also for the
21 medium-term, and then even into the slightly longer-term? We
22 had to think about what assets are there, what money those
23 assets might need that we would have to invest in them, and
24 whether there was liquidity in those assets that we can create
25 liquidity in order to fund the Debtors' business.

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1 Personnel, we needed a good opportunity to understand who
2 did what, not just in the senior managers that I mentioned,
3 but deeper into the staff, because we're going to rely on
4 those folks. Particularly worked through with DSI.

5 As I mentioned, the Debtor, unlike a lot of other asset
6 managers, owns a lot of assets. It's a disparate group of
7 assets, but getting a feel and understanding for what those
8 assets were, what the critical issues surrounding those assets
9 are, who managed them day-to-day: We wanted to make sure that
10 each of the directors had a good (inaudible) and understanding
11 of those issues that might arise with respect to those assets,
12 and a good sense of how quickly those issues could, you know,
13 further arise.

14 We also had to get a very good understanding of each of
15 the funds that we manage. As I said, the Investment Advisors
16 Act puts a fiduciary duty on Highland Capital to discharge its
17 duty to the investors. So while we have duties to the estate,
18 we also have duties, as I mentioned in my last testimony, to
19 each of the investors in the funds.

20 Now, some of them are related parties, and those are a
21 little bit easier. Some of them are owned by Highland. But
22 there are third-party investors in these funds who have no
23 relation whatsoever to Highland, and we owe them a fiduciary
24 duty both to manage their assets prudently but also to seek to
25 maximize value. And we wanted to make sure we had a good

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1 understanding of that.

2 Finally, with respect to the shared service arrangements,
3 we needed to get an understanding of that \$6 billion in assets
4 and how our business, HCMLP, worked with those -- those shared
5 service counterparties and exactly who did what for whom.

6 It's very complicated because it had been run much more on a
7 functional basis than on a line basis from each contract. So
8 it's not as if your employees are allocated to NexBank. It's
9 the whole panoply of businesses that we enter into, and
10 providing those services to NexBank, not through a central
11 point but through whatever requests come in from the counter-
12 parties. So we needed a good understanding of what those
13 contracts looked and what those obligations were.

14 A VOICE: John, you're on mute.

15 MR. MORRIS: Thank you.

16 BY MR. MORRIS:

17 Q All of that work was going on in the first weeks of the
18 appointment of the Board?

19 A Yeah, it would not be fair to say we could do that in a
20 couple weeks. So it took far longer than that. But that
21 didn't mean that issues didn't start to arise immediately in
22 February. And so, while we were learning, we were also
23 starting to get a feel for different things that could happen
24 in the company.

25 As in many companies, immediately, one of the first things

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1 you have to deal with is, particularly at the beginning of the
2 year, what does compensation look like; who are the -- what do
3 promotions look like; are you going to be able to hold this
4 team together to service these assets? And yeah, we had that,
5 with an additional wrinkle that Highland's payment structure
6 defers a significant amount of compensation to its employees,
7 and it vests over time, and it has the very typical provision
8 that if you are not there when it vests -- when it is going to
9 be paid, actually, not when it vests. Even if you're vested,
10 if you're not there when it gets paid, you're not entitled to
11 it. And so understanding who was owed what; how the vesting
12 worked; what the compensation structure looked like compared
13 to third parties, was one of the first things we had to do.
14 And Highland has an extremely robust review process. Brian
15 Collins manages it. It's first-rate. It goes through both
16 360 in terms of what other employees think of each other as
17 well as bottoms up, in terms of performance. And then it has
18 a top-down component, which ultimately ran through Mr.
19 Dondero. Since he was effectively removed from that role, the
20 Board had to jump in and get a full understanding with Brian
21 about what the process looked like; how it was going to work;
22 how it compared to other firms; and whether we could go
23 forward with it. And that was one of the motions that was
24 brought early to the Court.

25 A Let's talk a minute about the transactional work that the

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1 Board was called to focus on initially. Are you familiar with
2 the transactional protocols that the Debtor agreed to with the
3 Committee?

4 Q I am.

5 A Can you describe for the Court the impact those protocols
6 had on the Board's work?

7 Q Well, they make it extremely difficult. And I understand
8 the purposes behind the protocols. Was not involved in
9 negotiating them. However, because of the limitations they
10 put on the Debtor, they make it very difficult to manage
11 certain of the assets. So, if an asset needs money to invest
12 in it, depending on the size, it may need Committee approval.
13 If the -- if there are expenses that need to be paid from --
14 in related entities, and the related entity does not have the
15 capital to make the expense payment, the Debtor needs to put
16 the money in. Can the Debtor put that money in without the
17 Committee's approval, and if the Committee doesn't approve,
18 would we have to go to Court?

19 So, the functioning on a day-to-day basis for how to deal
20 with those assets became very difficult. And that came up
21 really early, as the market started to get a lot more
22 volatility by mid-February. We saw with respect to the
23 internal accounts trades that we would have liked to put on,
24 for example, short position, where we just weren't able to put
25 the trades on.

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1 Now, we could go to the Committee, and we did, but
2 understanding why we wanted to put it on; explaining it;
3 presenting that opportunity to the Committee; and then having
4 them go to the full Committee with it: It's very cumbersome.
5 And the trading markets don't wait for a week to determine
6 whether that offering that you want to -- that you want to
7 access is available.

8 So, early on, we got a sense of how difficult it would be
9 to manage the business with the protocols.

10 One of the areas I think that was significant and that we
11 talked about significantly with the Committee was an entity
12 called Multi-Strat. Multi-Strat is a fund that is owned by
13 the Debtor. It's, in essence, a PUNY-style (phonetic) fund.
14 It's an older fund. And it's about 60 percent owned by the
15 Debtor and roughly 30 percent owned by Dondero-related
16 entities.

17 However, there are 90 million, roughly 89 million,
18 approximately, third-party redeemers who had redeemed in that
19 fund but have yet to be paid, so they're treated like equity
20 claims but they're a fixed dollar amount because they are set
21 at the date that they redeemed based on the NAV at that time,
22 the net asset claim.

23 So, we were -- we were stuck with looking at that fund and
24 trying to determine how do we best manage the fund to get up-
25 side for the Debtor as well as the related entities that owned

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1 the equity, making sure that we treated the redeemed entities
2 as fiduciaries, so which we acted as their fiduciaries, but
3 then also assuring that we managed the assets that that fund
4 owns in a prudent way.

5 One of the large assets in that fund were 13 life
6 policies. And these are, in essence, life insurance policies
7 that the Debtor bought from third parties. And there's a
8 market that trades life policies, and they owned these
9 policies on (inaudible). The value at the time was marked
10 around \$32 million when -- when we took control.

11 The problem with the policies and some of the other
12 expenses at Multi-Strat is that they didn't -- Multi-Strat
13 didn't have the funds to continue to pay premiums. So, if the
14 premiums weren't paid, that \$32 million was at risk of going
15 to zero. Why? Because if the premiums aren't paid, the
16 policies lapse. And once they lapse, the insurance company
17 will pay you zero for them. They don't them buy them back
18 anywhere. That's the market. But we looked at those assets
19 and began to consider how we would fund, from a liquidity
20 perspective, monies going into Multi-Strat.

21 The amounts required would require CC's approval under the
22 protocols, and the Debtor prepetition had advanced monies to
23 Multi-Strat to make premium payments and other expenses at
24 Multi-Strat. We went to the Committee and were able to get
25 approval to put a couple million dollars in early on to keep

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1 the policies alive while we analyzed the best opportunity for
2 maximizing value with respect to those policies.

3 But thereafter, we needed additional money to try to
4 consider how to continue to maximize value, and the Committee
5 balked. So we went to Dondero-related entities, and they
6 actually put equity into the Multi-Strats. So we -- the
7 Debtor had made a postpetition, in essence -- it wasn't a
8 postpetition advance because it was going outside of the
9 Debtor, but postpetition, the Debtor made a loan to Multi-
10 Strat to service the policies, and then Dondero-related
11 entities made an equity investment into Multi-Strat to
12 continue to service the policies.

13 Well, we understood as a Board but that wasn't going to
14 work and that the protocols were going to continue to hinder
15 us, so we entered into a sale process with respect to those
16 policies.

17 Q And the work that you're describing with respect to Multi-
18 Strat, is that -- just to transition to your work as
19 functionary CEO, would it fall into that bucket as opposed to
20 the Board work that we were talking about earlier?

21 A Yeah, absolutely. I think the -- the initial assessment,
22 as I said, we made as a group. And we looked at what the
23 opportunity set was, and determined that, because of the
24 costs, we weren't going to be able to continue to fund money
25 into Multi-Strat to make those payments.

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1 So the Board asked me to take on trying to work out a
2 process to sell those policies. So, working with Fred Caruso
3 of DSI, we hired a broker, after interviewing a couple
4 different brokers. We considered the views of the internal
5 Highland team with respect to value and how to maximize that
6 value. We entered into a sale process for those policies, and
7 we ended up with a number of bidders and broke it down to two
8 bidders for the 13 policies, breaking up the policies to
9 maximize the value. They're only on eight lives, so it's not
10 fair to call it a portfolio. And so there's significant
11 amounts of premiums that have to be paid on a monthly basis
12 and going forward, and realizations on those policies are very
13 uncertain because it's hard to take them over an actuarial
14 methodology because there's only eight lives.

15 We tried to consider other ways to finance those policies,
16 but seven turned out to be, in our view, far and away the best
17 net present value for the investors in the fund.

18 The challenge that we had, as I mentioned, is the
19 complexity of Multi-Strat was also layered with a loan from
20 NexBank that was secured by four of the policies. That \$32
21 million loan was also secured by the MGM stock owned by Multi-
22 Strat.

23 And then, as we got towards closing, we learned that one
24 of the buyers wanted a more detailed title rep, and as we
25 peeled through, we found a long-dormant UBS fraudulent

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1 conveyance suit that had been brought against Multi-Strat.
2 There was no lien on the policies, but it made it impossible
3 for us to give the clean rep that the buyer wanted.

4 And at this point, I was running that with Fred Caruso, at
5 the request of the Board, and it became almost a full-time job
6 except for the five other things that we have to do during
7 April. And we negotiated a variety of different -- well,
8 considered a variety of different opportunities to try to
9 complete the sale.

10 First, I negotiated directly with UBS to see if they would
11 agree to a release, and then when the funds, other than
12 certain escrows which had to be paid out to NexBank as well as
13 repayment of the Debtors' fund, (inaudible), that didn't -- it
14 was very unfruitful in terms of those negotiations.

15 I then moved towards a potential bankruptcy of Multi-
16 Strat, where we would file Multi-Strat, have to do a 363 sale,
17 have a DIP loan to service the NexBank monthly payments. That
18 seemed very expensive.

19 We also thought about doing it as not selling them, so
20 perhaps we would a 360 -- a filing without a sale and try to
21 maximize the value by holding onto the policies but have to
22 get financing.

23 Ultimately, we came up with a structure which was we
24 escrowed funds for UBS, \$10 million of funds, but they're not
25 actually for UBS. We preserved all of our rights to defend

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1 the claims and we had paid down NexBank. We allocated funds
2 to make sure that we can pay NexBank for the next year before
3 their loan comes due. We allocated for all the expenses in
4 Multi-Strat. And then when we went back to the sellers, lo
5 and behold, one of the two sellers balked. Didn't -- or
6 buyers, I'm sorry. Balked. Didn't want to complete the sale.
7 And fortunately, our broker (inaudible) and Fred Caruso had
8 had another buyer in the wings, kept them warm, and were able
9 to complete the sale for \$37 million.

10 So that goes to: How does this business function, what's
11 the complexity of it, and what have I and the rest of the
12 Board been doing? That was virtually a month's worth of work.

13 Q And when did the Board ask you, if you recall, to
14 undertake this project? When did it begin and when did it
15 end?

16 A Well, the initial project, around -- around Multi-Strat,
17 we started analyzing it as a group in January, the first week
18 we were there. I started probably taking control of it
19 sometime in mid-February, with Fred Caruso. So, DSI was
20 already on it. We were looking to work with the Debtors' team
21 as well as hire a broker. We, as a group, as a Board, made
22 the decision to sell the policies. Ultimately, we sold them
23 for about \$37 million, which was -- which was more, a few
24 million dollars more than the mark on the policies when we
25 took them.

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1 Q Can you give the Judge a sense of your role, as distinct
2 from the Board's role, how you went about completing or
3 attempting to complete all of the tasks that you've described
4 and the interaction with the Board and what the Board's role
5 was in assessing all of that?

6 A With respect to the Multi-Strat policies?

7 Q Uh-huh.

8 A I think, you know, initially, it was a understand, for the
9 three of us, understand the policies; understand the premium
10 obligations; understand what the benefits, the potential up-
11 sides to those policies were; and understand what the risks
12 were if we were to fail to make a premium payment; what did
13 the lapse period look like. And we did that collectively.
14 From there, all of the individual work around -- we came up
15 with a strategy to sell the policies, and then the tactical
16 work with Fred Caruso about how to execute sale of the
17 policies and completing that sale through the issues NexBank,
18 through the issues with UBS, resolving those issues, that
19 became really my job.

20 Q Now, I do want to take a step back, because we kind of
21 transitioned from the Board to the work that you were doing,
22 and I wanted to ask: You're seeking -- the Debtor is seeking
23 to have you appointed as the CEO, right?

24 A Yes.

25 Q Can you just describe for Judge Jernigan your

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1 understanding of the duties and responsibilities of the CEO
2 position that we're seeking your appointment for?

3 A Sure. From a high level, it's -- I apologize. From a
4 high level, it's what I said earlier, which is the Board sets
5 the strategy, the CEO implements the strategy. And so I work
6 with the Highland team and the managers that I described
7 earlier, whose function that is, to try to execute on that
8 strategy. So that's, that's the basic overlay of what we do.
9 But that includes everything from, as I mentioned, personnel
10 issues to COVID-19 protocol to determining whether we're going
11 to sell certain assets and then how we're going to sell them,
12 determining how we'll resolve issues like Multi-Strat.

13 Another good example was the trading accounts that the
14 Debtor had. So, on the second or third week of January, or
15 perhaps the third or fourth week, we determined as we were
16 going through the asset review that the Debtor had two primary
17 liquid or semi-liquid securities accounts, and those were in
18 the Select account, which was a separate fund that had
19 previously third-party investors but was effectively a hundred
20 percent, 99 and change percent, owned by Highland at this
21 point. And an internal account, which was basically just
22 HCMLP-owned and denominated securities. These were generally
23 at Jefferies. Both of them employed significant margin.

24 THE WITNESS: If this is too pedantic, Your Honor,
25 please tell me if I'm going too deep.

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1 But margin is, in essence, a way for a security purchaser
2 to borrow money to facilitate the purchase and holding of the
3 securities. In essence, the lender, which in this case was
4 Jefferies, a large, well-known, reputable financier and New
5 York investment bank, was the Debtors' account holder. The
6 Debtor would select securities. Jefferies would establish a
7 haircut. The haircut is really the -- how the lender
8 determines how much they want to lend against the assets. So
9 if there's a -- if there's a haircut of a hundred percent in
10 use there, there would be no margin against that asset. A
11 haircut of 50 percent means the debtor will give you -- or,
12 the lender will give you 50 percent of the funds you need to
13 own and hold that asset and you put up 50 percent of the
14 funds.

15 And in a margin loan, the way that the lender protects
16 itself is, each day, it assesses the value of the asset; it
17 looks at the volatility of the asset; and then it asks for
18 more margin if the asset value went down in the trading
19 markets; and then you have a day or two or three, depending on
20 the structure, to post the new margin.

21 If you don't post the new margin, and this the way every
22 margin loan works, the lender has the ability to seize the
23 asset, sell it, and pay off its loan. It will then give you
24 the proceeds above the loan, if any.

25 The debtor -- the lender does that by looking at both the

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1 daily prices, to make sure that it can manage its exposure,
2 but also it considers the volatility. And what it does when
3 it's looking at the volatility, and volatility is really a
4 measure, the way -- the way that securities analysts look at
5 it, is a forward year of the movement, potential movement of a
6 security. And that's how you set your haircut. Because if
7 the -- if the asset is very, very stable -- for example, your
8 home -- if your home was a margin loan and your mortgage, say,
9 is a margin loan, there wouldn't be much calling of margin
10 every day, because if the lender loaned 80 percent of the
11 value of your home, there may be house sales that go higher or
12 lower, but they don't necessary move that much really quickly,
13 particularly if these loans set what's called a threshold
14 amount that allow a little bit of movement each way.

15 The margin loans, though, are on securities that can move
16 tremendously. And what happened in February and then in early
17 March, volatility spiked up, prices moved significantly,
18 prices moved against the Highland positions. So Jefferies did
19 two things. One is it called margin, because it was -- its
20 equity cushion, in essence, was getting trimmed, and it wanted
21 more protection. Number two, it increased the haircuts, which
22 it was entitled to do because it looked forward and said, The
23 volatility in this market is worse than we thought. It will
24 be a higher volatility and there's more risk to us that the
25 asset could be worth less than the loan.

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1 I started working with Joe Sowin, who's a head trader, a
2 very accomplished trader at Highland. He actually reports
3 into the -- not on the Debtors' payroll but another payroll
4 that we don't manage. But he spends a ton of time working on
5 Highland assets and trading those assets. And Joe and I
6 started working together to try to manage the Jefferies
7 exposure.

8 At one point, Jefferies actually seized the Select
9 account. Again, Select wasn't in bankruptcy, but Jefferies
10 had safe harbor provisions or protections anyway and they
11 could have done it. We felt they were about to seize the
12 internal account, and so we sent them a note that said that
13 perhaps their safe harbors weren't as good as they thought.
14 But, more importantly, here's our sale program. Jim Seery's
15 going to take over the account, working with Joe, and we're
16 going to manage it down.

17 In the Select account, Jefferies took it over -- and this
18 is not really a blame to Jefferies; it's part of the market --
19 they sold out of that account pretty quickly. They did work
20 with us, but they were the selling position and covering their
21 loan, and we lost virtually all of the value in that account.

22 In the internal account, we effectively kept Jefferies
23 from seizing it, gave them a sale program, and then day-to-day
24 managed the sale of the more significant assets, as well as
25 the hedges, which mean we traded pretty aggressively

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1 throughout the day. This was a full-day job, trading that
2 account, with Joe as the trader and then me acting as the PM,
3 effectively.

4 We took that account, which if Jefferies had taken it over
5 and done -- it had virtually the same securities, it had just
6 a small number of securities, as well as some hedges which had
7 significant basis risk related to the securities -- we took
8 that account over. If we'd gotten the same program as
9 Jefferies, we would have lost \$11 million. We made about \$23
10 million. So that swing, that swing was pretty significant.
11 I'm sorry, we made about \$11-1/2 million, about a \$23 million
12 swing than if Jefferies had taken it over.

13 So that was another example of what I've been doing that
14 the Board designated me to do to help run this business.
15 Working with Joe, as well as research, as well as discussing
16 these positions on a regular basis with Jefferies, weekly
17 calls and daily e-mails, we were able to preserve that value
18 in that account.

19 Q And so, just for context, this is happening in late
20 February or early March, as COVID is hitting and the markets
21 are volatile; is that fair?

22 A That's when we started taking it over. The real -- the
23 real -- the lay in the markets was about March 22nd or 23rd.

24 Q Uh-huh.

25 A And that's when it became a daily grind on those positions

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1 for a solid month to make sure that we got it in a decent
2 place.

3 And remind you that we were trading those accounts within
4 the strictures of the protocols. So we didn't have the
5 ability to -- the securities were -- rather less liquid. We
6 didn't have the ability to just dump them, because we would
7 have destroyed the market and taken significant losses.

8 In addition, because of the protocols, we didn't have the
9 ability to go out and buy hedges, even though we had a
10 negative bias as to where the market was, particularly in
11 those less-traded securities.

12 And it's -- it was public that Highland (inaudible) and
13 Highland (inaudible) was in bankruptcy, so you can be certain
14 that the traders were leaning on those -- those securities
15 from short decisions. So it was a very difficult, time-
16 consuming effort, and a great job by Joe.

17 Q When you talk about a time-consuming effort, how would
18 you -- how would you characterize the amount of time you spent
19 on this project in the month of March? Was it a full-time
20 job?

21 A Yeah. Yeah. I mean, full-time is relative, right, but it
22 was -- it was a lot of time. So we would start out, you know,
23 like everybody else who is in those markets and do it the same
24 way, it's pretty tried and true: By 6:30 in the morning,
25 you're starting to look at what the EOP, what Asia did, where

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1 European markets were opened up, what the futures were looking
2 like, looking at your own securities, checking all of the
3 mail, talking to your research folks. To the extent that you
4 know that there's other investors in those investments, we
5 reached out to those -- I have a number of contacts in the
6 market who are in these kinds of assets -- to see what they're
7 thinking and how they're looking at value. And then set up a
8 trading strategy with Joe, and then execute on it every day.
9 And that trading strategy, again, was not static. So during
10 the day, a dynamic trading strategy has to be adjusted
11 depending on what the market is doing, and Joe was excellent
12 at it.

13 Q I think you mentioned the protocols earlier. Can you just
14 talk a little bit more about how you and the Debtor
15 communicated with the Committee through this process of
16 addressing the Jefferies mortgage -- mortgage defaults?

17 A Well, every day, we sent a report to -- to the Debtor -- I
18 mean, to the Committee, I apologize -- with our positions in
19 each of the accounts and tell them exactly what we're doing,
20 what the plan is, what we're set up to do, where we think it's
21 going, and what assistance we might need through the
22 protocols.

23 I think it became really difficult for the Debtors'
24 professionals -- the Committee's professionals to deal with
25 these issues, because it's just not what they were used to

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1 doing every day. So we would report to them. The Committee
2 met weekly. We can -- provided direct information to
3 Committee members when they -- you know, there's members on
4 the Committee who are very versed in these types of assets.
5 We would talk to them directly, I would talk to them directly,
6 and tell them exactly what we're doing and why and get their
7 input, because there was no magic special sauce as to exactly
8 what to do.

9 Q And would you characterize the process as transparent and
10 open between you and the Committee and its members?

11 A Oh, oh, absolutely. You know, we were -- they were
12 constructive. I wouldn't say that the Committee wasn't
13 constructive. I think the difficulty the Committee had, which
14 is what, you know, any third party would have, is that: Why
15 are we going to put more money into these accounts when the
16 value is going down, and what's -- what's your -- what are
17 your price targets? How do you think about those assets;
18 who's the analyst who's working on it; how do they compare to
19 other assets? So it wasn't an easy process for the Committee
20 to get their arms around, either.

21 Q Okay.

22 MR. MORRIS: Your Honor, we have other transactions
23 that we could talk about if you think that would be useful, or
24 we could continue to push this forward.

25 THE COURT: You can continue to push it forward.

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1 Thank you.

2 MR. MORRIS: Okay.

3 BY MR. MORRIS:

4 Q Then let's transition for a moment just about your
5 recollection as to kind of when and how, you know, the
6 discussions with the Board and the Committee evolved with
7 respect to your taking over as CEO. Did there come a point in
8 time that you can recall when the Board asked you to consider
9 that?

10 A Yeah. The Board asked me to consider it I would say
11 probably late January or early February. And the initial
12 discussions, even before, you know, before we were selected.
13 So, as John Dubel and I had been selected by the Debtor and
14 the Committee, we talked about the need for one central point
15 of management for this company. That it's 70 employees and
16 diverse assets, diverse business practices. How are we going
17 to mold that as a Committee? It really needed somebody to
18 execute the strategic plan that the Board put in place.

19 And so John had asked me about that even before we were
20 selected. Committee counsel asked me about it. So there was
21 -- there was some, at least away from me, there was some view
22 that perhaps I was going to be the person that was most
23 likely, if it was needed.

24 My view in early February was that, you know, we were
25 effectively, as the phrase goes, drinking from a fire hose,

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1 and I wanted to get a better sense of who the folks were at
2 Highland; what their responsibilities are; how they performed;
3 what I thought of them as performers; how -- I had -- or,
4 having some idea what the claims are and how that process
5 would work; and could we make this a success?

6 So, early on, in January and in February, as we started
7 having these discussions, I was in the Highland offices at
8 least three, usually four days a week. And I was there from
9 7:30 in the morning until 6:00 or 7:00 at night every day.
10 And that gave me just a different feel for exactly how the
11 organization was running and the issues that were coming up
12 every day.

13 That evolved into March where, after I took over the
14 securities accounts in early March and then took over the
15 Multi-Strat issues, that John and Russ Nelms pushed me to
16 really consider stepping up fully to the CEO role. So, by
17 early April, I think it's the first week of April, we actually
18 -- we put it forth and go to the Committee. So we started
19 negotiating what potential terms were, how it would work.

20 You know, one of the concerns that I had, you know, we had
21 no idea, and I suppose we still don't, how the COVID-19 issues
22 will play out and how that would both -- because at the time
23 they were really affecting New York, where I'm based and I
24 live, and less so in Dallas. But by mid-March, it was pretty
25 clear that the whole country was being affected. And now,

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1 obviously, it's hitting all over.

2 And hopefully that will settle, but what we did learn, and
3 I think a lot of businesses learned, is that particularly
4 these types of service businesses that function electronically
5 in lot of respects, even when they are in an office, because
6 you're in front of your screen, that we are very lucky to have
7 these types of roles where we can really perform the job, if
8 not equally well, pretty darn close to how you perform it when
9 you're at the office. And so that issue subsided a little bit
10 in terms of how I would interrelate -- not the issue going
11 away, obviously -- but how I could interrelate and work with
12 the team to drive the business, even if I was doing it from
13 New York.

14 Q And have you continued to play a leadership role from the
15 time you spoke with your fellow Board members in early March
16 until the present?

17 A I have. And I think one of the things that the Committee,
18 you know, recognized was that John and Russ, experienced
19 professionals, were willing to step back and let me take the
20 day-to-day working with the Committee or presenting to the
21 Committee. So we do have weekly Board meetings and we do have
22 almost daily Board calls, and then, without an official
23 meeting, we meet on the phone virtually every Saturday or
24 Sunday, sometimes both, with the three of us, to go through
25 what's happened every -- each week, how the plan has evolved

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1 and where we're pushing it.

2 But in terms of the presentations to the Committee, I took
3 the lead on those in both designing and working with the Board
4 then and then implementing them and laying them out for the
5 Committee, as well as the individual negotiations.

6 So, early on, we determined that we had to try to figure
7 out a way to push this case forward, notwithstanding that we
8 weren't getting -- we didn't see a lot of movement from any of
9 the parties, frankly, on trying to figure out a way to
10 coalesce around a direction. So we designed a program that we
11 laid out for the Committee in which we considered three main
12 areas to consider for a plan. And I took the lead on doing
13 that.

14 Q So, let's talk a little bit about the claims resolution
15 process and the formulation of a plan. Have you played any
16 role in the claims resolution process?

17 A Well, we haven't actually resolved any claims completely
18 yet, but we're very close on one, and I've taken the lead on
19 doing that.

20 On the other two, I've been involved heavily with the --
21 both counsel and with DSI in analyzing the claims. As well as
22 with the rest of the Board, frankly. The -- you know, we've
23 got a significant amount of expertise between John Dubel and
24 Russ Nelms with respect to how to think about these issues in
25 the context both of a bankruptcy, obviously, with Russ, and in

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1 the context of both a restructuring and in the business with
2 respect to John.

3 So we've gang-tackled those, again, effectively, all
4 analyzing the various issues with respect to these claims.
5 But in terms of having the direct negotiations, particularly
6 on two of them, I've taken -- I've taken more of the lead
7 about where we could go. And if you -- particularly with my
8 background in restructuring, and having wrestled with
9 substantive consolidation, alter ego, piercing the veil since
10 1988 or '89, you know, some of the issues that have arisen in
11 this case are very, very familiar to me. I've spent a
12 significant part of my career dealing with those. So I've
13 taken the lead on those types of issues.

14 I think that where I was going was in terms of structuring
15 potential outcomes for plans. And we are -- you know, we've
16 been slowed down, as I think Jeff Pomerantz mentioned last
17 week, to a fair degree by COVID, in that the business impacts,
18 we can go into, and Jeff touched on some of those, but the
19 social impacts with respect to negotiating are hard to -- are
20 hard to understate. The -- you can run a business like this
21 through your screen. It's very difficult to simply negotiate
22 by phone or by video. The face-to-face, at least in my
23 experience, makes a big difference in moving parties, and we
24 haven't had as much of that.

25 What we've tried to do recently, starting in May, is we've

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1 put together a program for the Committee, and we'll walk them
2 through what I think are the -- what we determine as a Board
3 and then we laid out the specifics -- I didn't; DSI -- of what
4 the options are in this case.

5 And I think number one was the status quo. Do we maintain
6 this case status quo, continue to run the business, and then
7 try to negotiate, resolve, mediate, or litigate, first through
8 dispositive motions, then through something more significant
9 if we can't do it through dispositive motions, these claims?

10 The Debtor right now on an operating basis does burn cash.
11 I can go into the specifics, but the Committee knows them, and
12 I'd prefer to do those *in camera* if we -- if the Judge would
13 like that. We do burn cash on an operating basis, but not
14 that much. The Debtor has about \$30 million (inaudible) and
15 the business does run, and generally each year the operating
16 burn, if you will, which is, in compensation, is filled by
17 selling some assets that have appreciated in value. And the
18 Debtor runs real -- with those accretions, run roughly
19 breakeven.

20 The problem in this case is that we are burning a
21 significant amount of bankruptcy professional fees. And it's
22 the lament of creditors and business operators and the
23 bankruptcy bar. I think, certainly, the judges that I see for
24 a long time. And the percentage -- the cost of the cases
25 keeps going up and the percentage of the assets keeps going,

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1 but particularly if the asset values are going down.

2 So the status quo didn't make a lot of sense unless we
3 were going to get very swift movement from the parties, and I
4 mean all sides, to try to resolve the case.

5 The other type of outcome we thought about in terms of a
6 plan was a downsiding model. Downsizing model, excuse me. In
7 that model, we would try to significantly cut headcount, try
8 to significantly cut expenses. Run the business as leanly as
9 possible. And then try to go through those steps with respect
10 to resolving the claims.

11 Again, the problem, the problem with that is resolution of
12 those claims was uncertain and could take a long time, unless
13 we had significant movement from either side. But, moreover,
14 in terms of operating the business, we determined that with
15 respect to both the managed accounts and shared service
16 agreements, we really couldn't effectively do the job that the
17 Debtor does with a smaller staff. Truth is, even at 70
18 people, the HCMLP staff is pretty lean. It's a really good
19 team and they are very efficient and they've really proved it
20 through working offsite, you know, through the pandemic.

21 But we really thought that if we -- and analyzed it. If
22 we were to try to cut that team and provide the services, we
23 would fall down. So we would breach the duties or potentially
24 incur liabilities under those various contracts.

25 The third area that we took a look at, which was what we

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1 called the subservicing model. In this model, we would try to
2 separate the business of the Debtor, which has a small
3 operating loss, but it's still material money, from the asset
4 management. That way, you could hold onto the assets for the
5 benefit of the creditors or the Debtor, depending on where the
6 claims comes out, still provide the services to those third
7 parties under the subservicing agreements or the management
8 agreements. You wouldn't make money on that, but you'd get
9 rid of the operating burn.

10 And that model had a number of issues, but we've sort of
11 evolved that model to what I think has been referred to in
12 court as the debtor-creditor monetization vehicle. So a
13 little bit of a cumbersome name, but the idea would be to try
14 to separate the assets, which potentially are the ways to pay
15 the creditors, depending on where claims come out, and then --
16 and the operations, and make sure you can continue the
17 operations without a heavy burn.

18 That model also permits us to cut, we believe, bankruptcy
19 operating expenses significantly. So, right now, because of
20 the nature of the case, we have two professionals doing every
21 job: Committee professionals and Debtor professionals. We
22 would be able to reduce that cost by putting those into one
23 entity that'll be a trust-like structure to service the
24 business, resolve the claims, monetize the assets.

25 And, finally, something I started working on -- I'd say on

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1 my own, but that wouldn't be true -- with the DSI team,
2 particularly the two -- we have two excellent analysts on the
3 case. A very detailed model of what I think has been referred
4 to maybe even in court as a potential grand bargain plan. And
5 that plan looks at monetizing the assets over what period we
6 believe that we could get that done. (inaudible) we're
7 looking at the values that we could achieve as well as setting
8 out what we think are reasonable numbers for the claim
9 distributions and then how they would be made.

10 Now, on the asset side of the ledger, we have a pretty
11 good understanding. We obviously know where the assets are
12 bought, and we have a pretty good sense of what the current
13 market looks like for those assets. We're not a forced
14 seller, but we have -- we have been involved in processes
15 around a number of the assets and have a good sense of where
16 values are and how long it would take to achieve those values.

17 You don't have to sell an asset as well to get money from
18 it. There might be ways to finance those assets. Although,
19 to be sure, in this environment, financing particularly these
20 types of assets has become very, very difficult.

21 The other side of the equation of the claims, and we're
22 using our best estimate of where we think those claims come
23 out in terms of payment, the creditors often have a different
24 view as to what they would like those claims to come out with.
25 So we're trying to figure out, through negotiation and

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1 discussion, how we get those two sides closer together. And
2 that, that would be the grand bargain plan.

3 And I think where we're really focused now is that status
4 quo doesn't make sense. We've gone that way too long.
5 Downsizing doesn't work because of the complexity of these
6 operations and the contractual obligations that the Debtor
7 has. And it's really a grand bargain plan or a Debtor
8 monetization, a debtor-creditor monetization vehicle, which
9 would be structured like a trust and still be able to service
10 the business while resolving the claims.

11 Q Taking into account the uncertainty because there are
12 still some options being considered, in your leadership role,
13 have you -- do you have a sense of timing? Is there a
14 timeline by which certain milestones are at least
15 aspirational, if not achievable?

16 A Well, I don't think I'm telling anyone what they don't
17 know, that deadlines get people to act and make decisions.
18 Sometimes they're good decisions, sometimes they're not, but
19 we're going to push forward on both of these plan
20 opportunities now. So we intend to file a debtor-creditor
21 monetization vehicle plan, and we'll keep pushing the parties
22 towards settlements.

23 You know, as we say on the Multi-Strat negotiations, until
24 it was clear that we were either going to default, because we
25 didn't have the money to pay those premiums, or we're going to

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1 file Multi-Strat as a bankruptcy, it was hard to get folks to
2 really come to the table and think about how to settle that
3 issue.

4 These issues in regard to the total case are much more
5 complicated. We're going to file a plan. We believe that
6 will set a bit of a crucible to folks to think about how to
7 move forward with their claims. We are, as Jeff Pomerantz
8 mentioned last time, agreed in principle, but we have some
9 issues to work through with Redeemer that we hope to be able
10 to resolve by this week. And so that's my internal goal, but
11 I expect to be able to do it.

12 The reason that's complex is not that it's simply a -- the
13 arbitration award is not simply a money award; it actually
14 requires certain offsets, it requires certain assets be sold
15 and paid for. And we're trying to carve our way around some
16 of those, because they (inaudible) agreement, because they're
17 -- they're more difficult than simply exchanging cash for
18 assets, because we don't have the ability to do that right
19 now. We don't have the cash, and we're in bankruptcy.

20 So I do believe that we can get these done. And then if
21 mediation is something that would work, great. We're going to
22 try to do it without mediation as well. Going to try to do it
23 before we get to mediation and resolve claims. And if we're
24 unable to do that, hopefully mediation will push it forward or
25 we have to have a fallback, which will be dispositive motions

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1 with respect to certain of the claims.

2 But we expect to have and I think we have a number of
3 claims objections that have (inaudible). We've resolved
4 those. We're really down to three claims. And one of them is
5 almost done.

6 Q All right. At the last hearing, --

7 MR. MORRIS: Your Honor, that really does finish the
8 substance of the testimony with respect to this motion, but at
9 the last hearing Your Honor raised some questions about PPP
10 loans.

11 THE COURT: Yes.

12 MR. MORRIS: Would you like me to just take a moment
13 with Mr. Seery to address that?

14 THE COURT: Yes, please.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q Mr. Seery, you're aware that the Judge raised some
18 questions about whether and to what extent the Debtor may have
19 been involved in any of the PPP loans?

20 A Yes.

21 Q And have you done any work to try to figure out the
22 answers to the questions the Judge posed?

23 A Well, work in response to the question, but also work
24 previously. So, just a -- quickly, as I think we all know,
25 the PPP program was put forth to try to give companies cash

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1 that they had to use for employee payments, to continue to
2 keep payroll supported and to continue to have folks hold
3 their jobs.

4 We have -- and I think the *Business Insider* article, which
5 I'm not familiar, I know the publication is not something I
6 seen much, but I'm not familiar with the specifics of that
7 article, and -- but any PPP, away from the assets that HCMLP
8 actually owns or controls. And we've got -- we've got three
9 -- and I think there's some substance to the article. But
10 we've got three businesses. And these are -- this is public,
11 but I'll go into the -- sort of the obvious reasons without
12 going into the specifics of the business around the ones that
13 I know of well.

14 Carey Limousine is a business that transports folks in
15 high-quality cars from airports or from events or between
16 businesses. It was hit severely by the COVID-19 pandemic.,
17 particularly with respect to the air transportation, which was
18 really one of its biggest areas. The business,
19 notwithstanding Uber and the other type of shared ride
20 services, had actually done quite well, and Highland was an
21 owner of a significant portion of that business related to
22 some loans that it held in various funds.

23 That business's management, with its own outside counsel,
24 sought a PPP loan. Then our director came to us and discussed
25 with the Board the propriety of that loan. We engaged outside

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1 counsel, not bankruptcy counsel but counsel that had
2 particularized expertise in PPP, and spent a ton of time
3 really understanding both the law as well as the specific
4 regs. Carey did get a PPP loan. It is potentially
5 forgivable, depending on how it's used.

6 The second entity that was similar but didn't come to the
7 Board, we have a business called SSP, which is an excellent
8 highway business that provides equip -- materials for a lot of
9 different road construction, but primarily highway road
10 construction. Very well run business. That entity got a PPP
11 loan as well, primarily worried about whether the construction
12 on the highways would shut down.

13 So it's been -- I don't believe that's really happened in
14 Texas, which is where most of their business is, but they
15 qualified for that loan. They did not come to the Board. A
16 very specific carve-out, because one of the interest holders
17 that we share that position with is a Small Business
18 Administration fund and, so it was very clear that it was
19 entitled to that loan.

20 Then there's a third entity called Roma that got a very
21 small PPP loan. We don't control the entity and we were not
22 involved in its acquisition of that loan. Again, it would
23 have to be used as required.

24 One of the things I want to make sure that is in the
25 record and for Your Honor with respect to Carey, we spent a

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1 lot of time as a Board focused on, one, whether it was legal
2 to get that loan, first. We're doing everything right, by the
3 book. We're not going to play in the gray. There is no gray.
4 There's black and white in these areas.

5 Number two, was it ethical, was it appropriate that we
6 went and got this loan or that Carey went and got this loan?
7 Management, with the outside counsel, was sure that we could
8 do it, but we didn't want to take their word for it, so we
9 went out and got our own counsel, third-party counsel for the
10 Board to make sure that this was appropriate.

11 Three, the requirements around these loans are significant
12 and the penalties for violating them are severe. So if you
13 get a loan by mistake, are you really required to pay it back?
14 And if you're mistaken, that will be expensive, but it won't
15 be a real penalty. But if you get a loan that's really
16 inappropriate, that you shouldn't have gotten, that was a
17 material misstatement of any of the facts around it, the
18 penalties are significant. And not only in terms of the
19 opprobrium that you'd suffer in the press, because that's
20 coming, but in terms of how you use the funds.

21 So they can only be used in very specific ways, and we
22 were exceptionally careful around this program.

23 The basis of the program is to keep people employed. And
24 with a business like Carey Limousine in particular, where
25 there's a significant amount of debt, where the business is

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1 shut down by COVID, where we didn't have the funds to put into
2 Carey, nor even if we wanted to, we might not have been able
3 to do it without the Committee's approval because of the
4 protocol, a PPP loan was not only legal but it was
5 appropriate. And it's being used in that fashion, meaning to
6 keep employees employed.

7 Q Thank you very much, Mr. Seery.

8 MR. MORRIS: Your Honor, I have no further questions
9 of Mr. Seery. Does the Court have any questions?

10 THE COURT: I actually have a follow-up question
11 regarding the PPP, just to kind of put a bow on this.

12 EXAMINATION BY THE COURT

13 THE COURT: I'm looking at the demonstrative aide. I
14 don't know if you, Mr. Seery, have it there handy.

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. So I'm turning to Page 6, the
17 chart, the subchart, Investments and Subsidiaries. The third
18 column, Privately-Held Equity, Various Companies. I mean,
19 that would be the type of investment entity we're talking
20 about here that got the PPP loan: Carey Limousine, SSP, Roma?
21 Nothing that was -- well, I'm going to say Highland affiliate.
22 Affiliate, that's a dicey term, but that's the type of entity
23 in the organizational structure we're talking about, correct?

24 THE WITNESS: Those are the ones -- I want to be very
25 careful, because I know what I know and I know I won't

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1 represent anything that I don't know.

2 So, with respect to the entities that HCMLP, the Debtor,
3 controls, that's absolutely the case. I don't know, and I can
4 try to find out, but they are not HCMLP-controlled entities.
5 Whether other entities in the related-party complex received
6 loans -- so, obviously, HCMLP did not receive a loan. And the
7 only entities that we were involved with is the ones I
8 mentioned to you.

9 And I should mention, there are other entities in the
10 privately-held equity that got other government money, in the
11 medical space, that they didn't even ask for. HHS pushed
12 forward payments to folks in the business, medical healthcare-
13 providing businesses, to assure that they had liquidity to
14 provide. And so -- and this has been described to me exactly
15 this way, that they woke up in the morning and found money in
16 their account. And with one of the companies, they actually
17 returned a bunch of the money because it was from a dormant
18 provider number and they didn't believe it was appropriate to
19 keep that money. So that was one of the entities that we
20 control with other investors.

21 But with respect to our HCMLP entities, these are the only
22 ones I know. With respect to other related entities that
23 might be in the family of businesses, for lack of a better
24 term, that were alluded to in the *Business Insider* article, I
25 don't know that answer. So, I -- if I -- I can try to find

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1 out. I just don't know the answer, Your Honor.

2 THE COURT: All right. Thank you. Well, this has
3 been extremely helpful.

4 I should ask does anyone have any questions of Mr. Seery?
5 The Committee counsel, perhaps? Anyone else?

6 MR. CLUBOK: Your Honor, this is Andrew Clubok. In
7 light of the testimony, I do have some questions on behalf of
8 UBS.

9 THE COURT: All right. Briefly. Go ahead.

10 MR. CLUBOK: Okay.

11 MR. MORRIS: Your Honor? Your Honor, I'm sorry to
12 interrupt, but there's no objection lodged here. If Your
13 Honor wants to permit it, that's obviously the Court's
14 prerogative. But as just a point of order, having not lodged
15 an objection, I don't know what right anybody has to cross-
16 examine the witness.

17 THE COURT: All right. Well, that's why I said
18 briefly. I think that Mr. Morris makes a good point, Mr.
19 Clubok. You could have filed a written objection, response,
20 comment, or something. So, you're a party in interest. I'll
21 give you a little bit of leeway here. But please keep it
22 brief.

23 MR. CLUBOK: Yeah. Thank you, Your Honor. It's just
24 some of the things that Mr. Seery said which we didn't expect
25 to hear that has raised a few questions that I just very

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1 briefly will try to address.

2 CROSS-EXAMINATION

3 BY MR. CLUBOK:

4 Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham &
5 Watkins, on behalf of UBS.

6 Mr. Seery, you talked about the fiduciary duties you've
7 understood yourself to have with respect to certain parties,
8 and my question to you is: Have you understood, since the
9 beginning of your service as an Independent Director of
10 Strand, that you had fiduciary duties to the unsecured
11 creditors of the Debtor?

12 A It's a -- it's a -- the answer is I understand the
13 fiduciary duties very well. I think we have fiduciary duties
14 to the estate. So Highland -- what I tried to explain is that
15 Highland, as an asset manager, has very specific fiduciary
16 duties that are set forth in (inaudible) in the cases and the
17 rules that have interpreted it. We, as directors of Strand,
18 have a duty to the estate.

19 I don't think it's -- I don't think it's fair, and I'd
20 have to subject myself to some education from counsel, I don't
21 think it's fair to say we had a specific fiduciary duty to a
22 particular creditor.

23 So, for example, if I had a fiduciary duty to UBS, it
24 would be very difficult for me to object to UBS's claim. It
25 would be -- I don't know how I could do that as a fiduciary.

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1 When the claim is crystalized in the estate, I believe that we
2 have fiduciary duties to each and every interest holder in the
3 estate.

4 Q My question is a little simpler, and I just -- well, I'm
5 actually not asking legally whether you do or not. I'm asking
6 what your understanding has been since your role. Have you
7 conducted yourself in a way in which you have treated your
8 obligations as though you have a fiduciary obligation to the
9 unsecured creditors?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q You said that you believe that you have, with respect to
15 Multi-Strat, which is an entity that you manage, you said that
16 you understood yourself to have fiduciary duties to the
17 redeemers of Multi-Strat. Do you recall that?

18 A Yes.

19 Q Yeah. And Multi-Strat is outside of the estate, but HCM,
20 the Debtor manages Multi-Strat. And you said because of, you
21 know, your role, you personally feel as if you have a
22 fiduciary duty to the redeemers in Multi-Strat, correct?

23 A I --

24 MR. MORRIS: Objection to the form of the question.

25 Mischaracterizes the testimony.

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1 THE COURT: Sustained.

2 MR. CLUBOK: Your Honor, I believe that the
3 transcript -- I believe Mr. Seery said in direct that he
4 considered himself to have fiduciary duties with respect to
5 the redeemers of Multi-Strat. The transcript will show it. I
6 don't know what the objection is. Maybe I misstated when I
7 asked my question, but I'm just starting --

8 THE COURT: Okay.

9 MR. CLUBOK: I'm just trying to understand --

10 THE COURT: All right. I'll let you rephrase the
11 question, but this -- I've probably -- I may have made a
12 mistake in letting you ask questions, because this is about
13 the propriety of him being CEO and the reasonableness of
14 compensation. This isn't a discovery opportunity. So I'm a
15 little confused the relevance of what you're asking. Could
16 you address that for me?

17 MR. CLUBOK: Sure. Your Honor, Mr. Seery on direct
18 described what he understood his fiduciary duties to be. I
19 think we -- it made me wonder, he didn't mention the unsecured
20 creditors or what he believes his fiduciary relationship is,
21 if any, with the creditors, unsecured creditors. I would -- I
22 think it's a fair question to ask what his understanding is,
23 because now he's going to take on a new role as CEO, and I
24 think it's appropriate for everyone to understand, so we know
25 when we're dealing with Mr. Seery --

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1 THE COURT: Okay.

2 MR. CLUBOK: -- what his --

3 THE COURT: I think -- I think he --

4 MR. CLUBOK: -- he understands -- what he understands
5 his fiduciary duties to be.

6 THE COURT: I think he answered the question, and
7 frankly, I think he answered it correctly. His fiduciary
8 duties go to the estate, right? And the creditors are the
9 beneficiaries of his actions in that regard, right? So I
10 think he correctly answered the question already. All right?
11 Next question.

12 MR. CLUBOK: Okay. He says that there's three
13 aspects of the business he's been managing: \$300 million,
14 roughly, of Highland's own assets; the fact that they manage
15 \$3 billion in other assets, I think in managed assets; and
16 then they have shared services for \$6 billion in assets owned
17 by related entities, mostly.

18 BY MR. CLUBOK:

19 Q For those three separate businesses, I just want to
20 briefly understand: With respect to the first one, for
21 example, there's \$300 million, you said, roughly, of
22 (inaudible) assets. Roughly what were the value of the assets
23 when you started your role in January of 2020?

24 A It's hard to compare apples to apples on this because
25 there are certain assets that we've taken out that didn't

1 change in value. So I would say they were carried on the
2 balance sheet at different levels. I think a good rough
3 number would be in the \$500 to \$600 million area.

4 Q Okay.

5 A And the biggest -- the biggest movants in asset values
6 have been on securities, both ones that we continue to own and
7 the accounts that Jefferies -- that were levered, and those
8 were shown as unlevered marks on the balance sheet and the
9 losses that were incurred there. And then with respect to
10 certain of the PE assets and then a major movement on a
11 related-party loan, where the Board, through analysis that we
12 did with DSI and others, believes that loan is likely to be
13 worthless. Likewise, the claim of that entity we believe is
14 likely to be worthless.

15 Q And then to the extent the assets, you say, have a rough
16 value of \$300 million, you alluded to significant professional
17 fees, bankruptcy costs, administrative fees, the Debtor is
18 burning cash. My question is, If it's \$300 million today
19 roughly of total value of assets, what's your current best
20 estimate of the total amount that will be available to be
21 distributed to the creditors net of those -- that burning of
22 cash and the admin fees and the other issue that you
23 mentioned? What is your current expectation of the total
24 amount that will be able to be distributed to the creditors?

25 MR. MORRIS: Your Honor, just -- I just object to

1 this line of inquiry. It's like free discovery, as Your Honor
2 suggested earlier. I don't know what it has to do with Mr.
3 Seery's work, his qualifications, the compensation
4 arrangements. And I think it's inappropriate.

5 THE COURT: Okay. I'll overrule and allow this one
6 remaining question, but that's going to be it, unless your
7 next questions pertain to the employment or compensation
8 structure.

9 THE WITNESS: Yeah, I don't have a crystal ball as to
10 what the assets are going to be worth. I think that they are
11 fairly marked right now, and we have significant discovery
12 that we've had with respect to a number of the assets and
13 marked at views as to their value. So I think that we're at a
14 pretty good base value, assuming that we don't rush into
15 forced sales of assets.

16 So, as I know the Court is aware and I hope you're aware,
17 when you look at asset values, and you look at them on a
18 liquidation basis, the numbers are normally much lower than
19 when you look at them as selling them on a more controlled
20 basis. If you have liquid securities, that's not the case.
21 So if I have \$500 million of Apple at \$363 today, it's
22 probably a good chance that it'll be worth something different
23 in a month, something different in two months. But if I need
24 to move my position, I can do that.

25 These assets are much more difficult to move. And the act

1 of selling them often changes the value, which is why we
2 engage professional bankers to help move, first, those assets.

3 So I just don't have a good crystal ball. I think the
4 valuations that we have now are pretty good. I think they've
5 been scrubbed well. But that doesn't mean that certain of
6 these assets will maintain the exact value they have. So, I
7 gave a good example of Carey Limousine, which is a very small
8 asset but it's an easy one to understand because everybody can
9 relate to a car service company that does, you know, a little
10 bit more high-end and is focused on the airport travel and how
11 that's been impacted.

12 That asset value has gone down precipitously, even though
13 it was small, because of that. So I don't -- I don't really
14 have a great crystal ball as to what's going to happen. If
15 we're very successful in the fourth quarter and the economy
16 stabilizes and the COVID vaccines are out in record time and
17 move forward, then I think we've got potential for upside.
18 But right now, in the current environment, I think we're
19 marked fairly.

20 BY MR. CLUBOK:

21 Q Yeah. But my question really wasn't about the value of
22 the assets. I realize those could go up or down. And you
23 think they're fairly marked. My question was, What's the
24 total amount of setoff from those assets to the extent the
25 bankruptcy fees you alluded to, the burning of cash on the

1 other businesses, you know, how much, you know, net -- what's
2 the amount that will come off of those assets or that should
3 be -- that we should assume will be deducted from those assets
4 because of the professional fees that have been incurred or
5 you predict will be incurred through the end of the year and
6 the burn of cash that you mentioned, et cetera?

7 I'm trying to understand how you supervised -- because
8 you've managed those expenses as well as the assets, right?
9 And so I just think it's important for us to understand, at
10 the end of six months, and then how things are set for the
11 rest of the year, what's the total amount of, you know, call
12 it liabilities or costs associated with running the business,
13 running the business and at a cash burn rate, bankruptcy fees,
14 et cetera, that we --

15 THE COURT: Okay. I'm going to cut it off. I'm
16 going to cut it off. That, in my view, is going a little too
17 far afield. That's a discussion outside the courtroom. So,
18 thank you, and we're going to see: Does the Committee have
19 anything they want to ask?

20 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
21 the Committee.

22 I certainly do not have any questions to ask. I do have a
23 couple of statements that I want to make, but I don't know if
24 now is the appropriate time or if there's going to be further
25 testimony.

1 THE COURT: Okay. I think there might be another
2 witness or two, but we'll let you make your comments at the
3 appropriate time.

4 EXAMINATION BY THE COURT

5 THE COURT: Mr. Seery, I meant to ask, I forgot to
6 ask: You've mentioned a couple of times the Debtor, Highland,
7 has 70-ish employees. Has the number gone down since the case
8 was filed, is Highland losing employees, or is it staying
9 stable?

10 THE WITNESS: We lost -- we lost seven employees.
11 There were some that were severed for performance reasons.
12 That happens every year. There were some that just moved on
13 because they decided to move on. And that some -- and then we
14 had some that, because of the bankruptcy, we lost. We added,
15 I think, one or two employees that we're pretty excited about
16 in the fund valuation area, which is a pretty critical area
17 for the shared services. Unfortunately, they haven't been
18 able to go to the office, but fortunately, they've been able
19 to work.

20 So we're down, Your Honor, probably eight total, and so
21 we're more of the low to mid-60 area right now.

22 THE COURT: Okay. And --

23 MR. SEERY: And we were a little bit north of 70 when
24 we took the case.

25 THE COURT: Okay. And the COVID situation, I mean,

1 if you walked into the office, would there be people around in
2 masks, or are people still working at home?

3 MR. SEERY: People -- so, in -- yeah. So, in March,
4 very early on, as things started to shut down, Brian Collins,
5 who's the director of human resources and an accomplished
6 professional, came to the Board and basically said, you know,
7 yeah, Texas is better, but it's not immune. We need to come
8 up with a program.

9 And with Russ Nelms and John Dubel and I, we developed a
10 program, with Brian -- with Brian driving it, to figure out
11 exactly how to approach going into the office; how we would
12 maintain the office; and then, if something were to happen,
13 what we would do.

14 We had an employee who, with her family, got COVID in --
15 we believe in New York, came back. And as soon as we found
16 out that person wasn't feeling good in the office, it was the
17 first day they were back, a protocol with thermometers and --
18 at that time, thermometers were thought to be valuable -- we
19 immediately sent that employee home. We then brought in a
20 cleaning crew to clean up the office with EPA and FDA-approved
21 materials, and then had several days off and brought folks
22 back the following week.

23 We found that to be, frankly, unwieldy as COVID started to
24 continue to creep a bit through March and into April. At that
25 point, we did have other employees, not who came into the

1 office, but who had contracted COVID, so we shut down HCMLP.
2 When we cleaned the office, we shut it down completely.
3 Nobody could go in.

4 When -- since then, we have set the office up where we had
5 initial (inaudible) when things were pretty good, so we
6 divided the move into -- into basically 20 percent could be in
7 the office at any one time. And then, since that time, as
8 things have gotten worse, we found that we were, one, working
9 extremely well offsite; and two, that it was just a better
10 environment for the employees. So we've been working
11 continually offsite.

12 If folks need to go in, because either they need more
13 advanced systems that they can't go to plug-and-play at home,
14 or because there's just materials that they want to get,
15 they're able to do in. We have tons of disinfectant
16 everywhere. We have masks available. We put in dividers,
17 Plexiglas dividers between the work stations to assure that if
18 someone was at a station for a long time, it didn't -- it was
19 less likely that you could have transmission.

20 I will tell Your Honor that HCMLP is not reporting to the
21 office. Some of the affiliated businesses, and I don't know
22 the percentage, have been. So those businesses, which we
23 don't control, are going in.

24 From my perspective, as long as the numbers are where they
25 are in Texas, from both a business perspective in terms of

1 making sure that the employee base doesn't contract COVID in
2 material amounts -- first, any amount -- but in material
3 amounts that would impact our ability to run the business.
4 And then with respect to the civic part of it, which is we
5 don't want to be a part of forcing the spread or causing the
6 spread of this disease, we know we can work from home. We're
7 going to continue to do that until we believe it's very safe
8 to go back.

9 Notwithstanding that we have the ability and have been
10 doing it with extensive cleaning, extensive disinfectant, and
11 with dividers, until we are very comfortable that we can go
12 back and protect our employees and that it's the right civic
13 thing to do, we're not going to go back, particularly since it
14 doesn't impact our ability to perform.

15 THE COURT: Okay. I really want to, you know, get to
16 the rest of our hearing soon, but I heard something that made
17 me have a question. You said there are other entities we
18 don't control whose employees are going in. Could you tell me
19 exactly what you meant by that?

20 THE WITNESS: There's -- away from HCMLP, there's
21 approximately another 75 to 80 -- it may be slightly more --
22 employees at the other entities that are NexPoint, NexBank,
23 NexPoint Advisors. They are under different protocols that
24 neither I nor Russ nor John control. The office --

25 THE COURT: Let me just stop you.

1 THE WITNESS: Please.

2 THE COURT: So it's just Nex -- well, NexPoint-
3 related companies?

4 THE WITNESS: Uh-huh.

5 THE COURT: NexPoint and --

6 THE WITNESS: Yes.

7 THE COURT: -- affiliates of NexPoint?

8 THE WITNESS: Correct, Your Honor. The office, the
9 HCMLP offices are huge. And when we were there pre-COVID,
10 with the full complement of folks, it felt like they were
11 relatively empty. I shouldn't say -- they felt like there was
12 plenty of space.

13 What we found, with both sets, our employees and then the
14 NexPoint-related employees, when 140 or 150 people were in
15 that office, which pre-COVID felt comfortable, post-COVID
16 didn't feel so comfortable. So our employees, we started, as
17 I mentioned, with the shift-working. And then we decided to
18 go completely mobile unless somebody feels they have to be in
19 the office, and we want to make sure that they follow the
20 protocols when they do.

21 With respect to the non-HCMLP related entities, those
22 entities, some percent of those employees are still going into
23 the office.

24 Now, when they're there, to be frank, what I said was a
25 pretty comfortable place with 140 people is a pretty empty

1 place if there's only 50. But our employees, we felt it was
2 important, since we were able to execute from home, we didn't
3 need, on most parts, the extra systems to be able to execute
4 in the office, that we could largely perform from home to make
5 sure that we weren't taking any risks with the business but
6 also taking -- one, taking risks for the employees; two,
7 taking any risks for the business; and three, as I mentioned,
8 the civil perspective.

9 THE COURT: Okay. We're going to have to take a
10 five-minute break here in just a second, but let me kind of
11 elaborate on why I was drilling down on that question about
12 NexPoint. I mean, isn't it Highland employees who service
13 NexPoint? Or am I wrong about that?

14 THE WITNESS: Highland employees service a lot of
15 NexPoint. But NexPoint, NexBank, the various funds, NXRT,
16 there's a number of businesses: They have their own employees
17 as well.

18 THE COURT: Okay.

19 THE WITNESS: So the whole complex is about 150
20 employees.

21 THE COURT: Okay.

22 THE WITNESS: Highland Management is about 70.

23 THE COURT: Okay. All right. Well, are we finished
24 with Mr. Seery's testimony, Mr. Morris?

25 MR. MORRIS: Yes, Your Honor. Our next witness after

1 the break will be John Dubel.

2 THE COURT: Okay. Very good.

3 MR. MORRIS: And we --

4 THE COURT: Mr. Seery, again, this has been extremely
5 helpful for me, and I hope for others. I hope you'll stick
6 around, because when we circle back to the mediation
7 discussion at the end of today, I really would like you to be
8 involved in that discussion. I may want your input on one or
9 two things. So can you stick around?

10 THE WITNESS: Absolutely, Your Honor. Other than
11 getting some water and maybe turning the air conditioning back
12 on in this room, I'll stay.

13 THE COURT: You must not be in Texas if you don't
14 have your air conditioning on. I assume you're in New York.
15 All right. Five-minute break. We'll be back.

16 THE WITNESS: It's hot, but not Texas hot.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE CLERK: All rise.

20 (A recess ensued from 3:16 p.m. until 3:22 p.m.)

21 THE CLERK: All rise.

22 THE COURT: All right. Please be seated. We're back
23 on the record in Highland.

24 Mr. Morris, you were going to call Mr. Dubel next?

25 MR. MORRIS: Yes, the Debtor calls John Dubel.

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1 THE COURT: Dubel?

2 MR. DUBEL: Your Honor, may I have just one minute to
3 -- my air conditioner.

4 THE COURT: All right. Mr. Dubel, I said your name
5 wrong. Could you say Testing 1, 2?

6 MR. DUBEL: I can do that, Your Honor. Testing 1, 2.

7 THE COURT: Okay. Very good. Please raise your
8 right hand.

9 JOHN DUBEL, DEBTORS' WITNESS, SWORN

10 THE COURT: All right. Thank you. Mr. Morris, you
11 may proceed.

12 MR. MORRIS: Thank you, Your Honor. As Mr. Pomerantz
13 previewed, Mr. Dubel's testimony is going to largely cover the
14 corporate governance-type issues concerning the evolution of
15 the motion, the discussions or the, you know, beginning of the
16 discussions, and how the proposal itself evolved.

17 If I may, Your Honor, just to perhaps move this along, I
18 might lead the witness a little bit. If it's a problem,
19 you'll let me know, okay?

20 THE COURT: Okay. I will let you know if it's a
21 problem.

22 MR. MORRIS: Okay.

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good afternoon, Mr. Dubel. You're a member of the Board

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1 of Strand today; is that right?

2 A I am.

3 Q And you've held that position since mid-January; is that
4 right?

5 A Since January 9th, yes.

6 Q Okay. And you understand that we're here today on the
7 Debtors' motion to appoint Mr. Seery as the Debtors' CEO, CRO,
8 and the Foreign Representative?

9 A I do understand that, yes, sir.

10 Q Does the Board unanimously support the motion?

11 A I think the Board does, and specifically the compensation
12 committee, because of obviously the conflict that Mr. Seery
13 might have, you know, but the Board fully supports it, and the
14 compensation committee is comprised of Mr. -- Judge -- Judge
15 Nelms and myself.

16 Q Okay. And do you believe that -- withdrawn. Does the
17 Board believe that it's in the Debtors' best interests to
18 retain Mr. Seery on the terms proposed?

19 A We do.

20 Q And why does the Board believe that?

21 A Well, as the Court has heard from the testimony of Mr.
22 Seery today, he has a tremendous amount of skills and
23 experience in the area of asset management. He's effectively
24 been serving as the CEO since -- well, in a lot of ways, since
25 January 9th, when we asked him to step up and take on some

1 additional responsibilities, but very clearly since the middle
2 of February, and specifically, the middle of March.

3 And as the Court noted, he is -- knows these assets very
4 well. He knows the operations. He's done an exemplary job of
5 handling all of the issues. He has spent a tremendous amount
6 of time working with the Committee members, trying to develop
7 good lines of communications.

8 And, you know, Russ -- having, you know, served in a C
9 Suite position for 25 years of my 30-plus years of
10 restructuring experience, and 15 years as a CEO, we need a
11 good leader, an operational leader to run the organization.
12 So we can support him because you need to have someone in
13 there who can make decisions; work quickly; obviously,
14 communicate well with the Board, which he has been doing for
15 quite some time. So, all the -- all of the reasons why we are
16 very pleased to have him take on this role.

17 Q Okay. Let's talk a little bit about what led to this
18 particular motion. Do you recall when the idea of appointing
19 a CEO first arose?

20 A I would say it was back in December, before the
21 Independent Board was put together, when we first started
22 intervening with the creditors and with the Debtor. It was
23 raised to me in my interview, would I be, you know, willing to
24 step in as a CEO if asked to? And I'm assuming it was also
25 asked of Mr. Seery. I didn't ask him that. And it was all

1 obviously coming, you know, out of the protocols that were
2 being developed where Mr. Dondero would step down as the CEO
3 and the Independent Board would basically be responsible for
4 the operations of the company. But we had the opportunity to
5 go out and seek either one of the three Independent Board
6 Members as the CEO or go outside to the marketplace and try
7 and find an independent or a third-party CEO.

8 Q And to the best of your recollection, was that flexibility
9 built into the term sheet that was part of the corporate
10 governance settlement?

11 A It was.

12 Q All right.

13 MR. MORRIS: Your Honor, this is where we're going to
14 test our technological capabilities. I'm going to ask Ms.
15 Canty to put up and to share Exhibit 1, and let's see if we're
16 able to do that.

17 THE COURT: Okay. But if anything goes wrong, I
18 actually do have the docket up on my screen. I can pull them
19 up. But, oh, even better. Even better. Okay.

20 MR. MORRIS: All right. It looks like it worked.
21 Ms. Canty, if you could turn to Page 2, please. I think
22 that's Page 1.

23 (Pause.)

24 MR. MORRIS: I think it's stuck.

25 THE COURT: Hmm.

1 THE WITNESS: If need be, I have a teenager who could
2 probably figure this out, because I sure can't.

3 MR. MORRIS: I'm impressed that La Asia got to this
4 point already. Okay. Good. Just the one on the right. Is
5 there a way to focus in on the top paragraph on the right?

6 THE WITNESS: I'll put my glasses on and I'll be able
7 to read it.

8 MR. MORRIS: Okay. Right there. Perfect.

9 BY MR. MORRIS:

10 Q Is -- are you familiar with the provisions generally in
11 the term sheet relating to the opening of CEO?

12 A I am.

13 Q And is this the provision that you were referring to
14 earlier?

15 A It is.

16 Q And does this provision, to the best of your
17 understanding, provide the Board with the flexibility, in
18 consultation with the UCC, to exercise its business judgment
19 and appoint a CEO if it determined that to be in the Debtors'
20 best interest?

21 A It does. It's consistent with the discussions had -- that
22 were had prior to our appointment, and it obviously was
23 incorporated in the term sheet that was approved by the Court
24 on January 9th.

25 Q And this also reflects the understanding that you

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1 described earlier, where one of the Independent Directors
2 could, in fact, be selected as the CEO; is that right?

3 A That is correct.

4 MR. MORRIS: All right. Let's just take that down,
5 please, Ms. Canty.

6 BY MR. MORRIS:

7 Q Mr. Dubel, has Mr. Seery, in fact, taken on day-to-day
8 operational responsibilities for the Debtor?

9 A Yeah. Yes, he has. And I think early on the Board
10 realized that, between the three Board members, we would try
11 and divvy up the responsibilities, as Mr. Seery referred to
12 earlier, and it was definitely like drinking from a fire hose
13 in the early stages of the case, where the new Board was put
14 in place. And we tried to divvy up our responsibilities,
15 taking into consideration each of the Board Members'
16 expertise.

17 But it was pretty clear that the main business operations
18 required somebody with the skill set that Mr. Seery had, and
19 it would be much more efficient, as we progressed forward, to
20 coalesce around one individual as a CEO.

21 MR. MORRIS: Ms. Canty, can you pull up Exhibit 2?

22 BY MR. MORRIS:

23 Q And while we're doing that, Mr. Dubel, do you recall early
24 on that the Board asked Mr. Seery to become involved in the
25 trading of the prime accounts?

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1 A I do, yes.

2 Q Okay.

3 MR. MORRIS: La Asia, I don't know if you can scroll
4 down just to --

5 Your Honor, these are minutes from the Board's very first
6 meeting. And if we go to the next page, right here, you'll
7 see there's a discussion in the second paragraph.

8 BY MR. MORRIS:

9 Q Mr. Dubel, does that reflect the Board's deliberation and
10 decision, really, on the first day, to give Mr. Seery, you
11 know, the responsibility for dealing and overseeing the prime
12 accounts?

13 A It does. And what I was saying is, prior to the
14 appointment, in doing all of our diligence prior to joining
15 the Board, we realized there were all these issues that needed
16 to be dealt with. And so we came in on the very first day,
17 ready to recognize that there were certain things that needed
18 sort of expertise. And they were presented to us by DSI and
19 the management of HCMLP as areas that needed some additional
20 handling and oversight. And so we asked Mr. Seery to step
21 into that role on the very first day, which he -- which he
22 agreed to and the Board approved it.

23 Q Okay. Let's get to the meat and potatoes here. Did there
24 come a time when the Board and Mr. Seery actually began
25 discussing the possibility of his serving as the CEO?

1 A Yes, there did.

2 Q And can you share with the Court your recollection of how
3 that began?

4 A So, there were informal discussions, I would say, through
5 the month of February, as we started to realize that there
6 were -- the decision-making was going to be cumbersome,
7 having, you know, three parties involved. As I said earlier,
8 having spent 15 years or so my career as a chief executive
9 officer, I understand where you really want to have one person
10 be responsible for these issues.

11 And so we were conversing with Mr. Seery to see if he
12 would take on that role. And, obviously, we had felt very
13 comfortable, Mr. Nelms and I felt very comfortable with the
14 communications that he was having with us on things that we
15 had asked him to do. There was a very free and open
16 discussion with the Board members. So we continued, you know,
17 to look at opportunities where it might make sense.

18 And then, you know, towards the beginning of March, it was
19 pretty obvious that we were going to want to coalesce around
20 the motion. We thought about whether or not that would be
21 some third party. But having, again, experience of having to
22 go out in the marketplace to find CEOs when I'd been either,
23 you know, a director or involved in companies, we realized
24 that can be very time-consuming, would take us months to find
25 somebody.

1 And so we continued to discuss it with Mr. Seery. And
2 around the middle of March or so, right around the time that
3 we had a Creditors' Committee meeting in New York, we asked
4 Mr. Seery if he would take that role on, and he agreed to, to
5 take that role.

6 Q And that's -- and is that why the Debtor is seeking
7 authority to retain Mr. Seery nunc pro tunc back to March
8 15th?

9 A We are. I mean, effectively, he really started the role
10 in the February time frame. But we officially asked him about
11 this in -- right after that meeting on March -- I think it was
12 March 11th or so.

13 Q So, is it fair to say that's when the Board had a meeting
14 of the minds with respect to not necessarily the terms but at
15 least the engagement of Mr. Seery as CEO?

16 A Yes, that is fair to say.

17 Q Okay.

18 A And that's when he really did step up and take on all of
19 those responsibilities, you know, with the acknowledgement and
20 understanding that we would work out the appropriate terms for
21 his engagement.

22 Q Okay. And a couple of weeks later, do you recall that Mr.
23 Seery made a written proposal to you and Mr. Nelms?

24 A He did make a written proposal after, you know, having
25 discussions with us orally about various issues and roles and

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1 responsibilities. I think it was around April 4th or so that
2 he presented us with a written proposal.

3 MR. MORRIS: All right. Ms. Canty, can you call up
4 Exhibit 3, please? (Pause.) Okay. If you'll scroll down.

5 BY MR. MORRIS:

6 Q Mr. Dubel, is this the April, the early April e-mail that
7 you were referring to in which Mr. Seery made a proposal for
8 the terms of his engagement as CEO?

9 A Yes. This document refreshes my recollection. It wasn't
10 April 4th. It was April (audio gap). But yes, that's the
11 document I was referring to.

12 Q Okay. What happened next, after -- after the -- after
13 this was presented to you and Mr. Nelms? What did you guys
14 do?

15 A So, what we wanted to do is understand what was our
16 responsibility as a board. So we reached out to counsel to
17 figure out how the process should work. We set up a
18 compensation committee. It's called a comp committee; it's
19 more I would call it a nomination committee or a governance
20 committee also, because it was all about retaining Mr. Seery
21 in that role.

22 We got advice from counsel on what the process should be.
23 We reached out to our compensation consultant at Mercer, who
24 had been providing us assistance in other areas of the
25 company's compensation program, to talk to them about what the

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1 various market comps, you know, compensation programs were and
2 what would be an appropriate market comp for Mr. Seery's
3 compensation, and, you know, moved forward that way.

4 MR. MORRIS: Ms. Canty, can you pull up Exhibit 4,
5 please?

6 BY MR. MORRIS:

7 Q Do you know what this document is, Mr. Dubel?

8 A Yes. This looks like the minutes from the meeting of our
9 first compensation committee on April 8th, compensation
10 committee of Strand Advisors.

11 Q And this was a meeting between you and Mr. Nelms, with
12 counsel; is that right?

13 A That is correct.

14 Q And this was precipitated by Mr. Seery's written proposal
15 that was made a few days before that; is that fair?

16 A Well, I would say it was precipitated by the advice we had
17 gotten through counsel that we should set up a compensation
18 committee and consider what would be the appropriate way of
19 retaining Mr. Seery, you know, as a chief executive officer.
20 His proposal came in a couple of days earlier than that, and
21 so this was our first official time to get together as a
22 committee and review it and discuss the issue.

23 Q And was this a contemporaneous record of the steps that
24 the compensation committee took to do its due diligence with
25 respect to the proposal?

1 A It is.

2 Q Okay. Did the compensation committee --

3 MR. MORRIS: You can take that down, Ms. Canty.

4 BY MR. MORRIS:

5 Q Did the compensation committee communicate with the
6 Creditors' Committee with respect to these matters?

7 A We did.

8 Q Can you --

9 A As a part of the protocols, one of the things I -- and I'd
10 go back and re-read the protocol language, but one of the
11 things it said was work with the UCC to determine who would be
12 an appropriate CEO. And so we realized we would do that, and
13 we started to reach out to the various members of the
14 Creditors' Committee to discuss that.

15 Q Okay. And do you recall whether the compensation
16 committee or the Debtor generally shared Mr. Seery's proposal
17 with the Committee?

18 A We did. I don't recall the exact date, but we did share
19 it with the UCC through the UCC counsel.

20 Q Do you recall if the report that was commissioned by the
21 Debtor with respect to Mercer, the Mercer Report, was that
22 shared with the Committee?

23 A It was.

24 Q Can you describe for Judge Jernigan your recollection as
25 to, you know, the Committee's reaction and, you know, position

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1 with respect to the proposed retention of Mr. Seery as CEO?

2 A We shared the report from Mercer with the Committee in --
3 I think it was early May. And we spent time with them in the
4 April time frame talking about the fact that we were going to
5 be seeking Mr. Seery's appointment as CEO and telling them
6 that we were going to be commissioning a report to make sure
7 we had what we thought was market compensation.

8 The Committee was generally very supportive. They had
9 been obviously experiencing Mr. Seery taking on that role of
10 effectively the CEO for a period of time, so they understood
11 where, you know, where he was coming from and what -- how he
12 was going to operate the business.

13 They understood, to my knowledge and in my discussions,
14 they understood the benefits of having a single person as the
15 CEO rather than trying to manage the business by committee.
16 We discussed with them why it made sense.

17 And so, you know, they were supportive of it. Obviously,
18 we had to negotiate the terms of the compensation.

19 Q And did that take some time, to negotiate the compensation
20 terms?

21 A It did. Initially, it was being done through myself and
22 Mr. Nelms, working directly with the Committee. But, again,
23 having been in that position of having to negotiate with the,
24 you know, the committee on terms of my own personal
25 compensation -- not this committee, but in other cases -- we

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1 recognized that it was probably more efficient for Mr. Seery
2 to speak directly with the Committee, Committee members. And
3 so we asked him to pick up that, you know, responsibility
4 also. And he did. He kept us informed every step of the way.
5 And I, as the de facto chairman of the compensation committee,
6 also spoke directly with the various members of the Committee
7 during this time frame, where there was (echoing)
8 communication about compensation.

9 Q Mr. Pomerantz mentioned it in his opening remarks, but do
10 you recall kind of what the bigger issues were with respect to
11 the proposed compensation terms with the Committee?

12 A Sure. The Committee -- well, there was always negotiation
13 going on, obviously. The Committee, at the end of it, they
14 had no problems with the monthly compensation, recognizing
15 that whatever his board compensation would be would
16 effectively be wrapped into the monthly compensation.

17 What the issues really came down to for them revolved
18 around the restructuring fee that was being proposed, success
19 fee, you know, what have you. And there was a lot of
20 different views, as you can imagine, between the four members
21 of the Committee as to how that should be set up.

22 Mr. Nelms and I were very cognizant that we did not want
23 to have Mr. Seery (echoing) -- I'm sorry. I'm getting a lot
24 of background noise here.

25 THE COURT: Yes. I'm not sure who needs to mute

1 their phone, but someone needs to mute their phone. Okay.

2 THE WITNESS: Thank you.

3 THE COURT: Uh-huh.

4 (Echoing subsides.)

5 THE WITNESS: So we were very concerned that
6 structures not be put in place that could cause the potential,
7 the appearance of a conflict between the role that Mr. Seery
8 was playing and his compensation.

9 It's always a, you know, a challenging issue here, to make
10 sure that, you know, a CEO of any company is looking out for
11 the best interests of the estate and not looking out
12 specifically for any particular creditor, equity, or group of
13 creditors, just because that's the way the compensation was
14 designed. And so that was a challenge.

15 At the end of the day, we wanted to have what we felt was
16 fair compensation for the success fee and restructuring fee
17 for Mr. Seery, because we wanted him incented to get the job
18 done, as he has alluded to in his prior testimony as to what
19 he's trying to do here. And so there did come a point where
20 we could not get to a meeting of the minds and so we chose to
21 move forward on the compensation with just the monthly agreed
22 to. Mr. Seery was good enough to agree to that for just the
23 monthly, and that we would put forward the restructuring fee
24 at a later date.

25 BY MR. MORRIS:

1 Q Okay. Thank you. In addition to the CEO title, the
2 Debtor is asking for the Court to appoint Mr. Seery as the CRO
3 and the Foreign Representative; is that right?

4 A That is correct.

5 Q And why is the Debtor seeking that relief?

6 A Well, initially, the CRO was brought in, I believe it was
7 the middle of October, when the case was filed and before the
8 Independent Board was put in place. And there were reasons
9 why, you know, the Committee had asked for the CRO to have
10 certain responsibilities. Those carried through in the
11 protocols.

12 And obviously, you know, we had no issues with those, but
13 what we also felt, Mr. Nelms and I, and in consultation with
14 Mr. Seery, was that it would be more appropriate to have one
15 person be responsible for all of the issues within the
16 company. And since there was an Independent Board, and since
17 one of those Independent Board Members was becoming the CEO,
18 the need for another individual to be the CRO might send
19 conflicting signals inside the organization. And so we
20 decided that it would be appropriate to put those
21 responsibilities into Mr. Seery's lap. And we spoke with Mr.
22 Sharp from DSI, and he agreed. And so that's the reason why
23 we moved it forward that way.

24 Q Okay. I understood you to say that the meeting of the
25 minds, at least conceptually, was somewhere around March 12th

1 in New York, or March 11th. I think the Judge may have asked
2 the question or at least implied that she wanted to know kind
3 of why it took so long to get the motion on file. I think
4 you've discussed some of the issues, but just kind of in a
5 bullet-point way, can you give the Judge an explanation as to,
6 you know, why it took several months to get this motion in
7 front of the Court if a meeting of the minds occurred back in
8 March?

9 A Sure. I believe the motion was filed on the -- I think it
10 was the 22nd or so of June.

11 Q Okay.

12 A And so we -- we asked Mr. Seery. He accepted the
13 responsibility in the middle of March. Right at that point in
14 time was when the whole pandemic issue was, you know, really
15 coming hot and heavy at the company. As Mr. Seery testified
16 earlier, he had -- he was spending a tremendous amount of time
17 just focusing on the operations of the business, focusing on
18 the assets, dealing with the prime accounts, the select
19 accounts, working with Jeff Reeves, working with the other
20 individual investments that we had, to make sure that those
21 were under control.

22 I would say I applaud him for putting the business first
23 in front of him, and then I think probably at 1:00 o'clock in
24 the morning he was able to finally sit down and put together
25 his own compensation request.

1 We did need time to go through with the Mercer folks and
2 get, you know, the market information, and that took a lot of,
3 you know, a lot of time.

4 And then, more importantly, we wanted to make sure we
5 could get something in front of the Court that was agreed to
6 by the Committee. So we did share the information with the
7 Committee. We spent a lot of time in negotiations with the
8 Committee, trying to get to a resolution. As I said earlier,
9 we asked Mr. Seery to step in and there be, you know, one-on-
10 one discussions to maybe shortcut some of that.

11 And finally, at the point in time where we realized we
12 could not get a full, you know, fully-agreed compensation
13 program, we asked him to just break it down into the monthly,
14 and then come back for a restructuring bonus at the end of the
15 case.

16 And so all of that, while trying to manage the business in
17 the COVID era, is what took such a long period of time.

18 Q Did it also take some time to obtain appropriate D&O
19 insurance for Mr. Seery as the CEO?

20 A It did. We had to, as the Board of Strand, we had to set
21 up a D&O program for the Board members when we first got
22 involved back in January. That took a tremendous amount of
23 time. It was very difficult to obtain in the marketplace, for
24 any number of reasons, but mainly because the insurance market
25 understood what Highland was all about and the various

1 players, and they were very reticent to insure Highland.

2 So, because we were Strand, because there were other
3 protections that were afforded to the Independent Directors,
4 we were able to obtain it.

5 When we asked the various carriers to add Mr. Seery on as
6 the CEO for HCMLP, it was very challenging to put folks on.
7 We were eventually able to get our first layer to sign on, the
8 first-layer insurer. The second layer would not do it, and we
9 had to go find a third carrier who would do it. And we
10 actually got that done at some time in the latter part of
11 June, right after we had filed the motion.

12 Q Okay.

13 MR. MORRIS: Your Honor, I've got just a few more
14 questions, but they're going to be devoted to the DSI motion.
15 I don't know if you wanted to ask -- if you had any questions
16 on the motion with respect to Mr. Seery or I should just
17 continue on.

18 THE COURT: I do not have questions. You can
19 continue.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Okay. So, let's just finish up, Mr. Dubel. There is a
23 second motion in front of the Court, and this one is for the
24 appointment of DSI as financial advisor. Are you familiar
25 with that motion?

1 A I am.

2 Q Does the Board unanimously support that motion?

3 A We do.

4 Q Has the Board concluded, in an exercise of its independent
5 business judgment, that the engagement of DSI as financial
6 advisor is in the Debtors' best interests?

7 A We have. Yes.

8 Q Can you explain to the Court why the Board reached that
9 conclusion?

10 A Well, we do need the services of a financial advisor.
11 It's very important in this case to have an independent, you
12 know, restructuring, you know, financial advisor to assist us.
13 As Mr. Seery testified earlier, they have been very
14 instrumental in helping him prepare the financial analysis
15 that has been part of what he's been using to start
16 negotiating and working forward on the -- putting together a
17 plan of reorganization.

18 They've also spent a tremendous amount of time acting as a
19 bridge to FTI, the Committee's financial advisors, which is
20 very common in these types of cases. And so that's been
21 extremely helpful. And that role needs to continue.

22 They also are handling all of -- all the administrative
23 bankruptcy issues, the SOFAs, the MORs. They're doing a lot
24 of work for us, not necessarily specifically on the large
25 claims, but on helping us analyze and review all of the other

1 myriad of -- I think it's two hundred something claims that
2 have been filed in the case.

3 So they've been here since -- I guess they came in pre-
4 filing. They have a lot of history and knowledge, and we want
5 to continue to utilize that knowledge as we continue to move
6 forward. So that's why. And the Board is very comfortable
7 with the job they've been doing, and so we felt it was
8 appropriate to continue to use them as the financial advisor,
9 just in a slightly different role.

10 MR. MORRIS: Your Honor, I have no more questions of
11 Mr. Dubel.

12 THE COURT: All right. Well, I'm going to just jump
13 in and ask my own questions, and then I will -- I'll, you
14 know, offer him up for cross if people will promise to
15 restrict it to employment terms.

16 EXAMINATION BY THE COURT

17 THE COURT: So, what -- my question is about Mr.
18 Sharp. As I recall, the compensation is not going to change
19 at all, even though the role is changing. He won't be CRO
20 anymore, Mr. Sharp. He won't be the Foreign Representative
21 anymore. But obviously, he and his firm will remain very
22 engaged as financial advisor.

23 What I'm getting at is there was a \$100,000 per month flat
24 fee for Mr. Sharp, and then other professionals at DSI will
25 bill by the hour. Tell me why the Board thinks that's still

1 the appropriate compensation package with the modified role of
2 Mr. Sharp. I'm getting at, \$100,000 a month, is that still
3 the right thing, or hourly compensation, did you discuss that,
4 and why is --

5 THE WITNESS: We did, Your Honor. And I'll be
6 (inaudible) with you. I don't know who negotiated that
7 originally for -- with, you know, with DSI, but I find it to
8 be a very fair-to-the-Debtor compensation package of \$100,000
9 for Mr. Sharp, but it also includes Mr. Caruso, who Mr. Seery
10 has referenced earlier. I think it was a very good
11 negotiation that was had by the Debtor.

12 So when we looked at it, we said, if we switch to a
13 straight hourly, based upon the amount of time and effort
14 that's being put in by the two of those individuals, it might
15 cost us a little bit more. So we chose to continue it at that
16 level.

17 And I know Mr. Seery will continue to lean on those two
18 folks and get his money's worth. I'm confident of that.

19 THE COURT: Okay. You just reminded me of something
20 that I did not remember, I guess. Mr. -- we're getting two
21 for the price of one, is basically the -- Mr. Caruso does not
22 bill by the hour?

23 THE WITNESS: They -- they work together. It's their
24 compensation. I would imagine they keep hours internally,
25 just to keep track of it, but what they bill us for the two

1 individuals, Mr. Caruso and Mr. Sharp, is a flat fee of
2 \$100,000 for the two of them.

3 THE COURT: Okay. All right. And do you remember,
4 by comparison, the financial advisor to the Committee -- is it
5 FDI? Whoever it is.

6 THE WITNESS: It -- it --

7 THE COURT: How are they getting compensated? Is it
8 strictly on an hourly basis, or is there also a combo flat fee
9 and hourly?

10 THE WITNESS: (echoing) on an hourly basis, and I
11 have one of their most recent charts. It was the May fee
12 application that they just filed, and they -- they bill in a
13 range from \$1,245 an hour for, you know, senior managing
14 directors, to \$875 an hour for managing directors, down to,
15 you know, \$690 an hour for directors. Yeah. A very fair and
16 appropriate marketplace compensation, but I think what we are
17 incurring under the structure that we have for DSI is below
18 that.

19 THE COURT: If those two guys were billing normal
20 market hourly fees, you think it would be busting \$100,000 a
21 month, perhaps?

22 THE WITNESS: I think it -- I think it would be well
23 in excess of \$100,000, --

24 THE COURT: Okay.

25 THE WITNESS: -- based upon the hours that we have

1 seen to date from them, Your Honor.

2 THE COURT: Okay. Now, does anyone else have
3 questions for Mr. Dubel related to these employment
4 arrangements proposed?

5 (No response.)

6 THE COURT: I guess not. I actually have one more
7 question. I think it will be for my benefit, but maybe for
8 benefit of parties in interest, I hope. You made a comment
9 about getting insurance for Mr. Seery, and you said it was a
10 bit of a challenge because insurers in the marketplace kind of
11 knew what Highland was about. I think those were your words.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Here is my question. As far as knowing
14 what Highland is about, other persons, not me, have used the
15 words that people were Mr. Dondero's puppet master, or he was
16 the puppet master, had his hands all over this, here and
17 there. And we obviously endeavored to change that with the
18 new Board in place. What would you say if people out there
19 think Dondero still might be a puppet master? What -- I mean,
20 is there any concern there that you could address?

21 THE WITNESS: Sure. And let me, let me take it in
22 two parts, because I think it's important for you to
23 understand from a third-party insurer's point of view. The
24 D&O marketplace has seen a lot of litigation surrounding the
25 Highland Capital name. And because of that, that obviously

1 causes them concern. Their business is to write insurance and
2 never pay a dime. I ran an insurance company for six years,
3 and you never want to pay a dime out, you just want to collect
4 premiums.

5 THE COURT: Yes. And I probably prefaced this in a
6 confusing way. I'm really not going back to the insurance. I
7 just said that comment, when you were talking about insurance,
8 made me want to ask, for my benefit and for other parties'
9 benefit: How much control, if any, does Dondero have? In
10 theory, he was not supposed to have any control over the
11 Debtor anymore, but can you say something to make us all feel
12 comfortable that, if he ever was a puppet master, he's not a
13 puppet master anymore?

14 THE WITNESS: Well, I won't use that terminology.
15 What I will say is, since January 9th --

16 THE COURT: Yes. It was someone else's term, not
17 mine. I'm just repeating it.

18 THE WITNESS: That's okay. Since January 9th, when
19 the Independent Board was put in place, the Independent Board
20 has had the responsibility, is responsible for the operations
21 of this business. Mr. Dondero, as Mr. Seery alluded to
22 earlier in talking about the number of people in the
23 organization, has other businesses that he's involved with
24 that operate out of the offices through shared services. But
25 it's very clear to all the employees that the Independent

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1 Board is responsible for HCMLP and that since, really, you
2 know, the early March time frame, that Mr. Seery is the CEO.

3 So there is no concern on my part that Mr. Dondero is
4 having undue influence. He is still our portfolio manager,
5 but Mr. Seery is working with him as appropriate, and I have
6 no concern that Mr. Seery is not getting the job done and
7 getting any undue influence from Mr. Dondero.

8 THE COURT: All right. Thank you.

9 Mr. Morris, do you have any redirect?

10 MR. MORRIS: I do not, Your Honor. I appreciate the
11 question, and I think Mr. Dubel answered it appropriately.

12 THE COURT: All right. Thank you, Mr. Dubel. I do
13 appreciate your testimony today. It was helpful.

14 All right. Mr. Morris, --

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: -- what else do you have? You have Mr.
17 Sharp on your witness list. Did you want to --

18 MR. SHARP: I'm here, Your Honor.

19 THE COURT: -- put him on?

20 MR. MORRIS: I'm intending to do that. If Your Honor
21 thinks it's not necessary, I don't need to ask more questions.
22 It's a relatively brief examination that will just focus on
23 the slight change in his role.

24 THE COURT: All right. Well, if you feel the need to
25 make a record, you may. I just have one question I want to

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1 ask him, to shore up the record.

2 MR. MORRIS: So perhaps, Your Honor, could we swear
3 him in, you ask your question, and then I'll see if there's
4 (echoing)?

5 THE COURT: All right. Mr. Sharp, I see you there.
6 Please raise your right hand.

7 (Echoing.)

8 BRADLEY SHARP, DEBTORS' WITNESS, SWORN

9 THE COURT: Thank you. We were getting some
10 distortion there. So, again, if you're not Mr. Sharp, please
11 put your phone on mute.

12 EXAMINATION BY THE COURT

13 THE COURT: All right. Mr. Sharp, I just wanted to
14 hear from you how many hours a month do you think that you and
15 Mr. Caruso are working on the Highland matter?

16 THE WITNESS: I don't have the hours in front of me,
17 Your Honor, but I think Mr. Dubel unfortunately alluded to
18 poor negotiating on DSI's part. That'd be my responsibility,
19 because I'm the one that did that.

20 From October through May, if you look at the time for Mr.
21 Caruso and myself, DSI has provided about a \$730,000 discount.
22 So if we were actually being paid on our hourly rate, our fees
23 would be \$730,000 more than the \$100,000 a month. We
24 typically run -- my rate is \$720 an hour. I think Mr.
25 Caruso's is about the same. The time for the two of us each

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1 month runs about \$200,000, which we then write down to
2 \$100,000.

3 THE COURT: All right.

4 THE WITNESS: (echoing) a month.

5 THE COURT: Okay. That answers my question. Mr.
6 Morris, is there anything you wanted to put on the record?

7 DIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Sharp, are you the person who was (echoing) with the
10 (echoing) CRO (echoing) Seery (echoing)?

11 A Yes, I am. I think it's much more efficient, frankly.
12 We've worked very well with Mr. Seery since the beginning,
13 since January 9th. That's going to continue. I think it
14 takes away some confusion, both internally and externally, in
15 that, you know, Mr. Seery is the CEO, the CRO, and everyone
16 knows that we are providing the analytical and support for him
17 with whatever he needs.

18 Q And I want to focus just for a second on DSI's (echoing).
19 Is DSI's responsibilities in the case changing at all?

20 A No. No. We have been working for the Board and
21 responding directly to Mr. Seery. You know, as Mr. Seery
22 testified, he works directly with myself and directly with my
23 team, and that's not going to change.

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

25 THE COURT: All right. Anyone have any questions

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1 regarding the employment terms?

2 (No response.)

3 THE COURT: All right. Well, I thank you, Mr. Sharp.
4 We appreciate it.

5 All right. Mr. --

6 MR. MORRIS: The Debtor rests, Your Honor.

7 THE COURT: Okay. Well, I presume no one else had a
8 witness to call. Again, we didn't have any responsive
9 pleadings on this.

10 So, with that, I am going to turn to the Committee counsel
11 at this point. Mr. Clemente, I know you said early on that
12 you wanted to make some comments, so this is your opportunity.

13 MR. CLEMENTE: Well, thank you, Your Honor. Matt
14 Clemente from Sidley on behalf of the Committee.

15 And just very briefly, Your Honor, as you know, we did not
16 file an objection. It sounds from what we heard today that
17 Mr. Seery and the Board are working hard, which is, frankly,
18 what I think you expect and what we expect of them.

19 We don't have an objection to the retention of Mr. Seery
20 as CEO at \$150,000 a month, which is inclusive of director
21 fees. And as Mr. Pomerantz said, the Committee does not agree
22 -- in fact, that was the source of quite a bit of the
23 negotiation of the last couple of months -- with the bonus
24 proposal. But, again, we understand that that will be
25 addressed by a separate motion.

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1 Your Honor, we appreciate Mr. Seery's testimony to advise
2 you and to create the record for purposes of today's
3 uncontested matter. And obviously, the Committee -- there's
4 no live objection. And while the Committee may have different
5 views of what Mr. Seery said -- for example, the working of
6 the protocols, the sophistication of the advisors to the
7 Committee -- again, for purposes of the matter before the
8 Court today, we're not going to take any issue with any of
9 those statements, Your Honor, but reserve the right to do so
10 again in future if it becomes necessary.

11 So, with that, Your Honor, I have no further comments, but
12 I did want to make those couple comments for the record, to
13 make sure Your Honor understood where the Committee is coming
14 from.

15 THE COURT: Okay. Thank you. Does anyone else wish
16 to make comments about the applications before the Court?

17 (No response.)

18 THE COURT: All right. Mr. Morris, I'll turn it back
19 to you.

20 I found in my notes one question that I had. Looking at
21 your Exhibit 3 is what made me decide I have this question.
22 The Exhibit 3 was the e-mail exchange of Sunday, April 5th
23 amongst the Board members. Let me ask you this. There was
24 something in there regarding Mr. Seery, this would be a full-
25 time position, but he would be permitted to serve on outside

1 boards of directors. Is that a term that survived, or no?

2 And if it did, I want to ask how many outside board

3 memberships does he have? Again, I expect, like I think

4 everyone, that it's going to be very full-time, so I don't

5 want to hear that he's on 12 other boards. How did that --

6 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

7 Since I was the one who actually was involved in negotiations

8 more than Mr. Morris, --

9 THE COURT: Okay.

10 MR. POMERANTZ: -- maybe I can answer. I believe it

11 was something that survived. I am not aware of any other

12 boards that Mr. Seery is on. And if he has actually been able

13 to do anything meaningful while performing what is I think

14 probably 200 hours a month and being available 24/7, I take my

15 hat off to him. But I would ask him to confirm if he has any

16 other material role, but I have not seen anything.

17 THE COURT: All right. What about that, Mr. Seery?

18 MR. SEERY: I -- currently, I'm not on any other

19 outside boards except two charities.

20 THE COURT: Okay.

21 MR. SEERY: One is a foundation called the

22 (inaudible) Foundation, which is a charity for (inaudible)

23 individuals, disabled folks, and -- most of whom are abused.

24 And I'm also involved with a charity, I'm not on the board but

25 on a funding committee for Team Rubicon, which is a reference

1 -- reference service, assistance in disasters. So they don't
2 take time like this, and so I'm not going to be involved in
3 any --

4 THE COURT: Okay. Thank you. That's what I would
5 hope to hear. I didn't want to hear that you were on, you
6 know, 12 other for-profit boards.

7 So, all right. So, Mr. Morris, Mr. Pomerantz, do you have
8 anything to say before we wrap up this topic?

9 MR. POMERANTZ: Your Honor, I'm happy to give Your
10 Honor a closing statement if you think it's necessary. I
11 think you know what I would say, to summarize. But I think
12 we've been at this a while, so (inaudible).

13 So unless Your Honor has any questions for me, I would
14 just say that the evidentiary record, I believe, supports the
15 entry of an order approving both the Motion to Employ Mr.
16 Seery as the Chief Executive Officer, CRO, and Foreign
17 Representative, and the Motion to Appoint DSI as the Financial
18 Advisor.

19 THE COURT: All right. Well, I am going to grant
20 both of these motions. Again, as for Mr. Seery, it's as
21 modified per the agreements with the Committee, that
22 modification being that, as for any bonuses, we're just
23 deferring to another day whether Mr. Seery is going to get any
24 bonuses related to a plan, what kind of plan it might be, a
25 case resolution plan or a monetization vehicle plan.

1 You know, I really hope, frankly, Mr. Seery is before me
2 seeking a bonus in the very near future and we're all happy
3 about the prospect of paying him a bonus because a plan has
4 been achieved, hopefully a case resolution plan. I will just
5 tell you right now, I will have a big smile on my face and
6 will warmly consider that if we get a great result here.

7 But it's deferred to another day. So I do find it's --
8 the evidence amply shows a sound business justification and
9 reasonable business judgment on the part of the Debtor in
10 proposing that Mr. Seery be CEO and CRO, essentially, and a
11 foreign representative, where necessary, at the base pay of
12 \$150,000 per month, again, with bonuses to be considered at
13 appropriate times down the road if we feel that that is a good
14 thing for Mr. Seery to be paid.

15 And I likewise find that, under 327, 328, 363, the amended
16 application with regard to DSI Specialists and Mr. Sharp and
17 Mr. Caruso should be granted, it appearing to be reasonable
18 business judgment and in the best interests of the estate and
19 appropriate in all ways under those Code sections.

20 All right. So we are going to look for orders on those
21 two matters.

22 Now, unless you have other housekeeping matters you want
23 to talk about, I want to circle back to the mediation topic.
24 Mr. Pomerantz, Mr. Morris, anything you wanted to raise?

25 MR. POMERANTZ: There is actually one other

1 housekeeping matter that Ms. Patel and I have been speaking
2 about and we said we would raise before Your Honor.

3 As Your Honor heard at the last hearing, we had filed an
4 objection to the Acis claim. We initially set the objection
5 for August 6th. Ms. Patel reached out to us, I understand, I
6 remember at the last hearing indicated that August 6th was
7 difficult for her. And especially since we were having the
8 mediation, we had talked to her about a rescheduling. So we
9 are intending put the matter on the September 10th calendar.
10 We have also granted Acis an extension to file a response to
11 July 31st.

12 What I think we would like the Court's input on, and not
13 now, but we would suggest having it done at the next hearing,
14 which is July 21st, as I'm sure Your Honor has not yet read
15 our objection, but it's a quite lengthy objection, I think 55,
16 60 pages. There's a lot of issues there. There are some
17 factual issues, some -- there are some legal issues. There
18 are some combination of factual and legal issues.

19 We think it would be helpful to the process to set up a
20 status conference with Your Honor -- again, to be held perhaps
21 on July 21st, because discovery motions are pending -- where
22 we could walk through with Your Honor what exactly everyone
23 would intend to accomplish on September 10th. We don't
24 believe it should just be a status conference. We searched
25 other dates. On the other hand, I think both parties will

1 have different views on what exactly will be at issue. But I
2 think it would be helpful, from both sides, to hear Your
3 Honor's expectations and to get some ground rules so we can
4 make a hearing, if necessary, on September 10th as productive
5 as possible.

6 THE COURT: All right. So, in writing down dates,
7 did you tell me what -- a deadline you have given Acis, or
8 what is the deadline that would apply under the Rules versus
9 what you have agreed to? Is there something different you've
10 agreed to?

11 MR. POMERANTZ: Sure. I believe, for a hearing on
12 August 6th, based upon when we filed it, I believe their
13 objection would have been due July 23rd or thereabouts. They
14 have asked us for July 31st, and I don't want to be as
15 presumptuous, Your Honor, to say that I have given them the
16 extension. I know that's up to you, Your Honor, to do so.
17 The Debtor does not have any opposition to an extension in
18 that respect, especially given the fact that we're not going
19 to have a hearing until September, although it's obviously
20 going to be important to be able to move forward with
21 negotiations to understand what their specific position is,
22 and, of course, for a mediator to look at both as well.

23 So, again, it's July 31st, September 10th, and then
24 setting up something with Your Honor, whether it be July 21st
25 or some other date, to walk through Your Honor what that

1 hearing will look like so it could be most efficient.

2 THE COURT: All right. Well, I am agreeable to that
3 set of dates and deadlines. Ms. Patel, did you want to say
4 anything about it?

5 MS. PATEL: No, Your Honor. Mr. Pomerantz hit the
6 salient terms. Yes, July 31st is the agreed response date.
7 And that allows, frankly, parties to -- an opportunity --
8 allows Acis the opportunity to meaningfully brief the issues,
9 as Mr. Pomerantz indicated.

10 It's a 60-page objection. It's very weighty. There's a
11 lot of issues that require due consideration. So we have
12 agreed on that extended date. It's in sufficient time to
13 allow the parties time to read a response and analyze it ahead
14 of a mediation in August.

15 And as Mr. Pomerantz indicated, yes, the parties would
16 like -- effectively, I think he -- he might have referred to
17 it as a status conference. Apologies, my WebEx is cutting in
18 and out a little bit this afternoon. But I think it's
19 probably a status conference/scheduling conference so we can
20 talk about what the trial of the claim objection is going to
21 look like and how it should be structured. And I think, as
22 Mr. Pomerantz alluded to, parties may have very different
23 contexts with respect to that, but we want to just run it by
24 Your Honor, and ultimately it is going to be up to Your Honor
25 with respect to how the trial goes forward.

1 THE COURT: All right. Well, I hope that you all are
2 going to have lots of specific thoughts to share on what the
3 hearing on September 10th would look like, because, holy cow,
4 a \$70 million proof of claim that -- I haven't looked at your
5 proof of claim, but it is presumably based on the 34 counts in
6 the adversary proceeding filed in the Acis case, and maybe
7 then some.

8 So, you know, I don't know how in the world, if we had to
9 have a contested hearing on September 10th, we could get that
10 all done in one day.

11 MR. POMERANTZ: Your Honor, Jeff Pomerantz again.
12 Without getting ahead of ourselves, at least the Debtors' view
13 is there are some threshold legal issues --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- that are raised in the objection.
16 And then there are, of course, a series of issues that are
17 factual-intensive.

18 So what we intend to present is how we think we can
19 efficiently deal with it. Again, it's not our expectation to
20 have a lengthy trial on the entire claim objection. But,
21 again, Ms. Patel and I agreed that what we weren't going to do
22 is turn this into a status conference.

23 THE COURT: Okay.

24 MR. POMERANTZ: To the effect that neither party was
25 ready. I would just leave it at that --

1 THE COURT: Okay.

2 MR. POMERANTZ: -- and say we'd be prepared to talk
3 with you on the 21st.

4 THE COURT: Okay. Well, we -- we'll use that setting
5 partly as a status conference to talk about the September 10th
6 hearing. And, again, I hope you both will have some specific
7 ideas to give me.

8 So, July 21st, we have -- remind me what we have. We are
9 so busy, I haven't looked one week ahead to --

10 MR. POMERANTZ: I believe, and Mr. Morris could
11 correct me if I get ahead of ourselves. I know there's been
12 discussions between us and the Committee on two very -- two,
13 in some sense, the opposite sides of the coin -- discovery
14 motions that are pending before Your Honor. I thought July
15 21st may have been pre-obtained. Again, I could be ahead of
16 my partner there.

17 THE COURT: Okay. That sounds like something that
18 I've set on an expedited basis in the past few days. Mr.
19 Morris, Mr. Clemente -- Mr. Clemente filed a motion, or
20 someone from their shop filed a motion --

21 MR. CLEMENTE: Your Honor? Your Honor?

22 THE COURT: -- during the middle of our last hearing,
23 as I recall. And I was kind of surprised to get out of court
24 and learn about it. But you're saying you haven't gotten
25 information you've been asking for for months, and we also

1 have a motion for a protective order.

2 So, just give me a short -- I'm trying to figure out how
3 much time we're going to be in court next week on the 21st.
4 It's a discovery dispute.

5 MR. POMERANTZ: And I'll --

6 THE COURT: So, Mr. Pomerantz? Go ahead.

7 MR. POMERANTZ: Your Honor, if my colleague, Paige
8 Montgomery, is on, she's in a better position to address that.
9 I don't know if Ms. Montgomery is on.

10 MS. MONTGOMERY: I'm here. I don't -- my WebEx has
11 been cutting in and out, but I think (inaudible) hear me.

12 THE COURT: We can hear you, but we can't --

13 MR. POMERANTZ: Yes, we can.

14 THE COURT: Oh, there you are. We can now see you as
15 well. So, --

16 MS. MONTGOMERY: Yes, Your Honor. I think the amount
17 of time that might be required for the discovery motions is
18 going to be dependent on the number of third-party objections
19 that may or may not be filed tomorrow. We've been in
20 communication with a number of different parties over the last
21 couple of days, trying to resolve those.

22 But I think, if it were just the two motions and the two
23 parties that filed those, John, I don't know if you disagree,
24 but I'd say that's probably an hour. I just don't know how
25 many other people -- I don't know how many other people will

1 want to participate, Your Honor.

2 THE COURT: Okay. Well, it's going to be whatever
3 it's going to be, but we're going to have -- the main event on
4 the 21st is going to be this document discovery contest, and I
5 guess there's a related motion for protective order. But I
6 don't know how much it's going to be about resisting producing
7 documents versus we'll produce documents if we have a
8 protective order.

9 Mr. Morris, can you, in, you know, a few seconds, answer
10 that?

11 MR. MORRIS: Sure. As the Debtor, we're trying to --
12 we've got certain interests to protect. We thought we were in
13 a different place in the middle of June, and, you know, this
14 proposal that the Committee made for the first time on July --
15 on June 26th is really what, from my perspective, prompted us
16 to be here.

17 But we've made a proposal to the Committee. We haven't
18 received a response to that. We're trying to address these
19 issues. But it's not, you know, it's not contentious. I
20 think our interests are legitimate. I think the motion that
21 we made is either for a protective order or for an order
22 directing us to produce the documents. Because as the motion
23 itself sets forth, Your Honor, the Debtor has certain
24 contractual and other obligations to some third parties. We
25 have given notice to those third parties of our -- of our

1 intent to make this motion, because we are kind of between a
2 rock and a hard place. We can't produce the documents
3 without, you know, potentially violating obligations to third
4 parties.

5 And so we'd just ask the Court to be the referee here, to
6 make the decision as to how it gets resolved. And we've given
7 notice to these third parties so that they fairly have an
8 opportunity to be heard, too. And I've been in communication
9 with some of them as well, and I've encouraged them to speak
10 with the Debtor, because ultimately, you know, if the Debtor
11 and the third parties can come to an agreement on the
12 production of the documents, you know, that will resolve, you
13 know, a substantial piece of the issue.

14 MR. POMERANTZ: You mentioned the -- you meant the
15 Committee, John, not the Debtor.

16 MR. MORRIS: I apologize. Yes. Thank you.

17 MR. POMERANTZ: Thank you, John.

18 THE COURT: Okay. Well, I hope you have this largely
19 worked out. Obviously, I hope that. You know, I just
20 remember doing a very quick pass through the Committee's
21 motion, but I do remember them saying they've been trying to
22 get these documents for a very long time, and I think I recall
23 there's pressure building now because I gave you a 90-day
24 deadline to either file a lawsuit regarding the CLO Holdco
25 issues that we had a hearing on a few weeks ago, a couple of

1 weeks ago, or I'm probably going to release the money in the
2 registry of the Court. And so that's part of why you're
3 trying to get these documents as soon as possible, right, Ms.
4 Montgomery?

5 MS. MONTGOMERY: Yes, Your Honor.

6 THE COURT: Okay. All right. You all try to work
7 this out. Okay?

8 MR. CLEMENTE: Thank you.

9 THE COURT: Well, I was partly pressing the issue of
10 what's July 21st going to look like because I think we may
11 carry over the discussion about mediation. We're going to
12 start it right now, but I think we may have to carry it over
13 to the 21st, and I hope finally kind of get a game plan
14 together on that day.

15 So, I wanted Mr. Seery to be available. Mr. Seery is --
16 if you're still there somewhere. You're very important, in my
17 view, to mediation potentially being successful here -- and
18 the whole Board is, for that matter -- because -- well, let me
19 digress a minute.

20 Mediation is going to be very tough here. We all know
21 that mediation tends to be more likely to succeed if we've got
22 face-to-face, in-person participation. And as I said last
23 week, I just don't know how I can order people to be in face-
24 to-face mediation right now. I just -- we've got people
25 spread out, and I think it would be very, very bad to order

1 face-to-face mediation right now.

2 But on the topic of mediation, you know, I've heard some
3 things that, you know, we all know, but I've heard some things
4 from Mr. Seery that are important to stress today. This isn't
5 the type of case that needs to be in bankruptcy for months and
6 months and months and months. Okay? We have the issue of the
7 professional fees accruing, of course, like every case. But
8 we have a company where -- it's a strange fit for bankruptcy,
9 right, this kind of company. And it's so dependent on people
10 to provide value. And people can bolt. You know, people can
11 get weary of the bankruptcy and want to be somewhere else
12 where that taint is not there in the marketplace.

13 The issue of the UCC protocols was brought up by Mr.
14 Seery, and I know that is something that is going to be
15 cumbersome, you know, for this company to be in bankruptcy
16 long-term.

17 So, I want to go to Mr. Seery, and it may be unusual for
18 me to reach out to you and ask this, but I want to hear from
19 you: Do you think mediation is a waste-of-time pipe dream,
20 for lack of a better term? I really want mediation to happen,
21 because I don't know how we quickly get a confirmed plan if we
22 have, well, the voting issue, for one, right? We have to, at
23 a minimum, figure out what is UBS's voting claim. What's its
24 claim for voting purposes? What is Acis's claim for voting
25 purposes? A looming, huge issue in my mind. So I feel like

1 we've got to have mediation. We've got to get a strong shot
2 at getting these two claims liquidated, at least for voting
3 purposes, if not overall.

4 So, is this a pipe dream, Mr. Seery, in your view, that
5 mediation might get to resolution on these two claims? What
6 do you think about it?

7 MR. SEERY: The quick answer, Your Honor, is I don't
8 think it's a pipe dream. I think there's a legitimate shot to
9 move parties together.

10 Let me just say one thing that -- reflecting on what Mr.
11 Clemente said. I want to make clear for the record that, to
12 the extent I misspoke, and it would have been misspeaking, I
13 have no negative implication regarding the sophistication,
14 professionalism, or focus of Sidley --

15 THE COURT: Uh-huh.

16 MR. SEERY: -- or FTI or any of the professionals. I
17 know these folks. They're really good. They're very
18 sophisticated. I have the highest professional and personal
19 respect for them. So, to the extent that I misspoke, I
20 apologize.

21 THE COURT: I don't think you did, and that's not how
22 I heard it --

23 MR. SEERY: Okay.

24 THE COURT: -- and that's certainly not how I meant
25 it. It's just a fact of bankruptcy that it's expensive.

1 Okay? So, --

2 MR. SEERY: Yeah.

3 THE COURT: Right.

4 MR. SEERY: I just wanted that to be clear.

5 I think, particularly with respect, Your Honor, to the
6 Acis and UBS claims, our professionals have done a lot of work
7 on them. Obviously, the professionals for Acis and UBS have
8 done a lot of work on them. There may be things that we know,
9 the perspectives that we have, and perspectives that the other
10 side has, that may not be as well-founded as each side thinks.
11 It could be very valuable to have a third-party objective
12 observer, cajoler, somebody who's strong, to help move the
13 parties off of certain positions.

14 We would like to think, as a Board, Independent Board, and
15 I'd like to think as an Independent Director and now as a CEO,
16 I didn't really have a -- the proverbial dog in that fight for
17 either of those claims. I wasn't -- I'm not a Highland
18 employee. I don't have any animus towards any of the sides.
19 I don't have any history with any of the sides.

20 But I'm realistic that I take a perspective around certain
21 claims and how they're brought, the factual and legal basis
22 for them. And I get a lot of that information from Highland
23 employees, and we use that information to then perform the
24 analysis with our professionals.

25 Likewise, these parties have been involved in, on the

1 other side, very entrenched disputes with Highland and
2 Highland employees. And they've dug in on their positions.

3 Having a third party hear each side and start to move
4 could give us the chance to break it open. I think there's --
5 and there's two really important aspects. One is the claim
6 amount, and then, obviously, the distributions on the claims:
7 How to make those, how much are they, when are they made? We
8 can work on both of those, and I think we need some help
9 moving us both on the claim amounts and on how to make the
10 distributions.

11 We've made progress with Redeemer because even though they
12 had -- they had an arbitration award, so we knew what the
13 outside would be. Now, Redeemer and their attorneys are very
14 good and very creative. They could stretch the outside in
15 those discussions. I won't get into what they are. But we
16 were able to more easily fashion around the particulars of
17 that claim because there was that judgment from the
18 arbitrators that, while it hasn't been entered, gave us much
19 more guidelines as to where we could look. The other claims
20 are much more amorphous, at least at this stage, and having a
21 third party help us develop perhaps closer goal lines would be
22 useful, in my opinion.

23 But, again, I think it's very important that we do it
24 quickly. I think we -- you know, somebody who is focused,
25 strong. I'm sure they'll be highly intelligent and versed in

1 the field, but somebody who's got the opportunity and time to
2 do it. And then, if it's unsuccessful, then, as Mr. Pomerantz
3 and Ms. Patel alluded to, then perhaps we may need some
4 judicial help to move those goal lines a little bit.

5 But I do think that mediation -- and I apologize for the
6 length of my answer -- could be a very helpful way to do it,
7 provided we get there quickly.

8 THE COURT: All right. I guess my other question I
9 wanted your view on is structure. You know, when someone --
10 Mr. Pomerantz, I think -- told me that he or others had
11 reached out to our judges in Houston, Judge Jones and Judge
12 Isgur, my initial reaction -- and, frankly, my continued
13 thought on that -- is they just don't have meaningful time,
14 because I don't think one day of cajoling is going to be
15 enough to get -- you know, you're a billion dollars apart on
16 UBS, right? The Debtor, I guess, thinks zero is the amount of
17 their claim, and UBS thinks it's a billion, and it's been
18 litigated for 11 years. And then I personally know, you know,
19 how Acis feels about its positions.

20 So, anyway, what I'm getting at is structure. I in some
21 ways think what we need here is sort of a master statesman-
22 type person who would spend meaningful time, not just a day or
23 two, but days or even weeks trying to reach a grand
24 compromise.

25 On the other hand, in my experience -- I've never done

1 that in a case as judge. But as a lawyer, I felt like that
2 kind of person can hijack a case, and we don't need that here.
3 We have wonderful professionals, a wonderful Board, a
4 wonderful CEO. We don't need that kind of help, I worry.

5 So, I guess where I'm evolving, you know, we've got the
6 two-sitting-judge option that would be free mediators that
7 could give you a day or two. Maybe. And then we have kind of
8 the master statesman who might be in there for weeks, trying
9 to help you reach a grand compromise.

10 Another option, I think, is one or two mediators who just
11 zero in, you know, on the UBS claim versus -- and the Acis
12 claim. And I have a couple of private mediators in mind that
13 have very good video capabilities to have a sophisticated
14 video mediation.

15 So, all of this rambling to say, Do you think we need to
16 just zero in on Acis and UBS and maybe have one or two people
17 to do formal video mediation with those two parties, or do we
18 need sort of more of a grand pooh-bah, grand compromise-type
19 person?

20 MR. SEERY: My view, Your Honor, is that we should
21 focus on the claims, but they're not just going to be two-
22 party, because we do have other active constituents. I think
23 Redeemer, with their party in interest status, is going to
24 want to be part of it.

25 I think if we can focus on those, we have the

1 professionals to help drive the grander bargain that I've
2 alluded to in some of those discussions we've been having. So
3 they haven't progressed as far as I would like, but they have
4 progressed. We do need the bottom line number for where
5 claims are going to come out. But also that will help frame a
6 little bit as to what parties expect in terms of distributions
7 on their claims.

8 And I think the reason that we had some impetus behind a
9 sitting judge -- frankly, I didn't know that sitting judges
10 couldn't be paid. I think that's -- there should be a
11 standard rate, because we shouldn't take people's time for
12 free in these cases, and I know judges work extremely hard and
13 if they're going to put in extra time, then they should maybe
14 be compensated, but that's a whole different issue.

15 I don't think we should get too hung up on the cost. We
16 are -- the costs of this case are extremely high, and we are,
17 with best intents, sometimes getting ourselves wrapped up in
18 things that should be, I think, more swiftly and economically
19 dealt with and dispatched.

20 So, if we can get a good mediator, and I think the reason
21 folks think about a judge is -- a sitting judge, it's not just
22 the vast experience that folks -- judges like yourself have,
23 Your Honor, and in particular with these issues, but also the
24 requirement that all the participants, notwithstanding the
25 professionals and -- that you see here, the requirement that

1 all the participants know that they're dealing with a sitting
2 judge, there's a certain decorum that's required. But that, I
3 think we get anyway. But there's also a -- there's less
4 willingness to go to the furthest reaches of your argument
5 when you have someone who's on the bench who sees those types
6 of positions taken frequently and can dispatch with them more
7 readily.

8 So, I think there are a number of individuals that I've
9 dealt with in the past who would have the ability, the
10 gravitas, for lack of a better term, to be able to help push
11 the parties in the right direction. And I think it's a matter
12 of finding somebody, as you said, with both the capabilities,
13 which we'll find, but also the capacity in terms of the time
14 to do it. And then, in the video age, maybe some facility in
15 being able to make that happen both rapidly and effectively on
16 screen.

17 THE COURT: Okay.

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
19 And I'd just make a couple of comments.

20 THE COURT: Okay.

21 MR. POMERANTZ: You know, as Mr. Seery said, we were
22 predisposed towards a sitting judge. And while we did share
23 the same concerns about the timing of Judge Jones and Isgur,
24 we understand you've probably been in communication with them,
25 and if that's not going to work, we appreciate it. We want

1 this mediation to be effective and we want someone to spend
2 the time with it. And if you didn't feel that they, you know,
3 could commit to that, we totally appreciate that.

4 We thought long and hard about the people that you
5 identified at the last hearing, former Judge Peck and Sylvia
6 Mayer. We've done our diligence. The Debtor would be willing
7 to mediate before Sylvia Mayer. We think that, based upon our
8 diligence, the people we've spoken to, that she, if she
9 otherwise had the time and the abil... the time to devote to
10 it, that being a former big-firm lawyer in permanent practice
11 now as a mediator, that the Debtor would find her acceptable.

12 THE COURT: All right. Does anyone else wish to
13 comment? Because I have a very positive view of Sylvia Mayer,
14 and certainly her video capabilities, I think, are far and
15 away better than a few other people I've chatted with.

16 MS. PATEL: Your Honor?

17 MR. CLEMENTS: Your Honor? Oh, I'm sorry.

18 MS. PATEL: Go ahead.

19 MR. CLEMENTE: Your Honor, --

20 THE COURT: Not that I would ever, you know, put that
21 ahead of, you know, overall abilities, but it just is an added
22 plus, a huge plus right now during COVID.

23 Go ahead.

24 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
25 the Committee. Just a couple observations, building a little

1 bit on what Mr. Seery said.

2 We had consensus among the Committee around Judge Isgur
3 and Judge Jones. I think the view, the consensus view -- and,
4 again, I use the word consensus and not unanimity because I
5 want Your Honor to understand that -- is that having a sitting
6 judge, ideally, given the personalities as you've expressed
7 and I think as Mr. Seery has expressed, provides the best
8 possibility for a successful mediation. It may not be that
9 overlord that spends three weeks, but, you know, it is a
10 strong personality that -- not that any of the names that have
11 been raised aren't tremendously to be respected, but that
12 would be respected by all of the parties simply by the fact
13 that they're a sitting judge.

14 With that said, Your Honor, and, again, the speed. Again,
15 I don't have unanimity from the Committee, but there is
16 consensus to see if Sitting Judge Green from the Southern
17 District of New York would have the time and the capability to
18 spend. And I know Your Honor has concerns about the time. I
19 think Judge Isgur and Judge Jones occupy a special place in
20 terms of how busy they are, but at least among the Committee
21 members, there's been discussion that that may be a suitable
22 approach in terms of identifying a mediator and accomplishing
23 the objectives of having a very strong mediation, mediator, on
24 a timely basis, that has the best possibility of success.

25 That being said, Your Honor, based on what Mr. Pomerantz

1 said, if Mr. Green is not acceptable or if Your Honor doesn't
2 wish for us to go in that direction, I do have consensus among
3 the Committee members to move forward with Ms. Mayer as
4 mediator.

5 So, a little -- maybe a little convoluted in my comments
6 there, Your Honor, but the main thrust is I think there is
7 consensus among the Committee to consider a sitting judge, and
8 Judge Green would be someone who would be satisfactory. And
9 if he's not acceptable, or I should say acceptable but not
10 able to do it, Ms. Mayer would be acceptable to the Committee.

11 THE COURT: All right. Well, let me put this out
12 there. I talked on a no-names basis with Ms. Mayer last
13 Friday. And it was actually more in the nature of making
14 inquiries about how an organization she's connected with, the
15 AAA -- you've heard of the American Arbitration Association;
16 they, of course, do mediation -- what their experience and
17 capabilities were with many, many parties and video mediation.
18 And as you might guess, they have a lot of experience already
19 -- you know, a number well in excess of a hundred; I can't
20 remember -- of doing video mediations with many parties and
21 having the different constituencies in this caucus room and
22 that caucus room. And, very importantly, having lots of IT
23 staff to give instructions, to give help, to, you know, tackle
24 technology problems.

25 But in that discussion, I learned that there is a panel

1 that AAA has put together of 12 mediators that have bankruptcy
2 expertise. And, of course, Sylvia Mayer is one of those
3 people. But Retired Bankruptcy Judge Gropper -- is it Groper
4 or Gropper from the Southern District of New York? I always
5 forget which way he pronounces his name. Anyway, he is on
6 that. He is on that panel of 12.

7 Mr. Seery, you're grinning like you want to say something
8 about this.

9 MR. SEERY: No. Only on the Gropper/Groper, because
10 there's a professional that I know that is similarly named,
11 and I believe -- and I believe Judge Groper -- I may have it
12 wrong, but I think it's -- it's Judge Groper and Dan Gropper.
13 But that's the best I --

14 MR. NEIER: It's Dan Groper and Judge Gropper. I
15 actually had a mediation with the two of them when they argued
16 about the pronunciation of their name.

17 THE COURT: Okay. Well, Gropper. So we -- it's
18 Gropper. Okay.

19 A VOICE: Yes.

20 THE COURT: My point was, without -- I've not talked
21 to him at all. And by the way, I haven't personally reached
22 out to Jim Peck, but we'll stop that discussion about him.
23 But after getting off the call with Sylvia Mayer and a couple
24 of other people at the AAA Friday, I put together in my brain,
25 maybe we could have a Sylvia Mayer/Allan Gropper tag team, two

1 mediators. Okay? I don't know how that would affect the
2 cost, but that might be the way to go in such a complex case.
3 You know, maybe they could divvy up among themselves. One
4 would be the primary mediator on Acis, one would be the
5 primary mediator on UBS, but they would both work together.

6 If you all want to think on that, digest that a little,
7 and we, you know, decide definitely next week on the 21st, we
8 could do that. Or we could just all say, yeah, that's a good
9 game plan, and I can get on the phone after this. Or it
10 actually may be tomorrow, because I have a terrible hearing
11 that I've got to prepare for at 9:30 in the morning tomorrow.
12 It may be tomorrow.

13 But do people want to let that soak in a little bit, or
14 shall -- I mean, --

15 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

16 THE COURT: -- frankly, I can order it either way. I
17 can order it. But I just really want to be conciliatory to
18 the parties who are owed the money and have to pay the money,
19 if you want to think on it some.

20 MR. POMERANTZ: Your Honor, it's Jeff Pomerantz.
21 Having my newly-minted CEO on the phone, Mr. Seery, I would
22 ask him, and if he says that it would be okay, then it would
23 be okay with me.

24 MR. SEERY: Be fine with me.

25 THE COURT: Okay.

1 MR. SEERY: Yeah, I think the key is moving forward.
2 I know it's much harder with a Committee, and I respect, you
3 know, Matt Clemente's job there of having to get consensus.
4 But from our perspective, if we were to push it off, you know,
5 on the 21st, Your Honor, we -- we would request you to order
6 something, because I don't want this to delay.

7 THE COURT: Okay.

8 MR. CLUBOK: Your Honor, if I may, speaking for UBS,
9 it's Andrew Clubok. You'll be happy to know I think that
10 we're in agreement with Mr. Seery, and I guess, derivatively,
11 Mr. Pomerantz. We think the most important thing is to move
12 it along quickly, and we trust -- you know, we're familiar
13 with Judge -- or, with Mayer, and whether it's Groper or
14 Gropper, I lost track, but I'm sure he is also going to be
15 equally capable. We do kind of think that two is probably
16 necessary, given, you know, the sort of multi-layer
17 (inaudible).

18 But, really, our position has simply been we'll happily
19 mediate with any, you know, effective mediator as quickly as
20 possible, because we do think the sooner we do that, the
21 sooner we might have a chance to get to yes. So, I'm -- we're
22 prepared to just say yes to the idea.

23 THE COURT: All right. Does anyone else want to
24 comment?

25 MS. PATEL: Your Honor? And can you hear me? I'm

1 sorry. It's --

2 THE COURT: Yes.

3 MS. PATEL: Again, I'm still having WebEx problems.

4 THE COURT: Yes.

5 MS. PATEL: Your Honor, again, for the record, Rakhee
6 Patel.

7 Acis is fine with the proposal, Your Honor. We've been
8 amenable to virtually every proposal, and have been trying to
9 hopefully be helpful with respect to getting this moved to
10 mediation as quickly as possible. We equally think that we
11 should get to mediation as quickly as we can.

12 And, you know, the only -- the only -- and I appreciate
13 Your Honor's contemplativeness on this. As you know, at least
14 in connection with the Acis case, you know, we've been through
15 two unsuccessful mediations so far. So we're really hoping
16 that the third time will go much better than the prior two.

17 So, anyway, this is my very long way of saying we're fine
18 with the proposal and are happy to kind of sign off on it. We
19 don't need until July 21st to respond on that.

20 THE COURT: Okay. Anyone else?

21 (No response.)

22 THE COURT: All right. Well, very good. I'm going
23 to move ahead on this and will confirm to you, hopefully
24 before the 21st, through my courtroom deputy. And, again,
25 given the late hour, I think it's going to be tomorrow before

1 I pick up the phone and reach out to Sylvia Mayer and former
2 Judge Gropper.

3 But, again, I did, in speaking generically with Sylvia
4 Mayer, asking her, Have you ever done like a two-mediator
5 mega-mediation, and she said, Oh, sure. You know, that's --
6 she acted like it was quite common. It's not something that I
7 have seen very often, but I think we'll be in business with
8 this game plan.

9 Because, you know, I know everyone on this call knows
10 this, but maybe not everyone's client knows this: If we don't
11 -- if we don't have a successful mediation of both of these
12 claims, or at least one of these claims, it's going to be
13 years and years and years. I mean, I know it's already been
14 years for UBS, but it will -- it will be many, many more
15 years. And that's not what we're supposed to do in
16 bankruptcy. We're supposed to stop burdensome litigation and
17 solve problems. And I can't imagine your clients want to go
18 on with three or four more years of litigation. But that's
19 exactly what it will be, it's exactly what it will be, many
20 more years of litigation, if we don't have mediated
21 settlements.

22 So, all right.

23 MS. PATEL: Your Honor, if I may very quickly. I
24 just wanted to make sure the Court was aware of something. In
25 the context of mediation and as it relates to Acis's claim,

1 yesterday counsel for Mr. Dondero filed a joinder in the
2 Debtors' objection to Acis's claim. So, again, just thinking
3 about this in the context of mediation, I think, with that
4 joinder, they will be a necessary party. So, going back to
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing
12 further, we'll see you on the 21st. And, again, my courtroom
13 deputy may be reaching out before then if we've got things
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oOo--

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CERTIFICATE

21

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

23

24 **/s/ Kathy Rehling**

07/16/2020

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 1

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

4 In Re:) **Case No. 19-34054-sgj-11**
5) Chapter 11
6)
7) Dallas, Texas
8) January 9, 2020
9) 9:30 a.m. Docket
10)
11) DEBTOR'S MOTION TO COMPROMISE
12) CONTROVERSY WITH OFFICIAL
13) COMMITTEE OF UNSECURED
14) CREDITORS [281]
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtors: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtors: Melissa S. Hayward
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: Dennis M. Twomey
4 SIDLEY AUSTIN, LLP
5 One South Dearborn Street
6 Chicago, IL 60603
7 (312) 853-7539

8 For the Official Committee Penny P. Reid
9 of Unsecured Creditors: SIDLEY AUSTIN, LLP
10 2021 McKinney Avenue, Suite 2000
11 Dallas, TX 75201
12 (214) 981-3413

13 For the Issuer Group: James T. Bentley
14 (Telephonic) SCHULTE ROTH & ZABEL, LLP
15 919 Third Avenue
16 New York, NY 10022
17 (212) 756-2000

18 For the Issuer Group: James E. Bain
19 (Telephonic) JONES WALKER, LLP
20 811 Main Street, Suite 2900
21 Houston, TX 77002
22 (713) 437-1820

23 For Acis Capital Rakhee V. Patel
24 Management GP, LLC: Annmarie Antoinette Chiarello
25 WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
Dallas, TX 75201
(214) 745-5250

For Redeemer Committee of Terri L. Mascherin
the Highland Crusader JENNER& BLOCK, LLP
Fund: 353 N. Clark Street
(Telephonic) Chicago, IL 60654-3456
(312) 923-2799

For Redeemer Committee of Mark B. Hankin
the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
(Telephonic) New York, NY 10022-3098
(212) 891-1600

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee:

Lisa L. Lambert
Meredyth A. Kippes
OFFICE OF THE UNITED STATES
TRUSTEE
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-8967

6 For Jefferies, LLC:
(Telephonic)

Patrick C. Maxcy
DENTONS US, LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6361
(312) 876-8000

9 For Patrick Daugherty,
Pro Se:

Patrick Daugherty

10

11 Recorded by:

Hawaii S. Jeng
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2006

12

13

14 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

15

16

17

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transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 9, 2020 - 9:56 A.M.

2 THE COURT: All right. Let's roll to Highland now.
3 Let's get appearances from lawyers in the courtroom, please.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz; Pachulski Stang Ziehl & Jones. Happy New Year,
6 Your Honor.

7 THE COURT: Happy New Year.

8 MR. POMERANTZ: Here on behalf of the Debtor.

9 THE COURT: Okay. Thank you.

10 MS. HAYWARD: Good morning, Your Honor. Melissa
11 Hayward and Zachery Annable on behalf of the Debtor.

12 THE COURT: Good morning.

13 MS. LAMBERT: Lisa Lambert, and I think Ms. Kippes
14 will be joining me, representing William Neary, the United
15 States Trustee.

16 THE COURT: Thank you.

17 MS. CHIARELLO: Good morning, Your Honor. Annmarie
18 Chiarello and Rakhee Patel here on behalf of Acis Capital
19 Management, LP and Acis Capital Management GP, LLC.

20 THE COURT: Thank you.

21 MR. CLEMENTE: Good morning, Your Honor. Matthew
22 Clemente from Sidley Austin on behalf of the Official
23 Committee of Unsecured Creditors. With me today are my
24 partners Dennis Twomey and Penny Reid.

25 THE COURT: Okay. Good morning. All right. Is that

1 all of the courtroom appearances?

2 All right. We have several people on the phone. I think
3 most of them are just listening in. If you're on the phone,
4 though, and you wish to appear, you may do so at this time.

5 MR. BENTLEY: Good morning, Your Honor. This is
6 James Bentley of Schulte Roth & Zabel. Also on the line is my
7 co-counsel, Joseph Bain of Jones Walker. We represent the
8 Issuers.

9 THE COURT: Okay. Good morning.

10 MS. MASCHERIN: Good morning, Your Honor. This is --

11 MR. MAXCY: Good morning. Patrick --

12 MS. MASCHERIN: Good morning, Your Honor. This is
13 Terri Mascherin of Jenner & Block. Also on the line with me
14 is my partner, Mark Hankin. We represent the Redeemer
15 Committee of the Highland Crusader Fund, which is one of the
16 members of the Unsecured Creditors' Committee.

17 THE COURT: Okay. Good morning.

18 MR. MAXCY: Good morning, Your Honor. This is
19 Patrick Maxcy from Dentons US, LLP on behalf of Jefferies,
20 LLC.

21 THE COURT: Okay. Thank you. All right. Well, I
22 guess that is it for the phone appearances.

23 Mr. Pomerantz, we're -- we have just one matter on the
24 calendar, the motion to compromise with the Committee. I saw
25 two limited objections, and then a U.S. Trustee's broader

1 objection. I'll start with, Do you have any of these
2 objections worked out?

3 MR. POMERANTZ: Yes, we do.

4 THE COURT: Okay.

5 MR. POMERANTZ: We believe we have the Jefferies
6 objection worked out, as well as the objection of the Issuers.
7 And I'll, during the course of my presentation, alert Your
8 Honor to how that's worked out.

9 THE COURT: Okay.

10 MR. POMERANTZ: And then we'll have a revised order
11 that basically addresses each of their concerns, or at least
12 Jefferies' concerns, but the statements on the record for the
13 Issuers' concerns.

14 THE COURT: Okay. Very good.

15 MR. POMERANTZ: Good morning again, Your Honor. Jeff
16 Pomerantz; Pachulski, Stang, Ziehl & Jones. I'm joined in the
17 courtroom by Ira Kharasch, Greg Demo, and John Morris from my
18 office. I would also like to introduce the Court to the
19 proposed new members of the board of directors of Strand
20 Advisors, which is the Debtor's general partner. They're all
21 sitting in the first row behind counsel's well. And that's
22 Mr. James Seery, --

23 THE COURT: Good morning.

24 MR. POMERANTZ: -- Mr. John Dubel, --

25 THE COURT: Good morning.

1 MR. POMERANTZ: -- and the Honorable Russell Nelms.

2 THE COURT: Yes. I've met him before.

3 MR. POMERANTZ: As have we. We thought you would
4 remember him.

5 The resumes of Mr. Seery and Mr. Dubel were attached to
6 the motion filed on December 27th, and those two resumes and
7 the resume of the Honorable Judge Nelms were attached to the
8 reply that was filed last evening. And while Mr. Seery and
9 Mr. Dubel may be new names to Your Honor, we know that you are
10 familiar with Judge Nelms, who sat with you in this district.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: Also in the courtroom, Your Honor, is
13 Brad Sharp, the Debtor's chief restructuring officer from DSI,
14 --

15 THE COURT: Good morning.

16 MR. POMERANTZ: -- and his colleague, Fred Caruso,
17 who spends most of his working hours at the Debtor's Dallas
18 headquarters.

19 THE COURT: Good morning.

20 MR. POMERANTZ: We have the declaration of Mr. Sharp
21 that we would move into evidence at this point in time.

22 THE COURT: All right. I've got a stack of paper.
23 If you have an extra copy for me to use, --

24 MS. HAYWARD: Your Honor, may I approach with the --

25 THE COURT: You may.

1 MS. HAYWARD: Your Honor, it was filed, the
2 declaration was filed. I'm not sure that we have a copy of --

3 MR. POMERANTZ: Your Honor, we will also at the
4 appropriate time during my presentation, I'll bring up to Your
5 -- ask to bring up to Your Honor revisions to the term sheet
6 that was attached to the motion.

7 THE COURT: Okay.

8 MR. POMERANTZ: Copies have been given to Ms. Lambert
9 as well as the Committee.

10 THE COURT: Okay. Very good. All right. Well, what
11 was handed to me was the preliminary term sheet as well as the
12 CVs for the proposed new board members. I don't see the
13 declaration --

14 MR. POMERANTZ: Your Honor, if I may approach, I have
15 a copy.

16 THE COURT: You may. All right. Very good.

17 MR. POMERANTZ: So we would move that declaration
18 into evidence.

19 THE COURT: All right. The Court will admit this.
20 It was filed on the docket at 327, but I will additionally
21 admit it as Exhibit 1 today.

22 (Debtor's Exhibit 1 is received into evidence.)

23 THE COURT: At some point in time, I want to give
24 parties the opportunity to cross-examine Mr. Sharp. Do you
25 want to do that now, or shall we hear an opening statement?

1 MR. POMERANTZ: However Your Honor prefers. I mean,
2 maybe it's helpful to hear argument first, and then, before
3 the Trustee --

4 THE COURT: I think I'd like to hear opening
5 statements and then we'll --

6 MR. POMERANTZ: Thank you.

7 THE COURT: -- make the opportunity available. Okay.

8 OPENING STATEMENT ON BEHALF OF THE DEBTOR

9 MR. POMERANTZ: Your Honor, by way of background, we
10 appeared before Your Honor on December 6th and December 19th.
11 And during each of those hearings, we described for the Court
12 negotiations that were underway between the Committee and the
13 Debtor which, if successful, would have -- would eliminate the
14 need for contested and uncertain and costly litigation
15 regarding the appointment of a Chapter 11 trustee and really
16 put this case in a position where the Debtor and the Committee
17 would be able to work together constructively towards
18 negotiation of a plan.

19 As a result of our hearing on December 19th, Your Honor
20 entered a scheduling order that set deadlines for either the
21 filing of a motion to approve a settlement, or alternatively,
22 the filing of one or more motions for the appointment of a
23 trustee.

24 As set forth and required by the scheduling order, we
25 filed our motion on December 27th, and in that motion we

1 sought approval of a term sheet and ancillary documents
2 between the Debtor and the Committee, which I'll describe
3 shortly.

4 While a couple of items had not yet been agreed to at the
5 time the motion was filed, I'm pleased to report that over the
6 last couple of days we've been able to reach closure with the
7 Committee with respect to those items, and there would also be
8 some modifications to the term sheet, which I'll go through in
9 a few moments.

10 The motion, Your Honor, seeks approval of the term sheet,
11 which accomplishes a variety of things that, again, will allow
12 the Debtor and the Committee to put the acrimony that has
13 existed in this case for the first three months behind us and
14 allow us to focus on productive matters. In the last 24
15 hours, as I mentioned, there have been a few changes to the
16 term sheet that I will describe. And I would like to hand up
17 Your Honor a redline and a clean copy of the revised term
18 sheet and exhibits. May I approach?

19 THE COURT: All right. You may. Do you have an
20 extra for the law clerk? Okay. Thank you.

21 (Pause.)

22 MR. POMERANTZ: Your Honor, the term sheet does a
23 number of things. Would you like me to give Your Honor some
24 time to look through the redlines?

25 THE COURT: No. You may proceed.

1 MR. POMERANTZ: Okay. The term sheet does a number
2 of things. The first thing the term sheet does is appointment
3 of an independent board at Strand Advisors. Strand Advisors
4 is the GP of the Debtor. The Debtor is an LP. The Debtor
5 previously had filed a motion to approve the retention of Brad
6 Sharp as the chief restructuring officer, and that initial
7 agreement and motion contain details regarding the scope of
8 Mr. Sharp's authority and the scope of what the Debtor could
9 do without Mr. Sharp's prior consent.

10 The Committee raised concerns that the structure was not
11 sufficient to ensure that decisions were being made for the
12 Debtor only in their best interests and without any
13 inappropriate influence from Mr. Dondero.

14 To address the Committee's concerns, a focal point of the
15 settlement was the Debtor's agreement to appoint an
16 independent board of directors at Strand who would be
17 responsible for managing the operations of the Debtor.

18 Over the last few weeks, a principal aspect of the
19 negotiations between the Committee and the Debtor have been
20 discussing who should the independent directors be.
21 Conceptually, the Debtor and the Committee both agreed that
22 the board should include, first, a person with significant
23 industry experience in which the Debtor operates -- hedge
24 funds, money management; second, a person with deep
25 restructuring experience from the financial advisor side; and

1 third, a person with some sort of judicial or governmental
2 experience.

3 The Debtor originally provided the Committee with three
4 proposed candidates. The Committee considered the Debtor's
5 request, but instead presented the Debtor with four different
6 candidates and asked the Debtor to choose from those four.
7 The Debtors interviewed each of those people and ultimately
8 agreed on Messrs. Dubel and Seery, who were each on the
9 original list.

10 As of the deadline to file the motion on December 27th,
11 the Committee and the Debtor had still not agreed on the
12 identity of the third board member, but the parties were
13 hopeful that an agreement could ultimately be reached and we
14 decided to go ahead and file the motion. As I'm sure Your
15 Honor saw in the motion, it was contingent upon everyone
16 agreeing on the third board member.

17 Ultimately, the Debtor and the Committee both agreed that
18 Mr. Dubel and Mr. Seery could identify the third board member
19 out of a pool of four people: Two of the people originally
20 requested by the Committee and two people identified by the
21 Debtor. This week and over the weekend, Mr. Seery and Mr.
22 Dubel interviewed each of the four candidates, and ultimately
23 decided on the appointment of Judge Nelms as the third
24 independent board member.

25 The board, as it will be constituted going forward, in the

1 Debtor's opinion, consists of three exceptional individuals
2 who are independent of the Debtor, have a sterling reputation
3 in the community, and bring to the Debtor a variety of the
4 skills that we believe, and believe the Committee agrees,
5 gives the Debtor the best opportunity to achieve a consensual
6 restructuring and otherwise manage the affairs of the Debtor
7 in the best interests of the stakeholders.

8 It is contemplated that the Debtor will continue to retain
9 the services of DSI as the chief restructuring officer, and
10 ultimately the board will determine if it's important to
11 retain a CEO going forward.

12 The second thing that the term sheet does, Your Honor, was
13 the removal of Mr. Dondero as an officer and director of
14 Strand and eliminate all of his control over decision-making
15 of the Debtor. The Debtor recognized early on in this case
16 that Mr. Dondero's continuing role with the Debtor in a
17 position of authority made the Committee extremely uneasy.
18 Accordingly, the term sheet provides for him removing himself
19 as an officer and director of Strand and that he would no
20 longer be in a position of control at the Debtor.

21 However, since the filing of the motion, over the last
22 several days, concerns have been raised about whether removing
23 Mr. Dondero from the business entirely would have unintended
24 consequences. I believe I may have mentioned at prior
25 hearings that, because of his involvement as a portfolio

1 manager under various contracts with third parties, that there
2 could be adverse economic consequences to the Debtor if he
3 didn't stay in some role.

4 As a result of discussions over the last 24 hours, the
5 Committee has agreed and the Debtor agreed to modify the term
6 sheet to allow the new board to decide whether to retain Mr.
7 Dondero in his capacity as a portfolio manager, provided,
8 however, that he will not receive any compensation and he will
9 agree to resign if requested by the board.

10 In any event, he will have no decision-making control at
11 all and he will report to the independent board.

12 The corporate governance documents that create the new
13 independent board of Strand also provide that Mr. Dondero, as
14 the owner of the equity in Strand, may not replace the board
15 without the Committee consent or court order.

16 The third major aspect of the term sheet, Your Honor, was
17 the agreement on operating protocols, and it really relates to
18 the ground rules for the Debtor's operations going forward and
19 when notice to the Committee is required of certain
20 transactions that would otherwise be in the ordinary course of
21 business.

22 Importantly, Your Honor, we are not trying to modify the
23 Bankruptcy Code in any way. Any transactions out of the
24 ordinary course of business would still be subject to Your
25 Honor's approval.

1 However, in this case, as we indicated in the initial
2 motion we filed when the case was in Delaware, whether or not
3 something is ordinary is not straightforward in a case such as
4 the Debtor's, given the nature of the Debtor's operations. So
5 we thought it was important to establish ground rules up
6 front, and establishing those ground rules was one of the
7 things we did initially in the case. We had opposition from
8 the Committee, and we've worked through the opposition and
9 ultimately arrived at the operating protocols that are
10 attached to the term sheet.

11 They have been slightly modified in nonmaterial ways in
12 the documents I handed up to Your Honor.

13 They were subject to substantial negotiations between the
14 Debtor and the Committee, and we also expect them to be the
15 subject of future discussions with the Committee and the
16 independent board after the independent board takes -- takes
17 place. Takes over.

18 Two parties in interest, Your Honor, Jefferies and a group
19 of Issuers, the CLOs, have filed comments to the term sheet,
20 which I'll describe in a few moments.

21 THE COURT: Okay.

22 MR. POMERANTZ: The next aspect, Your Honor, of the
23 term sheet was the provision of standing to the Creditors'
24 Committee to pursue certain insider claims.

25 During the negotiations, the Committee requested immediate

1 standing to investigate and potentially prosecute claims
2 against insiders to the extent those insiders were not
3 employed by the Debtor. Granting standing at this stage of
4 the case was a difficult give by the Debtor. However, the
5 Committee impressed upon the Debtor the importance of them
6 being able to control the filing of any actions against the
7 insiders, and the Debtor decided to accede to the Committee's
8 request.

9 It still remains the Debtor's hope that, with the creation
10 of the independent board, that the Debtor, the Committee, and
11 any insiders who might be subject to any such claims will be
12 able to come together and negotiate a consensual resolution of
13 this case. While all parties, I'm sure, can and know how to
14 litigate, hopefully they will agree that a negotiated outcome
15 is better than a litigated outcome.

16 The next aspect of the term sheet, Your Honor, was the
17 document preservation protocols, and it provides for certain
18 procedures to be put in place to address the Committee's
19 concerns about document preservation. They are contained in
20 an exhibit to the term sheet. Again, slight nonmaterial
21 modifications were made in what I handed up to Your Honor.
22 And essentially they provide also for the Committee's access
23 to privileged documents to aid in their investigation and
24 prosecution of claims to which they are granted standing, and
25 also sets forth a procedure to be followed to address concerns

1 if the information is subject to shared privileges by several
2 entities.

3 As I mentioned, Your Honor, three parties have filed
4 responses to the motion. The first is Jefferies. Jefferies
5 is a secured creditor of the Debtor with respect to its margin
6 account held at Jefferies, and also has a similar account held
7 by a non-debtor affiliate. They have asked for clarification
8 that, one, nothing in the protocols or the motion affects its
9 rights under the underlying agreements or the safe harbor
10 provisions of the Bankruptcy Code entitling them to enforce
11 their remedies; and two, that the Debtors will not trade in
12 the prime account without Jefferies' consent, and if that
13 consent is sought and not obtained, only subject to court
14 order.

15 The Debtor has agreed to include language in the order to
16 address Jefferies' concern, and at the conclusion of my
17 presentation I'll submit to Your Honor an order and a redline
18 containing that language.

19 THE COURT: Okay.

20 MR. POMERANTZ: The second objection -- or not
21 objection, Your Honor -- the second statement was filed by a
22 group of Issuers of CLO obligations.

23 THE COURT: Uh-huh.

24 MR. POMERANTZ: And they were concerned that certain
25 aspects of the operating protocols which require notice to the

1 Committee prior to the Debtor being able to take certain
2 actions could conflict with the provisions of the underlying
3 agreements which might require the Debtor to take action on a
4 more expedited basis.

5 Neither the Issuers or the Debtor are aware of any
6 potential transactions that will arise prior to the next
7 hearing before Your Honor on January 21st. We understand --
8 we were not party to these discussions between the Committee
9 and the Issuers yesterday, but we understand the way it's been
10 resolved is that the Issuers will withdraw their objection as
11 it relates to going forward today, subject to being able to
12 come back to the Court on the 21st and revisit the issue if
13 additional changes are not made acceptable to them to resolve
14 their issues and concerns.

15 THE COURT: Okay.

16 MR. POMERANTZ: But I think all parties acknowledge
17 that over the next 12 days this is a theoretical issue rather
18 than a practical issue.

19 THE COURT: Okay.

20 MR. POMERANTZ: This brings us, Your Honor, to the
21 United States Trustee's opposition, which is really the only
22 true objection to the motion that has been filed. No creditor
23 has filed an objection, no investor has filed an objection,
24 and no governmental agency -- which the U.S. Trustee in its
25 objection purports to be pursuing their interests -- has filed

1 an objection, either.

2 As Your Honor probably recalls, at the December 19th
3 hearing the Trustee indicated its intent to oppose any
4 agreement between the Debtor and the Committee that would
5 involve corporate governance and to file its own motion for
6 the appointment of the trustee. That motion is currently
7 scheduled for hearing on January 21st. We had asked the U.S.
8 Trustee to reserve judgment on the Committee's and Debtor's
9 agreement until after we had come to an agreement and after we
10 had presented it to the Trustee, in hopes that it would
11 address their concerns. However, as the Court told us -- as
12 the U.S. Trustee told us and Your Honor at the December 19th
13 hearing, there was nothing short of appointment of a trustee
14 that would satisfy the Trustee.

15 The comments really didn't make sense to us, and I believe
16 it perplexed Your Honor, but here we are.

17 At its core, Your Honor, the U.S. Trustee's objection is
18 really a request that the Court substitute its business
19 judgment for that of the Debtor and the Committee, the
20 Committee who represents the substantial majority of all
21 claims in this case, when both of them have decided that
22 agreeing to certain changes in corporate governance, among
23 other things, is preferable to the uncertain, costly, and
24 time-consuming litigation over a trustee, and also the
25 uncertainty, even if a trustee was appointed, on how the case

1 would be administered.

2 To the contrary, under the corporate governance proposal,
3 we have three highly-qualified individuals who are poised to
4 take over management of the Debtor, and each bring with them
5 various skills that one trustee would not have.

6 The Trustee has filed its motion for appointment of a
7 trustee, and I'm sure on the 21st will argue that the Code
8 requires it. However, that's not the issue before Your Honor
9 today. It's not whether a trustee is appropriate. It's
10 whether the motion and the term sheet is a sound exercise of
11 the Debtor's business judgment under Section 363, and,
12 importantly, a reasonable compromise of the pending disputes
13 between the Debtor and the Committee.

14 The Trustee's objection raises three general points, none
15 of which have any merit. First, the Trustee argues that there
16 is a lack of disclosure of significant matters. The first
17 aspect that the Trustee raises to, or points to, is the
18 absence of identification of the third board member and the
19 absence of disclosure of the compensation that the board
20 members will receive, which will be backstopped by the Debtor.

21 As I described before, Your Honor, the identity of the
22 third member of the board was a fluid process which was only
23 resolved earlier this week, and the Debtor did not believe
24 that it was appropriate to reach agreement on director
25 compensation until all board members could provide input.

1 Last night, we filed a reply to the Trustee's objection in
2 which we disclosed the identity of the third board member, and
3 we'll also disclose the proposed compensation to be provided
4 to them, which essentially is as follows. Each member of the
5 board will receive \$60,000 a month for the first three months
6 of the case, \$50,000 a month for the next three months of the
7 case, and the presumption thereafter would be \$30,000 a month.
8 However, people recognize that this case will look a lot
9 differently six months from now, and while the presumption is
10 \$30,000, the Debtor, the independent board members, and the
11 Committee will sit down, see how the case looks, and decide
12 whether any modifications are appropriate.

13 The amount of compensation, which at first blush may seem
14 significant, really reflects the significant amount of work
15 that the Debtor, the Committee, and the independent directors
16 anticipate will be required from them not only to get up to
17 speed about the case, but to effectively manage this complex
18 Debtor's business operations. The directors have heard from
19 the Debtor and the Committee of all the issues, of all the
20 concerns, and this is not an enviable task that they are
21 undertaking. The compensation they are being provided thus
22 far we believe is appropriate under the circumstances and
23 commensurate with the work that they are going to be expected
24 to complete.

25 If they are successful and they are able to achieve a

1 consensual restructuring here, the million and a half or so
2 that will be spent on them will be best million and a half
3 dollars I think spent in this case.

4 Your Honor, we also have updated corporate governance
5 documents which --

6 (Pause.)

7 MR. POMERANTZ: Your Honor, may I approach with the
8 updated corporate governance documents?

9 THE COURT: You may. Okay.

10 MR. POMERANTZ: As I will discuss in a moment, Your
11 Honor, there is really no need for the Court to approve the
12 corporate governance documents, as they have been executed by
13 Strand, which is not a debtor before this Court. However,
14 there are a couple of matters in those documents that I want
15 to bring to the Court's attention that do impact on the
16 Debtor.

17 THE COURT: Okay.

18 MR. POMERANTZ: First, as is typical for board
19 members, Strand has agreed to indemnify the independent
20 directors to the full extent permitted by law. The
21 independent directors have requested that the Debtors backstop
22 Strand's agreement, and the Debtor and the Committee agree,
23 and the documents so provide.

24 Strand has also committed to obtain directors and officers
25 coverage for the independent directors. It has been located,

1 it's in the process of being finalized and bound, and the
2 Debtor will pay the cost of that coverage.

3 The independent directors have also asked for language in
4 the order approving the settlement that requires a party
5 seeking to assert a claim against the independent directors
6 relating to their role as an independent director to
7 demonstrate to this Court that a claim is colorable before
8 filing the claim and providing the Court with jurisdiction
9 over any such claim. This is language that's similar in other
10 similar types of cases.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: That will be reflected in the order.

13 Next, the Trustee objects to the failure of the Debtor to
14 identify who the potential chief executive officer of the
15 Debtor will be. And essentially, she's arguing that you have
16 to identify that CEO now; it has to be subject to court
17 approval. However, there's no requirement that any company
18 retain a CEO. It's not a corporate law requirement. And the
19 fact that the board reserves the right to retain a CEO in the
20 future is consistent with corporate law and is not a basis to
21 deny the motion. And in any event, normally, the retention of
22 a CEO is not a subject that is brought to the Court's
23 attention for Court approval.

24 So the lack of any clarity over the identity of the CEO is
25 a reflection of the fact that this independent board does not

1 know if a CEO is required. They will come in, they are going
2 to interview all the employees, they're going to sit down with
3 the CRO, they're going to sit down with counsel, they're going
4 to sit down with the Committee, and ultimately they will
5 decide if a CEO is to be retained. And if a CEO is to be
6 retained, they will go through the process of identifying who
7 that CEO is. But again, it's not a reason to deny the motion.

8 The Trustee has also argued that because the Committee is
9 not granted standing to pursue claims against current
10 employees, as opposed to former employees, that there might be
11 some statute of limitations concerns with respect to claims
12 against those employees. The argument doesn't really make
13 sense to us. In the standard case, the Debtor retains causes
14 of action. And the Committee can investigate causes of
15 action. And at some point during the case, a Committee could
16 come in and could demand that the Debtor prosecute them, and
17 if the Debtor unreasonably refuses, could seek standing before
18 the Court.

19 In this case, the Debtors agreed up front that the
20 Committee has the standing to prosecute certain claims against
21 insiders that are not employees of the Debtor, which obviates
22 the need for standing. So we've gone one step more. But the
23 Trustee is arguing that that leaves a void for the claims that
24 are not subject to the agreement on standing.

25 However, the term sheet provides that the board is going

1 to make determinations on what employees should remain, what
2 employees should not remain. To the extent the board
3 terminates any employees and there are claims against them,
4 then basically the Committee will have the ability to bring
5 those claims.

6 To the extent that those people aren't terminated, we have
7 no doubt that the Committee, in the course of its
8 investigation, will determine whether claims should be brought
9 against those people, and at some point in time may ask the
10 Debtor to prosecute those claims or ultimately seek standing.

11 In any event, these things are not being swept under the
12 rug. There's no real legitimate concern that there's any
13 statute of limitations issue that will prevent those claims
14 from being prosecuted.

15 I am very much aware and have no doubt that the Committee
16 is going to be laser-focused on claims, and any concern that
17 statute of limitations is going to lapse I think is not well-
18 taken.

19 The Trustee next argues that the Court does not have the
20 jurisdiction to implement the corporate governance matters,
21 and for that reason the motion should be denied. They -- she
22 argues that because Strand is not a debtor, that the Court has
23 no authority to appoint --

24 MS. LAMBERT: Your Honor, I object. The United
25 States Trustee is a he. I am not the United States Trustee,

1 and the attacks *ad hominem* are inappropriate.

2 THE COURT: All right. Well, clarification, the U.S.
3 Trustee is the guy in Washington. But anyway, you may
4 proceed.

5 MR. POMERANTZ: I apologize to Ms. Lambert.

6 MS. LAMBERT: Actually, he's downstairs right now.
7 Bill Neary.

8 MR. POMERANTZ: I apologize to --

9 THE COURT: Oh, well, I thought you meant the big guy
10 in Washington. But anyway, you may proceed.

11 MR. POMERANTZ: I apologize to Ms. Lambert and no
12 offense was meant.

13 THE COURT: Okay.

14 MR. POMERANTZ: So, the U.S. Trustee argues that
15 because Strand is not a debtor that the Court has no authority
16 to appointment the independent directors and limit Mr.
17 Dondero's right to remove the independent directors. The
18 Debtor is not really seeking authority to appoint -- to have
19 court authority for the appointment of the directors at
20 Strand. Again, as I mentioned before, that authority exists
21 outside of bankruptcy. Strand is not a debtor. Strand could
22 appoint anyone it wants to carry out its responsibility as the
23 general partner of the Debtor, and it's exercising its
24 corporate authority to do so by installing a board at Strand.

25 Nor is the Debtor seeking court authority for Strand to

1 enter into the corporate governance documents. Other than the
2 couple of items I mentioned before, Your Honor, Strand can
3 enter into these documents without authority from this Court.
4 The only court authority that was required: Debtor to
5 backstop the indemnification obligations, Debtor to pay
6 compensation to the board members, and Debtor to pay for the
7 D&O policy.

8 With respect to the Court's right to limit Mr. Dondero's
9 ability to terminate the independent directors, the term sheet
10 contemplates the Court approving a stipulation which limits
11 Mr. Dondero's ability to terminate the independent directors,
12 and if he does in fact seek to terminate the appointment of
13 the independent directors, he would be in violation of court
14 order. But even more importantly, Your Honor, if he decided
15 to terminate the independent directors without the Committee's
16 consent and without the Debtor's consent, I wouldn't imagine
17 it would take anyone very long to come back before Your Honor
18 and ask Your Honor to very quickly appoint a trustee.

19 Accordingly, Your Honor, I think the argument of lack of
20 jurisdiction over Strand is a red herring and should be
21 denied.

22 Lastly, Your Honor, the Trustee makes a curious argument
23 that a trustee is needed to protect all investors and
24 governmental authorities. The Trustee argues that this case
25 demands transparency which can only be accomplished by a

1 Chapter 11 trustee.

2 One thing I think the Debtor and the Committee and the
3 U.S. Trustee will agree on, this case does demand
4 transparency. And we believe we've installed a corporate
5 governance structure, an operating protocol structure, a
6 document preservation structure, that does just that, provides
7 transparency that this Debtor has not been subject to and
8 which is quite different from the case that was before Your
9 Honor before.

10 So we believe that what the Debtor and the Committee have
11 done is not only in the interests of the Debtor, the
12 creditors, but investors and all governmental entities.

13 And no investor or governmental entity has had any
14 concerns or any problems with what is being done. They
15 haven't filed any objection. The U.S. Trustee apparently is
16 proceeding by proxy asserting those interests.

17 Second, nothing in the term sheet or any of the documents
18 limits the rights of investors or of governmental entities to
19 seek a trustee, to seek documents, or to do anything they
20 would -- that they would be entitled to do under the
21 Bankruptcy Code.

22 In any event, Your Honor, the fact that the Trustee
23 believes that a trustee is more appropriate, again, is an
24 argument that they can make at the January 21st hearing. It's
25 not a basis for denial of this motion.

1 THE COURT: Okay.

2 MR. CLEMENTE: I think as late as 1:00 o'clock in the
3 morning I wasn't sure that I would be in front of you with
4 this settlement fully in place in a manner that was
5 satisfactory to my Committee. As I mentioned to you in my
6 prior appearances in front of you, every provision was
7 important to the Committee, and they all work together. As
8 Your Honor can imagine, there was a lot of negotiation that
9 took place, including late in the day and early morning, to
10 come to that conclusion.

11 Some comments on our perspective as a committee, Your
12 Honor. As an initial matter, we were absolutely not okay with
13 the governance structure that was in place when the petition
14 was filed. As we detailed in our objections to the CRO motion
15 and the protocol motion back when the case was in Delaware,
16 the Committee has very real and identifiable concerns about
17 the Debtor's ability to dispatch its fiduciary duty. And the
18 Committee very seriously contemplated moving for a Chapter 11
19 trustee daily. That conversation is something that the
20 Committee continues to -- continued to engage in, Your Honor.
21 So it's something that they considered very, very carefully.

22 That was the lens through which the Committee was
23 approaching negotiations over the settlement agreement and the
24 independent director structure. That's how they viewed it.
25 That's the backdrop against which they came to it.

1 The Committee had two primary goals that it had sought to
2 achieve with the settlement agreement. The first was to
3 ensure that Mr. Dondero does not remain in a position of
4 management authority or control in any fashion with the
5 Debtor. Goal number two was to ensure that the value of the
6 Debtor's estate is preserved and maximized. Those two goals
7 needed to work together.

8 The Committee believes that the carefully-crafted
9 settlement agreement achieves these objectives in a manner
10 that is more beneficial to the estate than a potential Chapter
11 trustee and a related fight over its appointment at this
12 time.

13 The lynchpin of the settlement, Your Honor, is the
14 appointment of the three independent directors. And as Mr.
15 Pomerantz outlined for you, that was the subject of intense
16 discussion, negotiation, debate among the Committee and with
17 the Debtor. But we believe that Mr. Seery, Mr. Dubel, and
18 Judge Nelms are fully independent, highly qualified, and bring
19 relevant and complementary skillsets to this board. Mr.
20 Pomerantz referred to that, but we believe that the three
21 directors all bring unique talents and attributes that will
22 allow them to function effectively as a board and provide the
23 appropriate oversight and direction that we believe is
24 necessary here.

25 However, regardless of how independent or highly skilled

1 they may be, they would be of no use if they weren't bestowed
2 with the appropriate power. So that was another point that
3 was very important to the Committee, and we believe that the
4 settlement does this. The settlement makes clear that the
5 independent directors are granted exclusive control over the
6 Debtor, including over all employees. That's absolutely
7 critical to the Committee.

8 The settlement also provides that the CRO and the Debtor's
9 professionals shall report and serve at the direction of the
10 independent directors. That is also very important.

11 And let me be clear, Your Honor, because I think you may
12 have raised this at a prior hearing: This is not a board that
13 we expect to work at 50,000 feet, as demonstrated by the
14 compensation structure that Mr. Pomerantz outlined for you.
15 This will be a board that's hands-on, members of which will be
16 on the ground, at the Debtor, with a strong presence and a
17 clear message of who is in charge. That is critical for this
18 Committee.

19 Additionally, as Mr. Pomerantz mentioned, the new board,
20 in consultation with the Committee, is empowered to determine
21 whether a CEO should be retained. It's possible that one of
22 the independent directors could be that CEO, Your Honor. But
23 we wanted to make clear that that was an important part of the
24 structure, should the board determine that that was the way it
25 wanted to go.

1 So, in sum, Your Honor, we believe that the independent
2 board has the clear authority and the skillset that's
3 necessary to take control and will be actively and
4 aggressively doing so.

5 But let me be clear, rest assured, Your Honor, this is not
6 going to be a board that answers to the Committee in that
7 sense. I think that we will all be moving together
8 directionally, but it's very possible that I will be in front
9 of Your Honor arguing against a decision that this independent
10 board made. So I want to assure Your Honor that although the
11 Committee was very active and in fact picked Mr. Seery and Mr.
12 Dubel, and then Mr. Pomerantz detailed how the third director
13 was picked, we understand who their duty -- what their duty is
14 and we also understand that they're not a rubberstamp for the
15 Committee, Your Honor. And so I wanted to make that point to
16 you to assure Your Honor that that's not the structure that's
17 being set up here, nor are they the type of individuals that
18 would allow that to happen.

19 Additionally, Your Honor, the settlement grants the
20 Committee standing to pursue estate causes of action against
21 the related parties. That was very important to us, Your
22 Honor.

23 And in addition to that, the settlement provides the
24 Committee access to privileged documents and sets forth a
25 discovery protocol that will assist the Committee in its

1 investigation.

2 The Committee strongly believes that Mr. Dondero's
3 repeated past behavior, that there are many questionable
4 transactions that will need to be thoroughly investigated and
5 pursued. And so having those causes of action with the
6 economic party in interest related to those causes of action,
7 the Committee and its constituencies, we thought was very
8 important and very critical.

9 Granting standing, Your Honor, as I mentioned, avoids any
10 issues regarding who will be controlling those claims.

11 I'll touch on this in a moment, but Mr. Pomerantz talked
12 about Mr. Dondero remaining in name as an employee. Let me
13 assure Your Honor that that is not a backdoor around the
14 Committee's ability to investigate and immediately pursue
15 claims against him should that be the course that we choose to
16 take. So he's not part of that carve-out for current
17 employees. That's not at all happening. That would never be
18 something that my Committee would be comfortable with. So I
19 wanted to make clear to Your Honor that that's not something
20 that's happening with sort of this late edition of Mr.
21 Dondero's continuing on in name as an employee.

22 Your Honor, the settlement also lays out a very detailed
23 set of operating protocols which we do believe are appropriate
24 and provides the Committee with transparency, which I've been
25 expressing to Your Honor we've needed since this case has

1 started.

2 Finally, as we point out in our reply and as would always
3 be the case, should new facts develop or the situation demand
4 it, the Committee reserves the right to seek a Chapter 11
5 trustee, as does any other party in interest, to the extent it
6 may be appropriate at that time.

7 In short, Your Honor, the Committee very carefully and
8 diligently weighed the independent director option versus the
9 Chapter 11 trustee option. The Committee had very clear goals
10 in mind, as I expressed to you, and determined that those
11 goals could be achieved in a value-maximizing manner through
12 the independent director structure.

13 The negotiations were very intense, and it was only after
14 the Committee determined that each piece of the settlement was
15 to its satisfaction did it ultimately conclude that the
16 settlement maximizes value for all stakeholders while at the
17 same time protecting those stakeholders from exposure to
18 continuing insider dealing, breaches of duty, and
19 mismanagement.

20 Therefore, the Committee believes approving the settlement
21 is in the best interest of the estate, and therefore it
22 believes it should be approved.

23 I do want to offer a word about Mr. Dondero continuing as
24 an employee. As Your Honor was aware, the term sheet as
25 originally filed provided that Mr. Dondero would, among other

1 things, resign as an employee of the Debtor. Mid to late
2 afternoon yesterday, Mr. Ellington called me and said that the
3 Debtor was now of the view that Mr. Dondero should remain on
4 as an employee in that capacity for the benefit of the estate.
5 The Committee was, very appropriately, very skeptical of this,
6 as well as the sort of last-minute offer, last-minute, you
7 know, addition, however you want to view it -- some might
8 argue retrade -- that Mr. Dondero was to leave the Debtor,
9 period. That was our view. That was the way that the term
10 sheet was initially structured. And under no circumstances
11 was the Committee going to allow Mr. Dondero to have any
12 control over this Debtor.

13 Your Honor, the Committee doesn't know what, if any, the
14 consequences are of removing Mr. Dondero as an employee. And
15 we're not conceding at all that there are any value lost by
16 removing Mr. Dondero as an employee. Instead, what we're
17 doing is we're staying true to our structure with the
18 independent directors and we're empowering them to decide.
19 And so it's consistent with, you know, our goals of having the
20 independent director structure in place. And under the
21 settlement as now constructed, even with this late addition or
22 adjustment, Mr. Dondero would remain as an employee in name
23 only, subject in all respects to the direction, oversight, and
24 removal by the independent board. And importantly, should
25 they decide to do that, Mr. Dondero shall resign. And he

1 shall receive no compensation.

2 So he will not be in control of this Debtor. The
3 independent directors are. And he's not going to be empowered
4 to make decisions on behalf of the Debtor. Instead, we're
5 empowering our independent directors to make those decisions
6 and determinations on behalf of the Debtor.

7 I wanted -- I thought it was important that I provide that
8 perspective to Your Honor, as this is something that came in
9 at a very, very late hour.

10 Overall, Your Honor, for the reasons I have stated and the
11 reasons in our reply, the Committee, as a fiduciary of all
12 creditors in this case, believes that the settlement is in the
13 best interests of the creditors and should be approved. And
14 at this time, it's the better alternative than the cost,
15 delay, and uncertainty resulting from a Chapter 11 trustee
16 fight and the potential appointment of a Chapter 11 trustee.

17 It is time to put the governance issues behind us, Your
18 Honor, and to move forward to determine how to maximize value
19 for the creditors and how to get them paid.

20 Your Honor, just regarding the specific resolutions of
21 objections that Mr. Pomerantz put on the record, I agree with
22 how Mr. Pomerantz characterized those, and the Committee is
23 supportive of those resolutions as well.

24 Those are all my remarks, Your Honor, but I am happy to
25 answer any questions or address any concerns Your Honor may

1 have.

2 THE COURT: Okay. Two follow-up questions. First, I
3 know I asked you this at a previous hearing and you told me,
4 but your Committee, as I recall, is very well constituted.
5 Just remind me of the members.

6 MR. CLEMENTE: Yes.

7 THE COURT: You have a representative from the
8 Redeemer Committee, --

9 MR. CLEMENTE: Yes, Your Honor.

10 THE COURT: -- which is a \$140 million or so
11 arbitration award?

12 MR. CLEMENTE: Yes, Your Honor.

13 THE COURT: Okay. And who else is on the Committee?
14 Is an Acis representative?

15 MR. CLEMENTE: Acis is on the Committee, Your Honor.

16 THE COURT: Uh-huh.

17 MR. CLEMENTE: Meta-e Discovery, who is a trade
18 vendor of the Debtor, is on the Committee. And UBS
19 Securities, who is also --

20 THE COURT: Okay.

21 MR. CLEMENTE: -- a litigation claimant, is on the
22 Committee.

23 It was the U.S. Trustee in Delaware's parting gift to me
24 to name a four-member committee, Your Honor.

25 (Laughter.)

1 THE COURT: Okay. Makes it awkward at times. And
2 then back to the Dondero subject.

3 MR. CLEMENTE: Yes, Your Honor.

4 THE COURT: I mean, again, both Mr. Pomerantz and you
5 clarified that the proposal now is the new board will decide
6 if he stays on, Mr. Pomerantz said as a portfolio manager.

7 MR. CLEMENTE: That is correct, Your Honor.

8 THE COURT: Am I -- I mean, I'm hearing that
9 correctly?

10 MR. CLEMENTE: That is correct, Your Honor.

11 THE COURT: So, right now, whatever officer positions
12 he has, he's technically not resigning? Or --

13 MR. CLEMENTE: He is resigning as an officer of the
14 company, Your Honor.

15 THE COURT: Okay. He's resigning? So the board will
16 just decide, is he going to be a portfolio manager or some --
17 whatever the employee title is?

18 MR. CLEMENTE: Or they could decide that he's not
19 necessary.

20 THE COURT: Or not necessary? In any event, no
21 compensation?

22 MR. CLEMENTE: That is correct, Your Honor.

23 THE COURT: Okay.

24 MR. CLEMENTE: And as you can see, the term sheet
25 provides that Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor as well. That was
2 language that was added last night as well.

3 THE COURT: All right. So they're going to make the
4 decision, does he help preserve value by staying in some
5 capacity or not?

6 MR. CLEMENTE: That is correct, Your Honor.

7 THE COURT: Okay.

8 MR. CLEMENTE: That, cutting through it, that is the
9 way that ultimately the Committee views it.

10 THE COURT: Okay.

11 MR. CLEMENTE: And if there's an opportunity -- and
12 I'm not conceding that there is. I'm not conceding that he
13 preserves any value.

14 THE COURT: Uh-huh.

15 MR. CLEMENTE: But we wanted to give the option to
16 our independent directors to make that determination. Because
17 if there's an opportunity to preserve value, that's what we're
18 trying to achieve.

19 THE COURT: Okay. And I don't even know if you've
20 thought through this. Would there be some sort of notice
21 filed on record in the case if --

22 MR. CLEMENTE: If --

23 THE COURT: -- if the decision is made to --

24 MR. CLEMENTE: To -- to --

25 THE COURT: -- hire him or keep him as a portfolio

1 manager?

2 MR. CLEMENTE: So, I think the default under the term
3 sheet, as revised, is he stays in that capacity in terms of
4 name. The independent directors will -- they're subject to
5 his control and direction, and they could decide to remove
6 him.

7 THE COURT: Uh-huh.

8 MR. CLEMENTE: Perhaps if Your Honor --

9 THE COURT: Okay.

10 MR. CLEMENTE: We could provide notice if they make
11 the determination to remove him, but I think the default is
12 that, you know, he's in that -- he's remaining as that
13 employee name currently. So that's the current default.

14 THE COURT: Okay. All right. Thank you.

15 MR. CLEMENTE: Thank you very much, Your Honor.

16 THE COURT: Well, Ms. Patel, you're getting up so
17 I'll hear -- I don't know who all has been in the loop over
18 this overnight development.

19 OPENING STATEMENT ON BEHALF OF ACIS CAPITAL MANAGEMENT

20 MS. PATEL: Your Honor, Acis has been in the loop as
21 a member of the Committee. And I will be very brief with
22 respect to Acis's individual comments. And I just want to be
23 clear: Obviously, I'm here as counsel for Acis, and so this
24 is Acis's individual position. Mr. Clemente aptly and very
25 ably handled the Committee's overall position with respect to

1 this.

2 But Your Honor, I just want to, on behalf of Acis, make
3 sure that, because of these developments, that's really -- I
4 really had hoped to have zero role today, but I want to make
5 sure that we're -- Acis is on record with respect to our
6 position. And obviously, given Your Honor's knowledge and
7 oversight of the long history of Acis's bankruptcy case and
8 seeing some of the events that transpired there, I'm sure that
9 this will all, against that backdrop, make an awful lot of
10 sense.

11 But, you know, it's this continued role for Mr. Dondero
12 that is of concern. You know, this issue even being raised
13 within like the last 48 hours by Mr. Ellington, the timing of
14 it just creates an issue. I mean, did this -- how could this
15 possibly have come out of left field when this is such a huge
16 part of what the Debtor does in its ordinary course of
17 business, is serve as a portfolio manager, and these are
18 contracts that have been negotiated, generally speaking,
19 internally by Highland. So the fact that if Mr. Dondero were
20 to exit the structure and there would be some potential
21 ramifications to that, I've got to wonder how much of a
22 surprise could that really have been to Highland folks.

23 But I just wanted to highlight, in connection with the
24 term sheet -- this is the preliminary term sheet that was
25 handed up Your Honor, and I believe Your Honor has a redline

1 version of it as well --

2 THE COURT: Uh-huh.

3 MS. PATEL: -- on Page 2, with respect to the role of
4 Mr. James Dondero, there's various provisions in there. And I
5 guess I would be remiss, Your Honor, if I didn't say, at least
6 out of the gate, Acis obviously supports the implementation of
7 this independent board of directors. We believe all the
8 candidates are very capable and are -- we put our reliance
9 upon them.

10 Obviously, we don't concede any issues. We'll see what
11 we're going to do. But certainly, for the time being, we do
12 support the entry of this agreement of the settlement -- or,
13 I'm sorry, approval of the settlement agreement by the Court
14 that lets the independent board be put into place.

15 But what I'll focus the Court on, on Page 2 under the role
16 of Mr. James Dondero, it goes through various provisions as to
17 what he'll resign to -- positions he'll resign from and that
18 he will remain as an employee of the Debtor, including
19 maintaining his title as portfolio manager for all funds and
20 investment vehicles for which he currently holds that title.
21 And then it goes on to provide as to who he'll report to and
22 how he will be governed, which includes by the independent
23 board, he will receive no compensation, and that he will be
24 subject to at all times the supervision, direction, and
25 authority of the independent directors.

1 Again, we have faith that the independent directors will
2 oversee this and will govern his role accordingly. However,
3 given Acis's history with how transactions have transpired at
4 Highland, we remain highly cautious with respect to what
5 happens next.

6 And to that end, Your Honor, the very last sentence there
7 on Page 2, "Mr. Dondero shall not cause any related entity to
8 terminate any agreements with the Debtor," is a key provision
9 of this that keeps Acis, as a Committee member, on board with
10 this agreement. I wanted to highlight that and note that, in
11 the last less than 48 hours, in the last 12 hours, or maybe a
12 little bit more than that, call it 18 to be safe, that's where
13 -- that's a provision that's been -- that's where we've ended
14 up. It's all of these issues have been going at lightning
15 speed, but I did want to just, for the record and so everybody
16 is clear, that is an important piece of this agreement to --
17 for Acis.

18 And as Your Honor knows, this Debtor, Highland, is wont to
19 try to terminate agreements and to try -- in an attempt to try
20 and transfer valuable contracts away and valuable revenue
21 stream away from an entity to an alternate entity. And that's
22 really the heart of our concern, Your Honor.

23 So, with that, I just wanted to be clear and be on record
24 as to Acis's position. Thank you.

25 THE COURT: Thank you. All right.

1 MR. POMERANTZ: Your Honor, if I briefly may respond
2 to the issues with Mr. Dondero while they are fresh in Your
3 Honor's mind?

4 THE COURT: Okay. Okay.

5 MR. POMERANTZ: Your Honor, look, we appreciate the
6 timing of this coming to the attention of the Committee as
7 being less than optimal. As Your Honor can appreciate, this
8 case that's been filed three months ago, a lot of people are
9 looking very carefully at what's happening to the Debtor.
10 Investors are looking. There was a transfer of venue. There
11 have been a lot of reports about potential trustee motions.
12 And we believe a lot of parties are waiting to see the outcome
13 of this hearing and the trustee hearing to determine whether
14 they will determine to continue to do business with the
15 Debtor.

16 It's not only an issue of contractual rights. It's also
17 an issue of whether investors feel comfortable on who is
18 managing, who is managing their investments.

19 This issue of Mr. Dondero's continuing role has been
20 something that at the Debtor we've continued to grapple with
21 over the last several weeks. It's always been our thought
22 that we should do nothing that would unduly harm the company
23 from an economic standpoint. I think the Committee shares
24 that. That if it's determined by an independent board -- and
25 don't take current Debtor professionals, don't take current

1 Debtor employees' word for it -- but if they determine that
2 there's an economic benefit by keeping him on to preserve
3 material revenue stream, they should be able to make that
4 determination. I think that's really at the core here. And I
5 think the Committee got ultimately comfortable with it because
6 it will be an independent board, the majority of the members
7 identified and chosen by them and accepted by the Debtor.

8 So, again, we apologize to the parties and the Court for
9 bringing this on late. It wasn't my intent to come here and
10 present modified versions of the term sheet that hadn't been
11 filed. But that's where we are, and that's why it has come
12 up, and that's why it's an extremely important issue, because
13 preserving whatever revenue we can for the Debtor is
14 important.

15 Now, at the end of the day, the board may either decide
16 that he doesn't preserve the revenue, or the negatives from
17 keeping him involved with the company outweigh any benefits.
18 And that's a decision they will have to make, and it'll be
19 their province to make. So I just wanted to give Your Honor
20 that perspective.

21 THE COURT: Okay.

22 MR. DAUGHERTY: Your Honor, may I approach?

23 THE COURT: Mr. Daugherty? You may.

24 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

25 MR. DAUGHERTY: I apologize. I was not planning to

1 address the Court at all today. I would have had my attorney
2 here for it. But I just ask a little bit of indulgence to
3 represent myself *pro se* for this issue.

4 This is the first I've heard that Mr. Dondero would stay
5 with the company. I think it's an awful idea. There's a
6 litany of reasons for that.

7 By the way, I'm completely in support of this -- of this
8 board that's been chosen. I have every confidence that
9 they'll be able to make good decisions eventually. But
10 they're stepping into this thing new. Obviously, I've been
11 through this in your court with *Acis* and other matters, and I
12 have deep, deep concerns about Mr. Dondero continuing in that
13 role, simply because of the influence it has on the rest of
14 the organization and the message that it sends, both
15 internally and externally, of where the company goes from
16 here.

17 So I just wanted to let you know my thoughts. I wasn't
18 planning to make them. I haven't filed anything. But that's
19 where I stand.

20 THE COURT: All right. Thank you, Mr. Daugherty.

21 All right. Before we hear from the U.S. Trustee, who I
22 know is going to have a lot to say, let me just circle back
23 briefly to Jefferies counsel and the CLO Issuers' counsel.
24 You heard the representations of Mr. Pomerantz earlier about,
25 well, first, in the case of Jefferies, that the Debtor has

1 agreed to language to address your concerns. Do you want to
2 weigh in on that and confirm that you're content that you're
3 going to have language to work out your concerns?

4 OPENING STATEMENT ON BEHALF OF JEFFERIES, LLC

5 MR. MAXCY: Thank you, Your Honor. Patrick Maxcy for
6 Jefferies.

7 No, I don't have anything additional to add to what Mr.
8 Pomerantz said. The language that we have worked out will
9 speak for itself and will be included in the order.

10 THE COURT: All right. Thank you.

11 And counsel for the CLO and CDO Issuers, do you confirm
12 that you would be in agreement to basically withdraw your
13 objections for now, but perhaps come back and make argument on
14 the 21st if you have not worked out language with the
15 Committee that you think works?

16 OPENING STATEMENT ON BEHALF OF THE ISSUER GROUP

17 MR. BENTLEY: James Bentley from Schulte Roth for the
18 Issuers, Your Honor.

19 I believe the deal that Mr. Pomerantz and Mr. Clemente
20 and I have discussed was adjourning our objection to the 21st,
21 --

22 THE COURT: Okay.

23 MR. BENTLEY: -- rather than withdrawing it.

24 THE COURT: Okay.

25 MR. BENTLEY: We're -- we believe we will be able to

1 come up with language acceptable to the Issuers, but we would
2 like to reserve the right to come back to the Court on our
3 limited objection if we cannot, given that our issue is really
4 -- really only relates to the 25 Issuers we represent.

5 THE COURT: Okay. Thank you very much.

6 All right. Ms. Lambert?

7 OPENING STATEMENT ON BEHALF OF THE UNITED STATES TRUSTEE

8 MS. LAMBERT: May it please the Court. As the Debtor
9 acknowledges, the motion that they are settling, the issues
10 that they are settling, are the issues that the U.S. Trustee
11 has raised in his motion to appoint a Chapter 11 trustee. As
12 a matter of statutory construction, Section 1104 does not
13 contemplate settlement of these issues. 1112, in contrast,
14 has a provision that if the Court finds and determines that
15 there is cause to convert a case, there are unusual
16 circumstances and the Court can find a reasonable
17 justification for the wrongdoing or the error that occurred
18 that led to cause -- for example, administrative defects in
19 1112, not filing monthly operating reports -- and that can be
20 cured. The Court has to make a finding that those -- these
21 defects can be cured within a reasonable period of time.
22 Section 1104 contains no analog to his.

23 If the Court finds cause to direct the appointment of a
24 Chapter 11 trustee, then the Court is supposed to appoint a
25 Chapter 11 trustee. And *Trailer Ferry* and *AWECO* both stand

1 for the proposition that, on today's day, we're supposed to
2 have evidence about what the management issues are that led to
3 this agreement. There's been no evidence. There's been no
4 allegations in the motion for settlement. And so the U.S.
5 Trustee is prepared to put that evidence on.

6 And Your Honor, one aspect of this is that the arbitration
7 agreement has been sealed. And there are people on the phone.
8 I don't know who's on the phone. The U.S. Trustee has opposed
9 the sealing of the arbitration -- not arbitration agreement,
10 the arbitration judgment -- has opposed the sealing of that.
11 And then they referenced a confidentiality order as the basis
12 to seal it. The U.S. Trustee also opposed that
13 confidentiality motion, which was filed subsequently to the
14 motion to seal.

15 There is no confidentiality order. An interim order was
16 entered sealing the arbitration award, but -- and the U.S.
17 Trustee has honored that by redacting all of the pleadings
18 that we filed relating to that, but it's important today for
19 the U.S. Trustee to be able to discuss it in argument, and it
20 is here -- and we have it prepared to be admitted into an
21 exhibit.

22 So, to proceed with my argument, Your Honor, I need some
23 clarification about what I can say.

24 THE COURT: You want clarification from me on what
25 you can say?

1 MS. LAMBERT: Well, I mean, either that or we need to
2 clear the room.

3 THE COURT: I've read the arbitration award.

4 MS. LAMBERT: Right.

5 THE COURT: It's in my brain.

6 MS. LAMBERT: Right. Okay.

7 THE COURT: Uh-huh.

8 MS. LAMBERT: And so one of the arguments here today
9 is that the U.S. Trustee is representing the SEC and
10 representing other Government agencies and things. No.
11 Obviously, that is not the U.S. Trustee --

12 THE COURT: I didn't hear that.

13 MS. LAMBERT: Okay. The -- one of the positions has
14 been, in the papers, is, well, that we don't have standing to
15 raise their issues. And that's true.

16 THE COURT: Okay.

17 MS. LAMBERT: But the problem is that the U.S.
18 Trustee has been constrained from discussing those issues with
19 the SEC. The arbitration award is very relevant to the SEC's
20 oversight. I anticipate the evidence today will be that the
21 SEC, after the financial crisis of 2008, imposed restrictions
22 on this Debtor on breach of fiduciary duty issues. I
23 anticipate that the arbitration findings would be very
24 relevant to whether those issues are ongoing or not.

25 THE COURT: Okay. Let me weigh in. I view the legal

1 standard that this Court has to weigh today as being: Is the
2 Debtor proposing something that is reflective of sound
3 business judgment, reasonable business judgment? And to the
4 extent this is a compromise of controversies with the
5 Committee, is this fair and equitable and in the best interest
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this
8 maybe doesn't even need Court approval. But to the extent
9 there are aspects of this that are appropriate to seek Court
10 approval on, you know, this is my task. I have to look at
11 what's presented, and is this reflective of sound business
12 judgment? Is this fair and equitable? Is it in the best
13 interest?

14 So, assuming there are tons of bad facts here reflected in
15 the arbitration award, reflected in other evidence, bad facts
16 that might justify a trustee, a Chapter 11 trustee, is this
17 nevertheless, what's proposed today, a reasonable compromise
18 of, you know, the trustee arguments the Committee could make
19 or, you know, is this a reasonable framework for going
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you
22 know, do I need to look at the arbitration award? Do we need
23 to have evidence of all of that? I can assume that there are
24 terrible facts out there that might justify a trustee, but I'm
25 looking at what's proposed. Is this a fair and equitable way

1 to resolve the disputes? Is it sound business judgment?
2 Frankly, is it a pragmatic solution here to preserve value?
3 So that's the legal standard I have in my mind here.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. LAMBERT: The standard is whether it is fair and
7 equitable to resolve the issues in the Chapter 11 trustee
8 motion, and it is the U.S. Trustee's position that they are
9 not resolved by this. And how are they not resolved? Number
10 one, they're not resolved because the problems that led to the
11 breach of fiduciary duty issues and findings are more
12 pervasive, both based on this Court' finding in the *Acis* case
13 and in the arbitration court's finding in Mr. Dondero. Other
14 officers are implicated.

15 THE COURT: But how --

16 MS. LAMBERT: Other employees are implicated.

17 THE COURT: Okay. I feel like maybe we're talking at
18 each other, not getting each other. I've got a proposed
19 solution here to totally change the playing field, if you
20 will. Bring in incredibly qualified people to --

21 MS. LAMBERT: Those people --

22 THE COURT: -- to change out the, you know, the
23 person that you say breached fiduciary duties, the, you know,
24 mismanagement, whatever bad labels we have here, but bring in
25 a clean slate.

1 MS. LAMBERT: No, Your Honor, because employees
2 remain at the Debtor who are problematic. The board that is
3 appointed owes a fiduciary duty to whom? Strand. Dondero.
4 He's still the board -- he is the sole stockholder. Yes. In
5 addition, --

6 THE COURT: And they won't be taking directions from
7 him.

8 MS. LAMBERT: In addition, --

9 THE COURT: The term sheet is they won't be taking
10 directions from him.

11 MS. LAMBERT: Your Honor, there is no evidence before
12 the Court today that Mr. Dondero has entered a stipulation.
13 This is part of the problem. This continues --

14 THE COURT: Well, if he doesn't, in five minutes the
15 Committee is going to be filing their trustee motion, right?

16 MS. LAMBERT: Well, then we haven't saved any time or
17 any money. This is the whole issue. They have to put on
18 evidence that this is a resolution of issues. We're going to
19 have the motion to appoint a Chapter 11 trustee either way.

20 THE COURT: All right. Well, we did have the
21 evidence of Mr. Sharp. Would you like to cross-examine him at
22 this point?

23 MS. LAMBERT: Your Honor, I would like to put the
24 U.S. Trustee's exhibits into evidence and then cross-examine
25 him.

1 THE COURT: All right. Your exhibits?

2 MR. POMERANTZ: Your Honor, we would object to any
3 exhibits. The Trustee has not filed an exhibit list.

4 MS. LAMBERT: Your Honor, this matter was set on an
5 expedited basis and the Court does not require exhibit and
6 witnesses lists when a matter is filed on an expedited basis.
7 It's impossible, when a response is filed at 5:00 o'clock the
8 evening before and supplements are made in the morning of the
9 hearing, for the U.S. Trustee to put on a witness and exhibit
10 list.

11 MR. POMERANTZ: Your Honor, we were here on the 19th.
12 We set out a briefing schedule. And maybe it was a couple
13 days short of normal notice. Ms. Lambert agreed to issue
14 discovery by a certain date, and she at no point said that
15 because there was 13 days' notice as opposed to longer period
16 that she couldn't comply and provide a witness list.

17 We provided with a witness list. We provided an exhibit
18 list. The Trustee's effort and attempt to now submit exhibits
19 and rely on maybe there were some changes this morning, that
20 just doesn't cut it, and that's not fair and that's not due
21 process.

22 THE COURT: Okay. I sustain the objection. The
23 exhibits won't be admitted since there was no exhibit list.

24 MS. LAMBERT: Your Honor, I do not have an exhibit
25 list from them. And they --

1 THE COURT: Well, they haven't offered any.

2 MS. LAMBERT: They put on new exhibits this morning.
3 The exhibits that the U.S. Trustee has are all things that
4 they are familiar with.

5 THE COURT: Let me back up. They didn't introduce
6 any exhibits. They --

7 MS. LAMBERT: But they introduced the declaration,
8 they introduced the supplements to the agreement that were
9 drafted this morning, they've introduced the new corporate
10 resolutions, all of which they handed me this morning.

11 THE COURT: All right. Well, the declaration of Mr.
12 Sharp, it's two pages long. It is, I don't think, any kind of
13 surprise information.

14 MS. LAMBERT: Your Honor, --

15 THE COURT: I'll allow you to cross-examine him.

16 MS. LAMBERT: -- the U.S. Trustee's exhibits are no
17 surprise, either. The *Acis* opinion is no surprise to anybody
18 in this courtroom.

19 THE COURT: Okay. Well, what are your exhibits?

20 MS. LAMBERT: The --

21 THE COURT: I probably should have asked.

22 MS. LAMBERT: The exhibits are the *Acis* opinion, the
23 arbitration awards or the determinations, both the partial and
24 the final, and the SEC's original judgment. There are four
25 exhibits.

1 THE COURT: All right. Well, Mr. Pomerantz, what
2 would you like to say? One of them I have obviously seen,
3 since I wrote it.

4 MR. POMERANTZ: Yes, you've written it. You wrote
5 it.

6 (Laughter.)

7 MR. POMERANTZ: Your Honor, I think this is a tempest
8 in a teapot. The Committee's brief that it filed in
9 opposition to the CRO retention, the ordinary course
10 protocols, and the cash management motion had a litany of
11 description of the Redeemer litigation, of the SEC litigation.
12 There are plenty of bad facts out here. Okay? We have an
13 interim order to seal. There was no hearing set today for our
14 final hearing.

15 The Trustee has objected to that order, and I suspect that
16 will be heard on the 21st. We don't think it's appropriate to
17 introduce the Redeemer award. However, we have read the
18 redacted provisions or portion of the U.S. Trustee's brief,
19 and we have no problem if the U.S. Trustee limits its argument
20 to the redacted portion in presenting that to the Court.

21 In other words, we don't believe that the few sentences
22 that were redacted need to be redacted.

23 However, to the extent they intend to submit the
24 arbitration award, we don't think it's appropriate, we don't
25 think it's necessary, we think Your Honor hit it right, that

1 the issues today are not whether there's mismanagement at the
2 Debtor. Okay?

3 The U.S. Trustee's position is, notwithstanding this new
4 structure, it doesn't work. She has a trustee motion on. She
5 can argue on the 21st that it doesn't work. Nobody is
6 prejudicing her right to do so.

7 We think it's prejudicial, it's unfair, it's procedurally
8 improper to submit the Redeemer arbitration award and to allow
9 the Trustee to do anything other than describe exactly what
10 she has in her pleading.

11 THE COURT: Okay. I sustain the objection to those
12 exhibits. Again, I've read them. They're in my brain. I
13 wrote one of them. But I will allow you to cross-examine Mr.
14 Sharp. So, Mr. Sharp, would you please come to the witness
15 stand? Please raise your right hand.

16 BRADLEY SHARP, DEBTOR'S WITNESS, SWORN

17 THE COURT: All right. Please be seated.

18 MS. LAMBERT: To clarify, Your Honor, has the Court
19 considered the *Acis* opinion and the arbitration opinions based
20 on judicial notice?

21 THE COURT: And we're doing a lot of hair-splitting
22 here. I'm just letting you know I -- the facts are in my
23 brain. You can't extract them from my brain. Okay?

24 MS. LAMBERT: Okay.

25 THE COURT: I know there have been a lot of bad

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1 things, arguably bad things. But to me, the real issue here
2 today is whether this framework that has been heavily
3 negotiated with the Committee reflects reasonable business
4 judgment on the part of the Debtor, is a fair and equitable
5 resolution of the Committee's, you know, arguments in favor of
6 a trustee, and whether this makes, you know, sense going
7 forward to allow this Debtor to go forward without a trustee.
8 Okay?

9 So I really think that the evidence you want is not
10 terribly relevant. We technically aren't here on a trustee
11 motion today. We're here on whether a new board and the
12 terms, the protocols suggested, reflect reasonable business
13 judgment and reflect a fair compromise of arguments the
14 Committee has raised. All right? So I don't know how much
15 more clear I can make that. I guess the technical answer is
16 I'm not taking judicial notice of those things for purposes of
17 today.

18 All right. You may proceed.

19 CROSS-EXAMINATION

20 BY MS. LAMBERT:

21 Q Mr. Strand, can you state your name for --

22 A Sorry. Bradley Sharp, S-H-A-R-P.

23 Q Sharp. Mr. -- oh, sorry.

24 A No relation to Strand.

25 Q All right. Strand is the general partner of the Debtor,

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1 right?

2 A That is correct.

3 Q And there has been no change in the board of the Debtor
4 except Mr. Dondero's resignation; is that right?

5 A Well, it's a little different, because the -- Strand is
6 the general partner of the Debtor.

7 Q Yes.

8 A So the new board will be acting and in control of the
9 Debtor.

10 Q Yes. And there is -- Strand is a non-debtor, correct?

11 A That is correct.

12 Q And the stock of the non-debtor, Strand, is owned by
13 Dondero?

14 A Mr. Dondero owns Strand Advisors.

15 Q In its entirety?

16 A That is correct.

17 Q So the board will owe a fiduciary duty to Mr. -- to Mr.
18 Dondero?

19 A The board will have a fiduciary duty to the Debtor and to
20 Strand Advisors.

21 Q All right.

22 A Their duty is to the entity.

23 Q The -- Strand, as the general partner, as an entity, owes
24 a fiduciary duty to the Debtor, right?

25 MR. MORRIS: Objection to the extent it calls for a

1 legal conclusion.

2 THE COURT: Sustained.

3 BY MS. LAMBERT:

4 Q Do you know?

5 A As a lay person. I'm not an attorney.

6 Q Okay. So you don't know what the fiduciary roles of the
7 board will be; is that right?

8 A Well, the fiduciary board will be acting -- you know,
9 looking at it from my perspective as the chief restructuring
10 officer, the new board will be acting as the Debtor-in-
11 Possession. And, you know, they will be directing the Debtor-
12 in-Possession. You know, the Debtor-in-Possession has duties
13 to all parties in interest, and they will be directing the
14 Debtor. They will be directing me as CRO.

15 Q And, in addition, there may be a CEO, right?

16 A That is contemplated, correct.

17 Q It is contemplated? It --

18 A It is -- it is an option that the board has if they think
19 a CEO is necessary.

20 Q But you don't know whether a CEO is going to be appointed
21 or not?

22 A That's up to the board.

23 Q And you don't know what the compensation for that
24 individual might be, right?

25 A Again, that's up to the board.

1 Q Mr. Dondero is going to be an employee of the Debtor,
2 right?

3 A That's correct.

4 Q And Mr. Dondero started the Debtor, correct?

5 A I believe so.

6 Q And he also started Strand, right?

7 A I believe that's correct.

8 Q And he is also in control of a number of entities that the
9 Debtor does business with; is that right?

10 A That is correct.

11 Q Mr. Ellington is going to remain on with the Debtor?

12 A That -- Mr. Ellington is an employee. All employees are
13 now subject to the board.

14 Q Okay. And Mr. Ellington's role with the Debtor is what?

15 A He is general counsel with the Debtor.

16 Q And there are other in-house attorneys with the Debtor,
17 right?

18 A That's correct.

19 Q And who else is there currently?

20 A I don't have the list in front of me, you know, the
21 employee list. As of now, because obviously this is still --
22 hasn't been effected, so the board has not made any decisions
23 with respect to any employees going forward.

24 Q And the CFO remains the same?

25 A Yeah, that is, again, as of now. I don't know what the

1 board is going to do, if anything.

2 Q Do you have any anticipation of what you would recommend
3 to the board regarding the CFO?

4 A You know, I have many recommendations I have not made to
5 the board yet. I just met them this morning.

6 Q Are you aware that historically this Court has found that
7 the lawyers provided bad advice to the Debtor?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Sustained.

10 BY MS. LAMBERT:

11 Q Do you have any knowledge about whether there have been
12 findings that the law firm gave erroneous advice to the
13 Debtor? Or, I mean, the in-house counsel gave erroneous
14 advice.

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Sustained.

17 MS. LAMBERT: Your Honor, I'm asking for the
18 foundation.

19 THE COURT: Rephrase.

20 BY MS. LAMBERT:

21 Q Do you -- are you aware of any concerns about the in-house
22 counsel?

23 A Yes.

24 Q What is your knowledge?

25 A I have read the rulings from this Court.

1 Q And what is your understanding of those rulings?

2 A I don't recall specifically. I read that early on when I
3 was first employed. But there have been concerns with respect
4 to, you know, management of the Debtor.

5 Q As the CRO, have you made any recommendations to change
6 employees to date?

7 A As of now, I don't have a -- the board. You know, the
8 board has just been employed. We have not made
9 recommendations up to this point. We are still -- obviously,
10 have been evaluating our position and what needs to happen. I
11 think it's important for the Debtor at this time, a little
12 stability would be a good thing for -- until we develop the
13 direction going forward.

14 Q Are you familiar with the compensation terms for the
15 directors?

16 A Yes.

17 Q And the directors are employees of Strand but paid by the
18 Debtor; is that right?

19 A Oh, I'm not sure they're employees of Strand, but they are
20 paid by the Debtor, their compensation. That's correct.

21 Q And yet the compensation is technically through Strand,
22 right?

23 A They -- they are. They have to act through the general
24 partner of the Debtor because of the corporate structure.

25 Q One of the portions of the agreement is that the Committee

1 acquires litigation claims. Are you familiar with that?

2 A I am.

3 Q Have you parsed out which litigation claims those might be
4 at this point?

5 A I think the agreement says they have litigation claims
6 against insiders and related parties. So I don't know what
7 those individual claims are. I don't know what exists.

8 Q Are you aware that the Committee obtains the attorney-
9 client privilege and work product privilege?

10 A Yeah. Subject to the terms of those agreements, correct.

11 Q Have you gone through the documents and determined which
12 ones would fall on -- which attorney files would fall on which
13 side?

14 A Not as of yet.

15 Q Have you been taking direction from Mr. Dondero?

16 A We've had -- I've had limited interaction with Mr. Dondero
17 since my retention. You know, we have been complying with the
18 protocols that we had been negotiating with the Committee and
19 providing information to the Committee. We have been, as a
20 result of those protocols, instructing management of the
21 company on compliance with those protocols. So they have
22 brought to us transactions that they would like to do. We
23 have reviewed those transactions and compared it to the
24 proposed protocols and have been enforcing those. So if
25 management has asked to do a transaction that does not meet

1 within those protocols, we have been declining the
2 transaction. And that -- you know, the company has agreed
3 with that decision and accepted that decision.

4 Q When you say management, who are you -- to whom are you
5 referring?

6 A You know, the whole management team at the company. In-
7 house counsel. The CFO. You know, I've had limited
8 interaction with Mr. Dondero. One interaction was he did
9 question one of my decisions that I made. We discussed it and
10 he accepted my conclusion.

11 Q You're at the Debtor every day?

12 A My team is.

13 Q You are not?

14 A I have had some travel restrictions due to a medical
15 issue, but I have three of my team there every day.

16 Q Is Mr. Dondero there every day?

17 A I don't know. I don't think so. In the few days I'm
18 there, I've not seen him.

19 Q Is Mr. Ellington there every day?

20 A No.

21 Q Who on the management team is there every day?

22 A You know, our primary interaction is with Isaac Leventon,
23 Frank Waterhouse, the CFO. You know, primary interaction, you
24 know, with David Klos, who is the controller, in dealing with
25 the financial issues.

1 Obviously, we spend a lot -- my team spends a lot of time
2 with the head of compliance.

3 Q Were you surprised by this addition that Mr. Dondero would
4 remain as an employee?

5 A I can't say I was surprised. It is an issue that we
6 struggle with, given the nature of this company's business.
7 You know, I see the change in the language and, you know, as
8 CRO, I am comfortable with it.

9 Q So, as CRO, if Mr. Dondero is necessary now, you recognize
10 that he was necessary three weeks ago?

11 A I'm not saying that he's necessary. I'm saying that it is
12 important for the board to be able to make that decision.

13 Q And it wasn't important when the settlement was filed?

14 A It was the -- it was a struggle at the time. I was
15 concerned at the time it was filed the unintended consequences
16 of Mr. Dondero resigning completely and disappearing, because
17 there are a significant number of funds that the Debtor deals
18 with related parties that are controlled by Mr. Dondero, and I
19 was worried about the financial impact with it. I knew this
20 issue was important to the Committee. And if that's something
21 that the Debtor agreed to and the Committee agreed to, so be
22 it.

23 You know, I think the last-minute compromise is acceptable
24 and appropriate. I think the language as negotiated is going
25 to be very helpful to the Debtor. And I think, then, it's up

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1 to the board to make the decision, with full knowledge on
2 what's the best avenue forward.

3 Q And the language as negotiated was added because, in the
4 past, there have been problems with Mr. Dondero changing or
5 terminating agreements with related entities, right?

6 A There was that -- I've seen that -- issues raised in the
7 *Acis* case.

8 MS. LAMBERT: No further questions.

9 THE COURT: All right. Any redirect?

10 MR. POMERANTZ: Not from the Debtor.

11 THE COURT: Anyone have examination? No? All right.
12 Thank you, Mr. Sharp. You're excused.

13 THE WITNESS: Thank you.

14 (The witness steps down.)

15 THE COURT: All right. Are we going to have any
16 other, I guess, witnesses, evidence?

17 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

18 MR. POMERANTZ: No, Your Honor. I just had a couple
19 points. One, Ms. Lambert mentioned that she hadn't seen a
20 copy of the stipulation referred to, which was prohibiting Mr.
21 Dondero from terminating the board. There's a good reason for
22 her not having seen it. I hadn't provided it to her. It just
23 came this morning, right before the hearing. I have one
24 signed copy. I have other copies that I could represent, even
25 though they're unsigned, are the same, so I would like to

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1 provide Your Honor. I'll keep the signed copy but provide you
2 with an unsigned copy, but it's the same, and also give one to
3 the U.S. Trustee.

4 THE COURT: But you've got a signature of Mr. Dondero
5 on that?

6 MR. POMERANTZ: Yes, I do.

7 THE COURT: Okay.

8 MR. POMERANTZ: May I approach?

9 THE COURT: You may. Thank you.

10 MR. POMERANTZ: Your Honor, maybe for the record it
11 would be appropriate for me to show Your Honor the signature,
12 so you could say that you've seen it?

13 THE COURT: Yes. Yes.

14 MR. POMERANTZ: May I approach again?

15 THE COURT: You may. (Pause.) Okay. Thank you.

16 The record will reflect I've seen Mr. Dondero's signature.

17 MR. POMERANTZ: Your Honor, one of the threads that
18 Ms. Lambert said to Your Honor is that there were employees
19 still remaining at the Debtor and that those employees may
20 have been involved in some wrongdoing.

21 I submit, Your Honor, if Your Honor appointed a Chapter 11
22 trustee today, what would a Chapter 11 trustee do? A Chapter
23 11 trustee wouldn't terminate every employee at the Debtor. A
24 Chapter 11 trustee, if he or she was doing what they should
25 do, would go down to the company, would interview members of

1 the company, senior management, and decide who should stay on
2 and who should not stay on.

3 That, I submit, Your Honor, is exactly what this board
4 will do. So the concept of there being something different
5 done, if you have a board here or not, I don't think makes
6 sense.

7 And lastly, Your Honor, Ms. Lambert expressed the issue as
8 whether it's fair and equitable to resolve the U.S. Trustee
9 issues in this way. I don't think that's the standard. The
10 only fair and equitable I understand is in plan confirmation.
11 I think Your Honor said it straight, which is: Is this a
12 valid exercise of the Debtor's business judgment and is it an
13 appropriate compromise of controversy? That is the standard.
14 And, again, we have always acknowledged that, notwithstanding
15 how Your Honor rules today, the Trustee reserves the right to
16 come back to court and argue a trustee is appropriate on the
17 21st.

18 We believe, Your Honor, that many of the cases, in this
19 circuit and elsewhere, look to the continuing management of
20 the company and whether management issues have been addressed
21 as a significant factor in determining whether a trustee is
22 appointed. And it'll come as no surprise, of course, if Your
23 Honor grants our motion today, this will be a lynchpin of our
24 opposition to the trustee motion.

25 But, again, those issues are for another day, and we

1 believe that we have satisfied our standard, and we request
2 that Your Honor approve the motion.

3 THE COURT: All right. Other closing arguments?

4 CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES TRUSTEE

5 MS. LAMBERT: Yes, Your Honor. As the Debtor
6 acknowledges, the Court has no jurisdiction over Strand. This
7 is a complicated structure. A trustee avoids all of the
8 complications involved in the Court exercising jurisdiction
9 over an entity that it doesn't have jurisdiction over.

10 To enter a stock stipulation related to a non-debtor is
11 highly irregular, and Mr. Dondero is the person behind that.
12 It has happened in cases where people have been in these kinds
13 of structures, like that FSLIC used to put in these kinds of
14 structures -- there's published opinion, the *Goubert*
15 (phonetic) case -- where the person continued to exercise
16 control even though they had a stock trust.

17 The Court needs a person beholden to the Court. The
18 evidence is that, historically, this Debtor has entered into
19 things that breached its fiduciary duty and resulted in self-
20 dealing and liability for the Debtor. The evidence is that
21 these go beyond Mr. Dondero and the Court does not have
22 jurisdiction over his stock. The Court does not have
23 jurisdiction over Strand. The board members of Strand are not
24 employees of the Court, they're employees of Strand, a non-
25 debtor. These members have a fiduciary duty to Strand.

1 Yes, Strand is the general partner of this Debtor and has
2 a fiduciary duty, but all these fiduciary duties intermix in
3 ways that result in conflicts for this case. These conflicts
4 are unnecessary. The Court could just appoint a trustee who
5 only owes a fiduciary duty to the members and creditors of
6 this case, as well as the next (inaudible).

7 There is no evidence that this is cheaper. There is no
8 evidence that this is a total resolution, because issues are
9 left open, such as whether or not a CEO is going to be
10 appointed, how much that person is going to cost.

11 Finally, Your Honor, the sealing has constrained the
12 ability of some of the parties to understand what's going on
13 in this case. And that is material to the argument about who
14 is here, because we don't know who -- that all the people who
15 would have participated in this discussion had an opportunity
16 to participate in it.

17 Yes, the creditors have a fiduciary duty, and I believe
18 that they represented to the best of their ability, but they
19 are not charged with the issues that others are charged with,
20 such as the SEC.

21 There is no evidence that the officers are disinterested.
22 Rather, the new officers are going to be conflicted by the
23 nature of their position. There's no evidence that it's
24 cheaper. And a trustee, if appointed, could be appointed on
25 an hourly basis. This is a Chapter 11 trustee.

1 They argue that the trustee would not have the knowledge,
2 and yet they've been able to find three candidates to serve
3 for the board who are qualified. So there's no evidence that
4 it would not be better to have a trustee for that reason as
5 well.

6 The evidence is that, historically, the Redeemer Committee
7 was set up to prevent these kinds of transactions and have
8 oversight. Historically, the evidence is it did not work.
9 For this reason, the statute provides a solution, and the
10 Court should impose it. The Court should deny this motion as
11 not being in the interest of the estate, as not being a sound
12 exercise of discretion, because it's really the discretion of
13 Strand, not the Debtor, and it will remain the discretion of
14 Strand, not the Debtor.

15 Thank you.

16 THE COURT: All right. Anyone else have comments?

17 MR. POMERANTZ: Your Honor, just a couple of minor
18 points.

19 THE COURT: Okay.

20 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

21 MR. POMERANTZ: Ms. Lambert started by saying the
22 Court doesn't have jurisdiction over Strand. I know I just
23 handed her the stipulation, but the last paragraph of the
24 stipulation specifically says that the parties stipulate and
25 agree that the Court shall have exclusive jurisdiction over

1 all matters arising from or related to the interpretation and
2 implementation of this stipulation and the adjudication of any
3 parties breaching the stipulation.

4 So the Court does have jurisdiction now that the
5 stipulation has been signed, assuming that the Court enters
6 it, so I think that addresses that issue.

7 Your Honor, the evidence of the disinterestedness of the
8 members of the board, we've provided their *curriculum vitae*.
9 We've made representations that they have no connections with
10 the Debtor or any of the parties in interest. We don't think
11 that, just because they become appointed and become a director
12 of Strand, that that renders them disinterested [sic], and we
13 think that the Trustee's arguments that being at a different
14 level creates different duties is just not -- is not accurate.
15 I don't think that the Committee would have had any appetite
16 for this type of structure had they believed that each of
17 these board members wouldn't feel that their fiduciary duty
18 was to the Debtor's estate. And they all are seasoned
19 restructuring people from different aspects, all understand
20 their fiduciary duties well, and all are prepared to carry
21 them out.

22 Lastly, the Trustee points to the historic issues, and
23 specifically mentioned the Redeemer Committee and that
24 structure didn't work. Well, I think it speaks volumes, Your
25 Honor, that not only the Redeemer Committee, are they on the

1 Committee and the Committee has supported this motion, but the
2 Redeemer Committee hasn't come to Your Honor and said that,
3 notwithstanding that structure that may or may not have been
4 effective, this structure is ineffective.

5 And at the end, Your Honor, the Trustee is trying to
6 replace the business judgment of the Debtor. The Debtor is
7 entitled to deference of the judgment, again, focusing on the
8 correct standard. And, again, the Trustee will have her day
9 in -- his day in court in connection with the ultimate trustee
10 motion on the 21st.

11 Thank you, Your Honor.

12 THE COURT: Anyone else?

13 All right. Well, the Court is going to note a few things
14 as part of its ruling, obviously. The new proposed
15 independent board members for Strand, Strand obviously being
16 the general partner of the Debtor, Highland -- Mr. James
17 Seery, Mr. John Dubel, and retired Judge Russ Nelms -- are
18 highly-qualified individuals with respect to the industry.
19 Some of them with respect to restructuring. Certainly, in the
20 case of retired Judge Nelms, with regard to fiduciary duties
21 and the Bankruptcy Code requirements.

22 These three individuals were chosen by the Creditors'
23 Committee, whose constituency is broad, whose constituency is
24 owed well over \$100 million. And they were chosen by the
25 Committee after literally months of negotiation. Obviously,

1 this bankruptcy was filed in October, and it appears to this
2 Court, from the representations of counsel, that from the very
3 beginning of the case -- the Committee was, I guess, appointed
4 a week or two after the case was filed in October -- there's
5 been haggling over corporate governance of this Debtor.

6 So we have highly-qualified individuals. We have
7 individuals who were chosen by the well-constituted Creditors'
8 Committee. And what has been proposed to the Court is that it
9 is these independent directors that would have sole and
10 exclusive management and control of the Debtor.

11 An interesting jurisdictional argument has been made, and
12 it's one of those arguments that, frankly, you know, sounds
13 good when you first hear it, but when you really drill down
14 about the governance structure here, I mean, obviously, this
15 Debtor is a limited partnership and it acts through a general
16 partner. It's the general partner that controls the Debtor
17 entity. And while Strand Advisors, Inc., the general partner,
18 may not technically be in bankruptcy, it's the structure of
19 these entities such that it controls the Debtor. So the
20 jurisdictional argument, when you drill down, feels a little
21 off.

22 Moreover, we have language in the stipulation where Strand
23 is stipulating and consenting, if you will, to this Court's
24 exercise of jurisdiction over it.

25 There are many things about the compromise here that have

1 very compelling appeal. Among them, certainly, the Committee
2 that's negotiated this term sheet retains the right at any
3 time to move for a Chapter 11 trustee if it believes there are
4 grounds. The Committee is granted standing to pursue estate
5 claims, certain estate claims right off the bat, without
6 having to come back and ask the Court, without having to rely
7 on the Debtor to pursue that. There are document production
8 provisions, document preservation provisions, a shared
9 privilege negotiated, that are very powerful tools for the
10 Committee, and certainly operating protocols that have been
11 negotiated regarding the Debtor's operations that are very
12 powerful tools for the Committee.

13 I said many times during the *Acis* case -- those who were
14 here will remember -- that the company, *Acis*, was not a great
15 fit for Chapter 11. Lots of companies aren't great fits for
16 Chapter 11, I suppose, but the kind of business it was was
17 kind of tough to maneuver in Chapter 11. Human beings and
18 their expertise create value. And while we had a Chapter 11
19 trustee, a stranger come in and take control over *Acis*, you
20 know, there's great uncertainty whether that stranger is going
21 to be able to preserve value and have the smooth transition
22 into Chapter 11 that's really going to be the best fit.

23 Here, as I've said earlier, the legal standard I view as
24 controlling here is 363 and whether what has been proposed
25 reflects reasonable business judgment. Is there a sound

1 business justification for proposing the independent slate of
2 directors at the GP level for the Debtor, the protocols, the
3 negotiation with the Committee, the document sharing, the
4 standing given to them? Does all of this reflect reasonable
5 business judgment? And I find, quite clearly, it does. I
6 find it to be a pragmatic solution to the Committee's concerns
7 about existing management and control.

8 And I think I used the words "fair and equitable," not
9 just Ms. Lambert, because it is also presented to the Court as
10 a 9019 compromise of disputes with the Committee, and we
11 traditionally use a fair and equitable and best interest of
12 the estate analysis in this context. So, to the extent that
13 applies, I do find this a fair and equitable way of resolving
14 the disputes with the Committee, and I find this to be in the
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet
17 as it's been presented, the various terms therein, the
18 exhibits thereto. I'm specifically approving the new
19 independent directors, the document management and
20 preservation process, the standing to the Committee over
21 certain of the estate claims, the reporting requirements, the
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the
24 role of Mr. Dondero. When Ms. Patel got up and talked about
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of
2 the term sheet, the sentence reading, "Mr. Dondero shall not
3 cause any related entity to terminate any agreements with the
4 Debtor." Her statement that that was important, it really
5 resonated with me, because, you know, as I said earlier, I
6 can't extract what I learned during the *Acis* case, it's in my
7 brain, and we did have many moments during the *Acis* case where
8 the Chapter 11 trustee came in and credibly testified that,
9 whether it was Mr. Dondero personally or others at Highland,
10 they were surreptitiously liquidating funds, they were
11 changing agreements, assigning agreements to others. They
12 were doing things behind the scenes that were impacting the
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,
15 but I am going to require that language to be put in the
16 order. Okay? So we're not just going to have an order
17 approving the term sheet that has that language. I want
18 language specifically in the order. You know, you can figure
19 out where the appropriate place to stick it in the order is,
20 but I want specific language in here regarding Mr. Dondero's
21 role. I also -- the language in there that his role as an
22 employee of the Debtor will be subject at all times to the
23 supervision, direction, and authority of the Debtors, I want
24 that language in there as well. Let's go ahead and put the
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want
4 it crystal clear that if he violates these terms, he's
5 violated a federal court order, and contempt will be one of
6 the tools available to the Court. He needs to understand
7 that. Mr. Ellington needs to understand that. You know, if
8 there are any games behind the scene, not only do I expect the
9 Committee is going to come in and highlight that to the Court
10 and file a motion for a trustee or whatever, but we're going
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a
16 clean redline of the order, of course not including the
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload
20 and hope to get an order signed by Your Honor today, if you're
21 around. But to go over the other changes, the changes to
22 Jefferies, the other language changes I discussed before. I
23 gave a copy to Ms. Lambert and to the Committee. May I
24 approach with a --

25 THE COURT: You may.

1 MR. POMERANTZ: Thank you.

2 THE COURT: Okay. All right. (Pause.) All right.

3 The form of order looks fine to me. Obviously, you'll add the
4 Dondero-related language, and we may have further wording
5 tweaks negotiated with the CLO Issuers. But, again, I approve
6 all of this. I didn't say on the record the compensation, but
7 certainly I am approving that as reasonable. I expect these
8 three directors are going to be working very, very hard. And
9 so, as you said, not 50,000-foot level monitoring, actually
10 rolling up sleeves on-site, so I think the compensation is
11 reasonable.

12 MR. POMERANTZ: Thank you, Your Honor. We will
13 submit an order shortly that includes Your Honor's language
14 requested.

15 THE COURT: Okay.

16 MR. POMERANTZ: Are you around this afternoon?

17 THE COURT: I am around, --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- so just pick up the phone or send an
20 email to Traci, my courtroom deputy, --

21 MR. POMERANTZ: Yes.

22 THE COURT: -- so she can tell me, "It's in your
23 queue to sign."

24 MR. POMERANTZ: She has been extremely helpful and
25 responsive.

1 THE COURT: Good. I'm glad to hear that.

2 MR. POMERANTZ: Yes.

3 THE COURT: Now, as far as future scheduling, I did
4 have her sitting by, listening, in case we needed to discuss
5 anything. Obviously, we're going to have a kind of a
6 carryover placeholder on the 21st as part of the trustee
7 motion hearing for any remaining issues with the CLO Issuer.
8 And, you know, that's just a placeholder if necessary to hear
9 language controversies.

10 My courtroom deputy was concerned, because you have a lot
11 of pending motions that have just sort of sat there pending
12 because this was the big issue, right? She wants to make sure
13 she sets anything you need a setting on. And I don't know if
14 you want to discuss that today or go back as a group and --

15 MR. POMERANTZ: We're happy to -- I think, you know,
16 I think that's appropriate to do. We had the motion to
17 appoint the CRO.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: That was pending. That gets resolved
20 by this motion. We will submit an order --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- with the new agreement that was
23 attached to the term sheet.

24 We had the cash management order which Judge Sontchi had
25 issued an interim order. We will have a final order with

1 respect to that.

2 THE COURT: Okay.

3 MR. POMERANTZ: We will be withdrawing the motion to
4 approve ordinary course protocols which was originally on for
5 hearing.

6 THE COURT: Uh-huh.

7 MR. POMERANTZ: I think on the 21st we have currently
8 set a motion to approve the retention or Mercer, which is the
9 Debtor's compensation consultant, --

10 THE COURT: Uh-huh.

11 MR. POMERANTZ: -- and an analog motion that was
12 originally set for today with respect to insiders, non-
13 insiders, but is on for non-insiders and insiders on the 21st,
14 --

15 THE COURT: Uh-huh.

16 MR. POMERANTZ: -- which is the motion to approve
17 bonuses.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: Of course, the Debtor's new board is
20 going to be wanting to very carefully review that. And we are
21 going back and today having our first new board meeting with
22 the board to start bringing them up to speed. But we
23 presently intend, subject to, obviously, their direction, to
24 go forward on the 21st.

25 We also have the retention of Lynn Pinker and Foley

1 Gardere, which had been filed and was brought on for hearing
2 previously. It had been delayed, again, for the board to look
3 at the issues. We expect to have that on for the 21st. And I
4 believe, I believe that would be it.

5 MS. LAMBERT: No, Your Honor, the --

6 MR. POMERANTZ: No?

7 MS. LAMBERT: -- U.S. Trustee has objected to the
8 motion to seal, which was the second item on the Wilmington
9 Court's docket that got -- and it got transferred here. The
10 U.S. Trustee has also objected to the motion for protective
11 order. The issues overlap. We request that they be set as
12 quickly as possible.

13 MR. POMERANTZ: We're happy to set both of those for
14 the 21st as well.

15 THE COURT: All right. So I think what I'm going to
16 ask you to do is just get on the phone, one of you, with Traci
17 and just make sure she's clear on everything you need set on
18 the 21st, and then you can do a big notice of hearing, just
19 kind of listing all of these matters.

20 MR. POMERANTZ: Your Honor, with respect to the CRO
21 motion -- order and the cash management order, I was wondering
22 if it would be helpful for my colleague Mr. Demo to go over
23 the amendments to those orders -- we would like those to be
24 entered today -- to see if Your Honor has any questions.

25 THE COURT: All right. That would be good. Mr.

1 Clemente, did you have something first?

2 MR. CLEMENTE: Just very quickly, Your Honor. We had
3 filed our retention applications for the Committee
4 professionals and filed CNOs, and your office had indicated
5 you wanted to get through today, which I totally understand,
6 but I just wanted to make sure that Your Honor didn't lose
7 sight of those. I don't believe there were any objections to
8 those, but I think your intent was probably to deal with them
9 after today, but I just wanted to --

10 THE COURT: All right. Yes, it was to get through
11 today.

12 MR. CLEMENTE: Yes.

13 THE COURT: So, since you've had plenty of time run
14 on those, you can submit orders and I'll get them signed in
15 chambers.

16 MR. CLEMENTE: Thank you very much, Your Honor.
17 Appreciate it.

18 THE COURT: Okay. Thank you. Counsel?

19 MR. DEMO: Good afternoon, Your Honor. Greg Demo,
20 Pachulski Stang, on behalf of the Debtor. I'm happy to keep
21 this as brief as possible, but I think walking through the
22 cash management motion has the most changes.

23 THE COURT: Okay.

24 MR. DEMO: The biggest change there, and we had
25 discussed this with the United States Trustee in Delaware, is

1 that in our initial motion we disclosed that the Debtor had
2 bank accounts at BBVA and then also at NexBank. Those
3 accounts have been moved to East West Bank, --

4 THE COURT: Okay.

5 MR. DEMO: -- which is a party to a depository
6 agreement with the United Stated Trustee.

7 THE COURT: Okay.

8 MR. DEMO: The only exception to that is a
9 certificate of deposit that is at NexBank. It's a relatively
10 small amount of money. It's \$135,000. But it also is pledged
11 as collateral on a lease. So that has been -- proven
12 problematic to move. The Trustee for Delaware did say that
13 was okay. I would hope that the Trustee for Texas would agree
14 with that. We did disclose it in the initial debtor
15 interview.

16 But those are the bank accounts. The bank accounts at
17 BBVA and NexBank, with the exception of that CD, were all
18 closed as of yesterday.

19 THE COURT: Okay.

20 MR. DEMO: So now we are going to be using East West
21 Bank for all operating accounts, all cash, going forward.

22 The other two accounts are the account at Jefferies, which
23 is the prime brokerage account.

24 THE COURT: Uh-huh.

25 MR. DEMO: That account, we are keeping open.

1 Obviously, there have been conversations with Jefferies that
2 are going to be reflected in the proposed order on the
3 settlement, but we do propose to keep the Jefferies prime
4 brokerage account open as well.

5 And then we filed a supplement for another prime brokerage
6 account that we have at a prime broker called Maxim Group.
7 That account has \$30 million in securities in it, give or
8 take, and then literally like \$100 in cash. The Debtor
9 considers that account more an investment than actual
10 operating account, but we would like to keep that account open
11 as well, just so it can continue holding those securities.

12 Jefferies and Maxim, neither of them are on the depository
13 list, so we are requesting a waiver of 345(b) for those two
14 accounts, and then also requesting a waiver of 345(b) with
15 respect to the certificate of deposit at NexBank.

16 THE COURT: Okay.

17 MR. DEMO: That's where we're at at cash management.
18 And I guess, sorry, one more thing. In the original cash
19 management motion, we had a series of intercompany
20 transactions that we disclosed, and we had gotten interim
21 relief from the Delaware court to make those payments up to a
22 hundred -- or, \$1.7 million. We are below that account, and
23 on a go-forward basis, all of those intercompany transactions
24 are getting subsumed into the settlement motion and the
25 operating protocols and all of that. But we are asking for

1 final relief on the intercompany transactions that we made
2 under the interim order.

3 THE COURT: Okay. All right. Who wishes to be heard
4 on this? I don't know how much discussion we've had outside
5 the courtroom on this.

6 MS. LAMBERT: We haven't -- normally, a bond would be
7 appropriate for the Jefferies and the other small account.
8 The estate is at risk on the CD, but it's not that much money.
9 It's not worth bonding. It'll be more expensive to bond it.

10 NexBank, as you know, Your Honor, is a bank where Mr.
11 Dondero is the CEO. So that was part of the reason that
12 NexBank was carved out. But the -- so I would like them to
13 bid bonds on the Jefferies and the other account. And if we
14 -- let's carry it on those issues so that we can see how
15 expensive bonding it would be, and if it's cost-prohibitive,
16 maybe we reconsider. But in the past, the bonds haven't been
17 very expensive, relatively.

18 MR. DEMO: We're happy to discuss that with the U.S.
19 Trustee. I mean, just for the record, the Jefferies account,
20 you know, does support a margin loan. It's \$80 million in
21 securities. It's \$30 million at Maxim. They're SIPC. I
22 mean, it's Jefferies and, you know, another large prime
23 broker. Again, we're happy to discuss it with the Trustee. I
24 don't know that it's necessary, but we will discuss it.

25 THE COURT: Okay. Well, you all can discuss it, and

1 if you have an unopposed order, an agreed order, --

2 MR. DEMO: Uh-huh.

3 THE COURT: -- you can upload it and I'll sign it.

4 Otherwise, if you need hearing time on the 21st, --

5 MR. DEMO: Okay.

6 THE COURT: -- we'll get it all figured out then and

7 --

8 MR. DEMO: Okay. All right.

9 THE COURT: -- resolve it then.

10 MR. DEMO: Thank you, Your Honor. And then I guess
11 the other motion is the CRO retention. This one should
12 hopefully be pretty brief. We are just filing a new proposed
13 order that attaches the engagement letter, as has been
14 modified by all of the settlement discussions. I believe the
15 Committee is on board with that, and it's consistent. It was
16 one of the attachments that you approved this morning in
17 connection with the settlement.

18 THE COURT: All right. Comments on that?

19 A VOICE: None, Your Honor.

20 THE COURT: Committee, you're good?

21 MS. LAMBERT: The U.S. Trustee had also objected to
22 the CRO motion, but it's some of the same issues that the
23 Committee raised. And the CRO, my understanding, is now not
24 an employee of the board but totally overseen by the board,
25 and with that, we can withdraw our objection.

1 THE COURT: All right. Very good. I'll sign your
2 order on the CRO, then.

3 MR. DEMO: Okay. Thank you, Your Honor.

4 THE COURT: All right. Well, if there's nothing
5 else, I'll be on the lookout for your orders. And, again, if
6 you could coordinate with Traci to make sure she's clear on
7 everything you need set on the 21st.

8 MR. POMERANTZ: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTE: Thank you, Your Honor.

11 MR. DEMO: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 11:54 a.m.)

14 --oOo--

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16

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19

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CERTIFICATE

21

22

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

23

/s/ Kathy Rehling

12/10/2020

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

004702

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLANT RECORD
VOLUME 22**

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

_____ § Chapter 11
In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-sgj11
§
§
Debtor. §
_____ §

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**APPELLANTS' AMENDED STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Appellants”) hereby designate the following items to be included in the record and identify the following issues with respect to their appeal of the Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Did the bankruptcy court err in refusing to modify its order extending quasi-judicial immunity to a debtor’s chief executive officer?

2. Did the bankruptcy court err in refusing to modify its order asserting exclusive gatekeeping and adjudicatory authority over certain accrued and unaccrued causes of action against the debtor’s chief executive officer?
3. Did the bankruptcy court err in treating its order approving appointment of the debtor’s chief executive officer as final rather than interlocutory and therefore subject to the requirements of Rule 60(b)? Did appellants satisfy Rule 60(b) in any event?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

*Vol. 1
000001*

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Doc. 2513];
2. The judgment, order, or decree appealed from: Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd. [Doc. 2506] (“Motion for Modification of Order”);
3. Any opinion, findings of fact, and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript of Hearing on Motion for Modification of Order dated June 25, 2021;
4. Docket Sheet kept by the Bankruptcy Clerk;
5. Documents listed below and as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Number	Date Filed	Docket No.	Description/Docket Text
1	12/27/2019	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/2/2020	297	(4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 291 Order granting motion for expedited hearing (Related Doc 283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan

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			Ctrm for 281 , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
3	1/9/2020	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
4	6/23/2020	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
5	7/16/2020	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
6	12/23/2020	1625	(13 pgs) Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
7	1/8/2021	1707	(10 pgs) Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
8	1/21/2021	1788	(23 pgs) Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)

Vol. 2 000601	9	1/22/2021	1808	(66 pgs) Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1472 Chapter 11 plan). (Annable, Zachery)
Vol. 3 000667	10	2/22/2021	1943	(161 pgs) Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) 1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
000828	11	4/23/2021	2248	Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)(Entered: 04/27/2021)
000876	12	4/28/2021	2254	(5 pgs) Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)).Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248 , (Sbaiti, Mazin)
000881	13	5/14/2021	2311	(22 pgs) Response opposed to (related document(s): 2248 Motion to Reconsider (related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
000903	14	5/14/2021	2315	(2 pgs) Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 2311 Response). (Hoffman, Juliana)
000905	15	5/21/2021	2347	(12 pgs) Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
Vol. 4 000917	16	6/5/2021	2411	(309 pgs; 44 docs) Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P.,

			Respondent Mark Patrick (RE: related document(s) 2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)	
Vol. 9 001133	17	6/5/2021	2412	(1192 pgs; 20 docs) Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
Thru Vol 10 Vol. 11 002325	18	6/7/2021	2417	(10 pgs) Notice (<i>Notice of Proposed Order</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
002335	19	6/7/2021	2418	(23 pgs; 3 docs) Declaration re: (<i>Declaration of Jeffrey N. Pomerantz</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
002358	20	6/7/2021	2419	(249 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)

Vol. 12 002607	21	6/7/2021	2420	(170 pgs; 4 docs) Amended Witness and Exhibit List Exhibits 44, 45, 46 filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
Vol. 13 002777	22	6/8/2021	2423	(249 pgs) Amended Witness and Exhibit List (<i>Second Amended</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2419 List (witness/exhibit/generic)). (Hayward, Melissa)
Vol. 14 003026	23	6/10/2021	2439	(4 pgs) Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003030	24	6/10/2021	2441	(3 pgs; 2 docs) Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
003033	25	6/14/2021	2446	(4 pgs) Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , (Sbaiti, Mazin)
003037	26	6/16/2021	2454	(234 pgs; 3 docs) Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
003271	27		2456	(2 pgs) Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider (related documents 854 Order on application to employ)) Hearing to be held on

			6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2248 , Entered on 6/16/2021. (Okafor, M.)	
Vol. 15	28	6/25/2021	2492	(2 pgs) Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) 2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
003273	29	6/28/2021	2493	Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
Thru Vol. 21	30	6/28/2021	2494	(2 pgs) Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested
Vol. 22				
004704				
004705				

			Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)	
Vol. 22	31	6/28/2021	2495	(26 pgs) Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2494 Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) 2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
004767	32	7/8/2021	2530	(7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
004733	33	7/8/2021	2531	(2 pgs) Notice regarding the record for a bankruptcy appeal to the U.S. District Court.(RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004740	34	7/8/2021	2532	(47 pgs) Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) 2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2506 Order on motion to reconsider). (Whitaker, Sheniqua)
004742	35	7/8/2021	2534	(85 pgs; 5 docs) Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) 2494 Order (generic)). (Attachments: # 1 Exhibit 1 _June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2 _June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3 _Subscription and Transfer Agreement # 4 Exhibit 4 _Members Agreement) (Sbaiti, Mazin)
004789				

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004882

36	7/15/2021	2571	(8 pgs) Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
37	6/30/2021	2500	<p>Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248).</p> <p>THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) 2248 Motion to Reconsider (related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAFFund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>

Dated: July 19, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 19th day of July, 2021.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

BTXN 191 (rev. 11/20)

AUDIO / TRANSCRIPT ORDER

1. ORDER REQUEST: <input type="checkbox"/> DUPLICATE OF AUDIO CD Recordings Only		<input checked="" type="checkbox"/> TRANSCRIPT		2. DATE OF ORDER: 6/28/21		FOR COURT USE ONLY DUE DATE:	
3. NAME: Kim James				4. PHONE NUMBER: 214-432-2899		5. EMAIL ADDRESS: krj@sbaitilaw.com	
6. MAILING ADDRESS: 2200 Ross Avenue, Suite 4900W				7. CITY: Dallas		8. STATE: TX	9. ZIP CODE: 75201
10. CASE NUMBER: 19-34054-sgj11		11. CASE NAME: In re Highland Capital Management		12. JUDICIAL OFFICIAL:		13. DATE OF PROCEEDING: FROM: 06/25 / 21	
14. ORDER FOR:		<input type="checkbox"/> APPEAL	<input checked="" type="checkbox"/> BANKRUPTCY		<input type="checkbox"/> OTHER		
15. ORDER:							
ORDINARY		7 DAY EXPEDITED		DAILY		HOURLY	
A. <input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>		<input type="checkbox"/>	
14 DAY EXPEDITED				3 DAY EXPEDITED			
<input type="checkbox"/>				<input type="checkbox"/>			
16. AUDIO/TRANSCRIPT REQUESTED Specify portion(s) and date(s) of proceeding(s):							
PORTION(S)				PORTION(S)			
<input checked="" type="checkbox"/> ENTIRE HEARING **See note in red				<input type="checkbox"/> TESTIMONY (SPECIFY WITNESS)			
<input type="checkbox"/> OPENING STATEMENT (PLAINTIFF)				Only hearing on motion for modification of order authorizing retention of James Seery, Jr.			
<input type="checkbox"/> OPENING STATEMENT (DEFENDANT)							
<input type="checkbox"/> CLOSING ARGUMENT (PLAINTIFF)				<input type="checkbox"/> VOIR DIRE			
<input type="checkbox"/> CLOSING ARGUMENT (DEFENDANT)				<input type="checkbox"/> OTHER (SPECIFY)			
<input type="checkbox"/> COURT RULING ONLY							
CERTIFICATION				17. SIGNATURE:			
By signing 17. & 18, I certify that I will pay all charges (deposit plus additional as specified by the assigned transcriber).				18. DATE: June 28, 2021			
COURT USE ONLY							
A. PROCESSED BY:				B. TRANSCRIPT TO BE PREPARED BY:			
PHONE NUMBER:				ADDRESS:			
EMAIL ADDRESS:				TELEPHONE: EMAIL ADDRESS:			
C. PARTY RECEIVED AUDIO:		DATE:		BY:		\$32 FEE PAID:	

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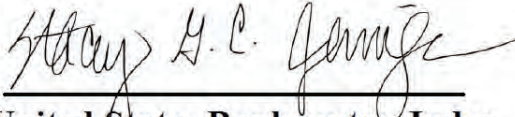
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed June 27, 2021


United States Bankruptcy Judge

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

IN RE: §
§
Highland Capital Management, L.P. § **CASE NO. 19-34054-SGJ-11**
§
Debtor §

ORDER REQUIRING POST-HEARING SUBMISSIONS

The court held a hearing in the above-referenced bankruptcy case on June 25, 2021 on *CLO Holdco and The Charitable DAF Funds' Motion for Modification of Order Authorizing Retention of James P. Seery Due to Lack of Subject Matter Jurisdiction* [DE # 2248] (the "Motion"). At the hearing, the court raised questions about jury trial rights argued to exist by CLO Holdco and The Charitable DAF (the "Movants") with regard to causes of action they seek to maintain against the Debtor and Mr. Seery in Case No. 3:21-cv-00842-B before the United States District Court for the Northern District of Texas. After closing of the evidence, the Debtor offered a document, entitled *Second Amended and Restated Investment Advisory Agreement*, that the Debtor represented

applied to the parties and negated the Movants' jury trial rights. The Movants objected to the admission of the document. The court sustained the Movants' objection to admission (given the lateness of the offer of evidence) and determined that the document would not be relevant to its ruling on the Motion before the court anyway.

However, the court had concerns regarding the Movants' statements regarding the applicability of jury trial rights with regard to causes of action they are pursuing against the Debtor and Mr. Seery. Accordingly, the court, based on those concerns about representations and omissions on the issue, **ORDERS** as follows:

(1) The Debtor shall immediately file with the court the *Second Amended and Restated Investment Advisory Agreement* that governed the relationship among Movants and the Debtor;

(2) within 10 days of the Debtor filing the agreement, the Movants shall address, through filing a pleading with this court, their position regarding the application of the *Second Amended and Restated Investment Advisory Agreement* to the alleged jury trial rights of the Movants in Case No. 3:21-cv-00842-B before the United States District Court for the Northern District of Texas; and

(3) the Debtor, within 7 days of the Movants filing its pleading, shall file a reply to the Movants pleading; and

(4) the court reserves the right to hold a status conference to further address these issues.

END OF ORDER

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

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

**NOTICE OF FILING OF SECOND AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT**

PLEASE TAKE NOTICE that Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), hereby submits its *Second Amended and Restated Investment Advisory Agreement* (the

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

“Agreement”), attached hereto as **Exhibit A**, to the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) in accordance with the Bankruptcy Court’s *Order Requiring Post-Hearing Submissions* [Docket No. 2494] (the “Order”) in connection with the June 25, 2021 hearing on *CLO Holdco and The Charitable DAF Funds’ Motion for Modification of Order Authorizing Retention of James P. Seery Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248] (the “Hearing”).

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Dated: June 28, 2021

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)

(admitted pro hac vice)

Ira D. Kharasch (CA Bar No. 109084)

(admitted pro hac vice)

John A. Morris (NY Bar No. 266326)

(admitted pro hac vice)

Gregory V. Demo (NY Bar No. 5371992)

(admitted pro hac vice)

Hayley R. Winograd (NY Bar No. 5612569)

(admitted pro hac vice)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

E-mail: jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

jmorris@pszjlaw.com

gdemo@pszjlaw.com

hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

SECOND AMENDED AND RESTATED
INVESTMENT ADVISORY AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTMENT ADVISORY AGREEMENT (this “*Agreement*”), dated to be effective from January 1, 2017 (the “*Effective Date*”) is entered into by and between **Charitable DAF Fund, L.P.**, a Cayman Islands exempted limited partnership (the “*Fund*”), **Charitable DAF GP, LLC**, a limited liability company organized under the laws of the State of Delaware (the “*General Partner*”), the general partner of the Fund, and **Highland Capital Management, L.P.**, a limited partnership organized under the laws of the State of Delaware (the “*Investment Advisor*”). Each of the signatories hereto is sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the Fund, the General Partner and the Investment Advisor entered into that certain Investment Advisory Agreement dated January 1, 2012 (the “*Original Agreement*”);

WHEREAS, the Parties amended and restated the Original Agreement in its entirety on the terms set forth in that certain Amended and Restated Investment Advisory Agreement dated July 1, 2014 (the “*Existing Agreement*”);

WHEREAS, the parties desire to amend and restate the Existing Agreement in its entirety with the terms as set forth in this Agreement effective as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree, and the Existing Agreement is hereby amended and restated in its entirety, as follows:

1. Investment Advisory Services. Subject to Section 7, the Investment Advisor shall act as investment advisor to the Fund, the General Partner with respect to the Fund and its subsidiaries and shall provide investment advice with respect to the investment and reinvestment of the cash, Financial Instruments and other properties comprising the assets and liabilities of the Fund and its subsidiaries.

2. Custody. The Financial Instruments shall be held in the custody of Jefferies & Company, Inc. or one or more banks selected by the General Partner (each such bank, a “*Custodian*”). The General Partner will notify the Investment Advisor promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the General Partner. At no time shall the Investment Advisor have possession of or maintain custody over any of the Financial Instruments. The Investment Advisor shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

3. Authority of the Investment Advisor. Subject to Section 7 of this Agreement, the Investment Advisor shall advise the General Partner on behalf of the Fund and/or its subsidiaries with respect to:

(a) investing, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (ii) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (iii) spot and forward currency transactions and (iv) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "**Financial Instruments**"), and the sale of Financial Instruments short and covering such sales.

(b) engaging in such other lawful Financial Instruments transactions;

(c) research and analysis;

(d) purchasing Financial Instruments and holding them for investment;

(e) entering into contracts for or in connection with investments in Financial Instruments;

(f) investing in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;

(g) possessing, transferring, mortgaging, pledging or otherwise dealing in, and exercising all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Fund and/or its subsidiaries;

(h) lending, either with or without security, any Financial Instruments, funds or other properties of the Funds, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Fund;

(i) opening, maintaining and closing accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;

(j) opening, maintaining and closing accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combining purchase or sale orders on behalf of the Fund with orders for other accounts to which the Investment Advisor or any of its affiliates provides investment services (“*Other Accounts*”) and allocating the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts;

(l) entering into arrangements with brokers to open “average price” accounts wherein orders placed during a trading day are placed on behalf of the Fund and Other Accounts and are allocated among such accounts using an average price;

(m) organizing one or more corporations and other entities formed to hold record title, as nominee for the Fund and/or its subsidiaries (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Fund and/or its subsidiaries;

(n) causing the Fund and/or its subsidiaries to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Investment Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engaging personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants and investment bankers); and

(p) voting of Financial Instruments, participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

4. Policies of the Fund. The activities engaged in by the Investment Advisor on behalf of the Fund and/or its subsidiaries shall be subject to the policies and control of the General Partner.

The Investment Advisor shall submit such periodic reports to the General Partner regarding the Investment Advisor's activities hereunder as the General Partner may reasonably request and a representative of the Investment Advisor shall be available to meet with the General Partner and/or any other representative of the Fund or its subsidiaries as reasonably requested by the General Partner.

In furtherance of the foregoing, the General Partner hereby appoints the Investment Advisor as the Fund's attorney-in-fact, with full power of authority to act in the Fund's name and on its behalf with respect to the Fund, as follows:

(a) to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner;

(b) to execute and combine purchase or sale orders on behalf of the Fund with orders for Other Accounts and allocate the Financial Instruments or other assets so purchased or sold, on an average-price basis or in any other manner deemed fair and equitable to the Investment Advisor in its sole discretion, among such accounts; *provided, however*, that such purchase or sale orders shall be market rates;

(c) to direct the Custodian to deliver funds or the Financial Instruments, but only in the course of effecting trading and investment transactions for the Fund and subject to such restrictions as may be contained in the custody agreement between the Custodian and the Fund;

(d) to enter into contracts, provide certifications or take any other actions necessary to effect any of the foregoing transactions; and

(e) to select brokers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker-dealer's expertise in the relevant market or sector; the extent to which the broker-dealer makes market in the security or has an access to such market; the broker-dealer's skill in positioning the relevant market; the broker-dealer's facilities, reliability, promptness and financial stability; the broker-dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; and other factors deemed appropriate by the Investment Advisor.

5. Valuation of Financial Instruments. Financial Instruments will be valued in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided to the General Partner upon request.

6. Status of the Investment Advisor. The Investment Advisor shall, for all purposes, be an independent contractor and not an employee of the General Partner or the Fund or its subsidiaries, nor shall anything herein be construed as making the Fund or its subsidiaries or the General Partner, a partner, member or co-venturer with the Investment Advisor or any of its affiliates or clients. The Investment Advisor shall have no authority to act for, represent, bind or obligate the Fund or its subsidiaries or the General Partner except as specifically provided herein.

7. Investments. ALL ULTIMATE INVESTMENT DECISIONS WITH RESPECT TO THE FUND AND ITS SUBSIDIARIES SHALL AT ALL TIMES REST SOLELY WITH THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY, IT BEING EXPRESSLY UNDERSTOOD THAT THE GENERAL PARTNER AND/OR THE OFFICERS/DIRECTORS OF THE APPLICABLE SUBSIDIARY SHALL BE FREE TO ACCEPT AND OR REJECT ANY OF THE ADVICE RENDERED BY THE INVESTMENT MANAGER HEREUNDER FOR ANY REASON OR FOR NO REASON.

8. Reimbursement by the General Partner. The Investment Advisor may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the General Partner with respect to the Fund and/or its subsidiaries (any such appointee, a “*Sub-Advisor*”), including, but not limited to, any affiliate of the Investment Advisor, but payment for any such services shall be assumed by the Investment Advisor, and, therefore, neither the General Partner nor the Fund or any of its subsidiaries shall have any liability therefor; *provided, however*, that the Investment Advisor, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the General Partner with respect to the Fund and/or its subsidiaries hereunder, and the Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

9. Expenses.

(a) The Fund shall pay or reimburse the Investment Advisor and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Fund, any taxes imposed upon the Fund (including, but not limited to, collateralized debt obligations managed by the Investment Advisor or its affiliates), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Investment Advisor. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Investment Advisor’s advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Fund are paid by the Investment Advisor or by any Sub-Advisor, the Fund shall reimburse the Investment Advisor (or Sub-Advisors, as applicable) for such expenses so long as such expenses are at market rates.

10. Fees.

(a) The Fund shall pay the Investment Advisor a quarterly fee (the “**Management Fee**”) equal to 2.0% per annum (0.5% per quarter) of the Net Assets (as defined below) of the Fund, payable in advance at and calculated as of the first business day of each calendar quarter. For purposes of calculating the Management Fee, the Net Assets of the Fund will be determined before giving effect to any of the following amounts payable by the Fund generally or in respect of any Investment which are effective as of the date on which such determination is made: (i) any fee payable to the Investment Advisor as of the date on which such determination is made; (ii) any capital withdrawals or distributions payable by the Fund which are effective as of the date on which such determination is made; and (iii) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdback or other amounts specially allocated ending as of the date on which such determination is made. The Management Fee shall be prorated for partial periods and any applicable excess fees should be returned to the Fund by the Investment Advisor. Capital contributions made to the Fund after the commencement of a calendar quarter shall be subject to a prorated Management Fee based on the number of days remaining during such quarter.

(b) Subject to clauses (c) and (d) below, at the end of each Calculation Period (as defined below), an amount equal to 20% of the net capital appreciation of the Fund’s Investments (as defined below) after deducting the Management Fee shall be paid to the Investment Advisor (the “**Performance Fee**”); *provided, however*, that the net capital appreciation upon which the calculation of the Performance is based shall be reduced to the extent of any unrecovered balance remaining in the Loss Recovery Account (as defined below) maintained on the books and records of the Fund. The amount of the unrecovered balance remaining in the Loss Recovery Account at the time of calculating the Performance Fee shall be the amount existing immediately prior to its reduction pursuant to the second clause of the second sentence of clause (c) below.

(c) There shall be established on the books of the Fund a memorandum account (the “**Loss Recovery Account**”), the opening balance of which shall be zero. At the end of each Calculation Period, the balance in the Loss Recovery Account shall be adjusted as follows: first, if there has been, in the aggregate, net capital depreciation of the Fund’s Investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period (or with respect to the initial Calculation Period, since the Effective Date), an amount equal to such net capital depreciation shall be credited to the Loss Recovery Account, and, second, if there has been, in the aggregate, net capital appreciation of the Fund’s investments (as adjusted pursuant to the last sentence of this paragraph) since the end of the immediately preceding Calculation Period, an amount equal to such net capital appreciation, before taking into account any Performance Fee to be paid to the Investment Advisor, shall be debited to and reduce any unrecovered balance in the Loss Recovery Account, but not below zero. Solely for purposes of this paragraph, in determining the Loss Recovery Account, net capital appreciation and net capital

depreciation for any applicable Calculation Period shall be calculated by taking into account the amount of the Management Fee paid for such period.

(d) In the event that all or a portion of the Fund's capital is distributed or withdrawn while there exists an unrecovered balance in the Loss Recovery Account, the unrecovered balance in the Loss Recovery Account shall be reduced as of the beginning of the next Calculation Period by an amount equal to the product obtained by multiplying the balance in such Loss Recovery Account by a fraction, the numerator of which is the amount distributed or withdrawn with respect to the immediately preceding distribution or withdrawal date, and the denominator of which is the total fair value of the Fund's Investment immediately prior to such distribution or withdrawal.

(e) For purposes of this Section 10, the net capital appreciation and net capital depreciation of the Fund's Investments for any given period will be calculation in accordance with the then current valuation policy of the Investment Advisor, a copy of which will be provided upon the General Partner's request. As soon as reasonably practicable following the end of a Calculation Period, the Investment Advisor shall deliver, or cause to be delivered, to the General Partner a statement showing the calculation of the Performance Fee, if any, with respect to such Calculation Period. The Performance Fee, if any, shall be payable within three (3) business days of the General Partner's receipt of such statement.

(f) Payments due to the Investment Advisor shall be made by wire transfer to:

Bank Name: Compass Bank
ABA#: 113010547
FBO: Highland Capital Management, L.P. (Master Operating Account)
Acct#: 0025876342

(g) For purposes of this Section 10, the following terms have the definitions set forth below:

"Calculation Period" means the period commencing on the Effective Date (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period, and ending as of the close of business on the first to occur of the following: (i) the last day of a calendar year; (ii) the distribution or withdrawal of capital of the Fund (but only with respect to such distributed or withdrawn amount); (iii) the permitted transfer of all or any portion of a partner's interest in the Fund; and (iv) the final capital distribution of the Fund following its dissolution;

"Investments" means all investments, securities, cash, receivables, financial instruments, contracts and other assets, whether tangible or intangible, owned by the Fund;

“*Net Assets*” means, with respect to the Fund as of any date, the excess of the total fair value of all Investments over the total liabilities, debts and obligations of the Fund, in each case, calculated on an accrual basis in accordance with accounting principles generally accepted in the United States and the then current valuation policy of the Service Provider, a copy of which will be provided to the General Partner upon request; and

“*Services Agreement*” means that certain Second Amended and Restated Service Agreement, dated effective as of the Effective Date, by and among the Parties, as amended, restated, modified and supplemented from time to time.

11. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Investment Advisor, its members or any of their respective affiliates and their respective partners, members, officers, directors, employees, shareholders and agents (including parties acting as agents for the execution of transactions) (each, a “*Covered Person*” and collectively, “*Covered Persons*”) shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable to the General Partner or the Fund or any of its subsidiaries or anyone for any reason whatsoever (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the General Partner or the Fund, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the General Partner or the Fund, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the General Partner or the Fund or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on behalf of the General Partner or the Fund or any of its subsidiaries, (iii) any act or omission by the General Partner or the Fund or any of its subsidiaries, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the General Partner or the Fund or any of its subsidiaries selected by Covered Person with reasonable care), unless any act or omission by such Covered Person constitutes willful misconduct or gross negligence by such Covered Person (as determined by a non-appealable judgment of a court of competent jurisdiction).

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the General Partner or the Fund or any of its subsidiaries or in furtherance of the business of the General Partner or the Fund or any of its subsidiaries in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the General Partner and the Fund and its subsidiaries shall indemnify and hold harmless Covered Persons (the “*Indemnified*”

Party”), from and against any and all claims, liabilities, damages, losses, costs and expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnified Party and arise out of or in connection with the business of the General Partner or the Fund or any of its subsidiaries, any investment made under or in connection with this Agreement, or the performance by the Indemnified Party of Covered Person’s responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person or any Indemnified Party in connection with the General Partner or the Fund or any of its subsidiaries, provided that an Indemnified Party shall not be entitled to indemnification hereunder to the extent the Indemnified Party’s conduct constitutes willful misconduct or gross negligence (as determined by a non-appealable judgment of a court of competent jurisdiction). The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Party’s conduct constituted willful misconduct or gross negligence.

(e) Expenses incurred by an Indemnified Party in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the General Partner prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay the amount advanced to the extent that it shall be determined ultimately that the Indemnified Party is not entitled to be indemnified hereunder.

(f) The right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Indemnified Party’s successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Investment Advisor and each Indemnified Party will generally not be liable to the General Partner or the Fund for any act or omission (or alleged act or omission), absent bad faith, willful misconduct, fraud or gross negligence, and the General Partner and the Fund will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the General Partner, the Fund or its subsidiaries, absent bad faith, willful misconduct, fraud or gross negligence. As a result of these provisions, the General Partner, the Fund and its subsidiaries, as applicable (not the Investment

Advisor or any other Indemnified Party) will be responsible for any Losses resulting from trading errors and similar human errors, absent bad faith, willful misconduct, fraud or gross negligence or the ability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Investment Advisor and its affiliates on behalf of the Fund and/or its subsidiaries, the General Partner acknowledges that trading errors (and similar errors) will occur and that the General Partner will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Investment Advisor or its affiliates.

12. Activities of the Investment Advisor and Others. The Investment Advisor, and its affiliates may engage, simultaneously with their investment management activities on behalf of the Fund, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Fund. Notwithstanding the foregoing, the Investment Advisor and its affiliates shall devote as much time to provide advisory service to the General Partner with respect to the management of the Fund's assets as the Investment Advisor deems necessary and appropriate. In addition, the Investment Advisor or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, the investment advice provided by the Investment Advisor to the General Partner with respect to the Fund. The Investment Advisor may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from advice given to, or securities recommended or bought for, the Fund, even though their investment objectives may be the same or similar. The Investment Advisor may recommend transactions in securities and other assets in which the Investment Advisor has an interest, including securities or other assets issued by affiliates of the Investment Manager. Each of the General Partner and the Fund acknowledges that it has received, reviewed and had an opportunity with respect to (a) a copy of Part 2 of the Investment Advisor's Form ADV, and (b) the supplemental disclosures attached hereto as Exhibit A, each of which further describes conflicts of interest relating to the Investment Advisor, its affiliates and their respective advised accounts.

13. Term. This Agreement shall remain in effect through an initial term concluding December 31, 2017 and shall be automatically extended for additional one-year terms thereafter, except that it may be terminated by the Investment Advisor, on the one hand, or by the General Partner and the Fund, on the other hand, upon at least 90 days' prior written notice to the General Partner or the Investment Advisor, as the case may be, prior to General Partner's fiscal year-end.

14. Miscellaneous.

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Investment Advisor, to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Telephone Number: (972) 628-4100
Facsimile Number: (972) 628-4147

If to the General Partner or the Fund, to:

Charitable DAF GP, LLC
4140 Park Lake Avenue, Suite 600
Raleigh, North Carolina 27612
Attention: Grant Scott
Telephone Number: (919) 854-1407
Facsimile Number: (919) 854-1401

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Fund. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the General Partner, the Fund, the Investment Advisor, each Indemnified Party and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (*e.g.*, officers, partners and personnel of the Investment Advisor and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; provided; however, that the Investment Advisor may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(e) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed in that State.

(f) Jurisdiction; Venue; Waiver of Jury Trial. The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“*Dispute*”) shall be submitted exclusively to the U.S. District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, and any appellate court thereof (“*Enforcement Court*”). Each Party irrevocably and unconditionally submits to the exclusive personal and subject matter jurisdiction of the Enforcement Court for any Dispute and agrees to bring any Dispute only in the Enforcement Court. Each Party further agrees it shall not commence any Dispute in any forum, including administrative, arbitration, or litigation, other than the Enforcement Court. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Nothing in this Section 14(f) shall be construed to limit either party’s right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10, 11 and 14 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons’ firm or company may require in the context thereof.


(k) Arm's-Length Agreement. The General Partner and the Fund have approved this Agreement and reviewed the activities described in Section 12 and in the Investment Advisor's Form ADV and the risks related thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Name: James Dondero

Title: President

Date: 6/21/17

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott

Title: Managing Member

Date:

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: _____

Name: James Dondero
Title: President
Date:

CHARITABLE DAF GP, LLC

By: _____

Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

CHARITABLE DAF FUND, L.P.

By: Charitable DAF GP, LLC, its general partner

By: _____

Name: Grant J. Scott
Title: Managing Member
Date: 6/21/2017

EXHIBIT A

Supplemental Disclosures

Potential Conflicts of Interest

The scope of the activities of Highland Capital Management, L.P. (the “*Investment Adviser*”), its affiliates, and the funds and clients managed or advised by the Investment Adviser or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on Charitable DAF Fund, L.P. and its subsidiaries (collectively, the “*Fund*”) in the future that cannot be foreseen or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts. Additional conflicts are described in the Investment Adviser’s Form ADV. You are urged to review the Investment Adviser’s Form ADV in its entirety prior to investing in the Fund.¹

Highland Group & Highland Accounts. None of the Investment Adviser, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “*Highland Group*”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Adviser is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Adviser or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations and collateralized loan obligations that invest in leveraged loans (collectively, “*CDOs*”) and other vehicles managed by members of the Highland Group (collectively, “*Highland Accounts*”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Adviser may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Adviser has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the

¹ The Investment Adviser’s latest Form ADV filed and Part 2 Brochures can be accessed here: https://adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=110126

Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained by the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Adviser will devote to the Fund only as much time as the Investment Adviser deems necessary and appropriate to manage the Fund's business.

The Investment Adviser undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities. It is the policy of the Investment Adviser to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Adviser has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order for any accounts cannot be fully allocated under prevailing market conditions, the Investment Adviser may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Adviser will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the U.S. Investment Advisers Act of 1940, as amended. The Investment Adviser will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy. However, there is no assurance that such investment opportunities will be allocated to the Fund fairly or equitably in the short-term or over time and there can be no assurance that the Fund will be able to participate in all investment opportunities that are suitable for it.

The Investment Adviser and/or its affiliates may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day for the Fund, the Highland Accounts or affiliates of the Investment Adviser are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Highland Group Trading. As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor's or issuer's securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor's or issuer's securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund's investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund's portfolio, the Investment Adviser may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Adviser in accordance with its fiduciary duties to its other clients, the Investment Adviser may take, or be required to take, actions which adversely affect the interests of the Fund.

The Highland Group has invested and may continue to invest in investments that would also be appropriate for the Fund. Such investments may be different from those made by the Fund. The Highland Group does not have any duty, in making or maintaining such investments, to act in a way that is favorable to the Fund or to offer any such opportunity to the Fund, subject to the Investment Adviser's internal allocation policy. The investment policies, fee arrangements and other circumstances applicable to such other accounts and investments may vary from those applicable to the Fund and its investments. The Highland Group may also provide advisory or other services for a customary fee with respect to investments made or held by the Fund, and neither the Fund nor its investors shall have any right to such fees. The Highland Group may also have ongoing relationships with, render services to or engage in transactions with other clients who make investments of a similar nature to those of the Fund, and with companies whose securities or properties are acquired by the Fund.

As further described below, in connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Adviser to effect a transaction for the Fund, and the Fund's investments may be constrained as a consequence of the Investment Adviser's inability to use such information for

advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Adviser will devote as much time to the Fund as the Investment Adviser deems appropriate to perform its duties in accordance with the Fund's advisory agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Adviser's other accounts.

Various Activities of the Investment Adviser and its Affiliates. The directors, officers, personnel, employees and agents of the Investment Adviser and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories or provide banking, agency, insurance and/or other services, and receive arm's length fees in connection with such services, for the Fund or its investments or other entities that operate in the same or a related line of business as the, for other clients managed by the Investment Adviser or its affiliates, or for any obligor or issuer in respect of the CDOs, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund. The Fund may compete with other Highland Accounts for capital and investment opportunities.

There is no limitation or restriction on the Investment Adviser or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Adviser and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Adviser's investment committee, the Investment Adviser or its affiliates have to other clients.

The Investment Adviser and its affiliates may participate in creditors or other committees with respect to the bankruptcy, restructuring or workout of an investment of the Fund or another account. In such circumstances, the Investment Adviser or its affiliates may take positions on behalf of themselves or another account that are adverse to the interests of the Fund.

The Investment Adviser and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CDOs, Highland Accounts and other investments purchased by the Fund. Such transactions shall be subject to fees that are intended to be no greater than arm's-length fees, and the Fund shall have no right to any such fees. There is no expectation for preferential access to transactions involving CDOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Adviser and/or its affiliates and the Fund shall not have any right to any such fees.

Investments in Highland Accounts Managed by the Investment Manager or its Affiliates. The Fund may invest a significant portion of its capital in Highland Accounts. The Investment Adviser or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Highland Accounts. If the Fund invests in Highland Accounts in secondary transactions, the Fund will indirectly pay the fees (senior and subordinated) of such Highland Accounts and any

carried interest. If the Fund provides all of the equity for a Highland Account, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Adviser or its affiliates will have conflicting division of loyalties and responsibilities regarding the Fund and a Highland Account, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of a Highland Account or to other interests of the Investment Adviser.

Multiple Levels of Fees. The Investment Adviser and the Highland Accounts are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if investors in the Fund were able to invest directly in the Highland Accounts or their respective underlying investments. Investors in the Fund should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a Highland Account may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (*e.g.*, break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees).

Cross Transactions and Principal Transactions. The Investment Adviser may effect client cross-transactions where the Investment Adviser causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Adviser may engage in a client cross-transaction involving the Fund any time that the Investment Adviser believes such transaction to be fair to the Fund and such other client.

The Investment Adviser may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Adviser and/or its affiliates, in each case in accordance with applicable law, which will include the Investment Adviser obtaining independent consent on behalf of the Fund prior to engaging in any such principal transaction between the Fund and the Investment Adviser or its affiliates.

The Investment Adviser may advise the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Adviser or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Adviser and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Adviser's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Adviser or its affiliates. In each such case, the Investment Adviser and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Fund and the other parties to such trade. Under certain circumstances, the Investment Adviser and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Adviser's valuation procedures to another client managed or advised by the Investment Adviser or such affiliates. In addition, the Investment Adviser may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Adviser may obtain independent consent

in writing on behalf of the Fund, which consent may be provided by the managing member of the General Partner or any other independent party on behalf of the Fund, if any such transaction requires the consent of the Fund under Section 206(3) of the U.S. Investment Advisers Act of 1940, as amended.

Material Non-Public Information. There are generally no ethical screens or information barriers among the Investment Adviser and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Adviser, any of its personnel or its affiliates were to receive material non-public information about a particular obligor or issuer, or have an interest in causing the Fund to acquire a particular security, the Investment Adviser may be prevented from advising the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Adviser. Notwithstanding the maintenance of certain internal controls relating to the management of material nonpublic information, it is possible that such controls could fail and result in the Investment Adviser, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material nonpublic information could have adverse effects on the Investment Adviser's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Adviser's ability to perform its portfolio management services to the Fund. In addition, while the Investment Adviser and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Adviser's ability to operate as an integrated platform could also be impaired, which would limit the Investment Adviser's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Conflicts Relating to Equity and Debt Ownership by the Fund and Affiliates. In certain circumstances, the Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Adviser to reconcile the conflicting interests in the Fund and such other accounts in a way that protects the Fund's interests. Additionally, the Investment Adviser or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Adviser in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Adviser's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Other Fees. The Investment Adviser and its affiliates are permitted to receive consulting fees, investment banking fees, advisory fees, breakup fees, director's fees, closing fees, transaction fees and similar fees in connection with actual or contemplated investments. Such fees will not reduce

or offset the Management Fee. Conflicts of interest may also arise due to the allocation of such fees to or among co-investors.

Soft Dollars. The Investment Adviser's authority to use "soft dollar" credits generated by the Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Adviser may give the Investment Adviser an incentive to select brokers or dealers for transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Adviser rather than giving exclusive consideration to the interests of the Fund.

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

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

The Charitable DAF Fund, L.P.
CLO Holdco, Ltd.

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

For appeals in an adversary proceeding:

- Plaintiff
 - Defendant
 - Other (describe)
-

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

- Debtor
- Creditor
- Trustee
- Other (describe)

Movant on a motion to modify a prior Order

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd.

2. State the date on which the judgment, order, or decree was entered: June 30, 2021

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

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

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

Telephone: (212) 561-7700

Fax: (212) 561-7777

And

Hayward & Associates PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy. Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Fax: (972) 755-7110

2. *Party/Appellants*: Plaintiffs: The Charitable DAF Fund, L.P.
CLO Holdco, Ltd.

Attorney:

SBAITI & COMPANY PLLC

Mazin A. Sbaiti (TX Bar No. 24058096)

004734

Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts): Not applicable.

Dated: July 2, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

Counsel for Plaintiffs

004735

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

APPEAL SERVICE LIST

Transmission of the Record

BK Case No.: 19-34054-sgj11

Received in District Court by: _____

Date: _____

Volume Number(s): _____

cc: Stacey G. Jernigan
Robert (Bob) Schaaf
Nathan (Nate) Elner
Attorney(s) for Appellant
US Trustee

Appellant The Charitable DAF Fund, L.P. and CLO Holdco, Ltd.

SBAITI & COMPANY PLLC
Mazin A. Sbaiti
Jonathan Bridges
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
214-432-2899

Appellee Highland Capital Management, L.P.

Jeffery N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
780 Third Avenue, 34th Floor
New York, NY 10017-2024
Telephone: (212) 561-7700

And
Hayward & Associates PLLC
Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy. Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100

- ◆ If you have designated a transcript that has not been filed, order it immediately by contacting the presiding bankruptcy judge's courtroom deputy or following the instructions at <http://www.txnb.uscourts.gov/transcript-and-tape-orders>.

ASSEMBLY OF THE RECORD

Within 14 days of filing your designation of the record, pursuant to Rule 8009, submit to the bankruptcy clerk any item that is **not available in the ECF system**, using this procedure:

- Enclose sealed items and non-documentary items (e.g., removable media) in 8.5" x 11" envelopes.
- Copy all other items in PDF files to a removable storage device (e.g., USB drives, DVDs, etc.), organized in the sequence in which they were designated. Limit files to 5.0 MB in size and do not include color.
- Save copies of court exhibits in PDF files to a removable storage device, organized in the sequence in which they are designated. Limit files to 5.0 MB in size and do not include color. (Use a separate removable storage device for each hearing.)
- Label any submission with the case caption and bankruptcy court case and/or adversary proceeding number.

TRANSMITTAL OF THE RECORD

- The bankruptcy clerk will electronically transmit the record to the district clerk. The parties must provide a paper copy of the record, if required.

REQUIREMENTS REGARDING PAPER RECORD

- If the district judge requires a paper copy, the district clerk will notify you that you are required to provide a copy of the items in *your* designation **to the bankruptcy clerk**, for quality review.
- If you are notified to provide a paper copy, organize the record according to the volumes maintained in the **district court's ECF system**.
- Even if a paper copy is not required when an appeal is entered on the docket, the district judge or the district clerk may later notify you that a paper copy is required for the use of the district judge or the court of appeals.

DATED: 7/8/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

004741

BTXN 150 (rev. 11/10)

In Re:
 Highland Capital Management, L.P.

Debtor(s)

§
 §
 §

Case No.: 19-34054-sgj11
 Chapter No.: 11

CIVIL CASE COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) APPELLANT

The Charitable DAF Fund and CLO Holdco, Ltd.

(b) County of Residence of First Listed Party:
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SBAITISBAITI & COMPANY PLLC
 Mazin Sbaiti
 Jonathan Bridges
 J.P. Morgan Chase Tower
 2200 Ross Avenue, Suite 4900W
 Dallas, TX 75201
 214-432-2899

APPELLEE

Highland Capital Management, L.P.

County of Residence of First Listed Party:
 (IN U.S. PLAINTIFF CASES ONLY)

Attorney's (If Known)
 PACHULSKI STANG ZIEHL & JONES LLP
 Jeffery N. Pomerantz
 Ira D. Kharasch
 John A. Morris
 Gregory V. Demo
 Hayley R. Winograd
 780 Third Avenue, 34th Floor
 New York, NY 10017-2024
 Telephone: (212) 561-7700

And

Hayward & Associates PLLC
 Melissa S. Hayward
 Zachery Z. Annable
 10501 N. Central Expy. Ste. 106
 Dallas, TX 75231
 Telephone: (972) 755-7100

II. BASIS OF JURISDICTION

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

- | | | | | | |
|---|-------------------------|-------------------------|--|-------------------------|-------------------------|
| Citizen of This State | <input type="radio"/> 1 | <input type="radio"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="radio"/> 4 | <input type="radio"/> 4 |
| Citizen of Another State | <input type="radio"/> 2 | <input type="radio"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="radio"/> 5 | <input type="radio"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="radio"/> 3 | <input type="radio"/> 3 | Foreign Nation | <input type="radio"/> 6 | <input type="radio"/> 6 |

IV. NATURE OF SUIT

- 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 890 Other Statutory Actions

V. ORIGIN

- | | | | |
|---|--|---|--|
| <input checked="" type="radio"/> 1 Original Proceeding | <input type="radio"/> 2 Removed from State Court | <input type="radio"/> 3 Remanded from Appellate Court | <input type="radio"/> 4 Reinstated or Reopened |
| <input type="radio"/> 5 Transferred from another district | <input type="radio"/> 6 Multidistrict Litigation | <input type="radio"/> 7 Appeal to District Judge from Magistrate Judgment | |

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
 422 Appeal 28 USC 158

Brief description of cause:
 Notice of appeal of a bankruptcy court order

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

004744

VIII. RELATED CASE(S) IF ANY

Judge:

Docket Number: 3:20-cv-3390-K and 3408-G. 3:21-cv-0261-L and
0538-N, 0539-N, 0546-L, 0550-L, 0879-K, and 1295-X

DATED: 7/8/21

FOR THE COURT:
Robert P. Colwell, Clerk of Court
by: /s/Sheniqua Whitaker, Deputy Clerk

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed by Charitable DAF Fund L.P. and CLO Holdco, Ltd.

2. State the date on which the judgment, order, or decree was entered: June 30, 2021

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

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

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

Telephone: (212) 561-7700

Fax: (212) 561-7777

And

Hayward & Associates PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy. Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Fax: (972) 755-7110

2. *Party/Appellants*: Plaintiffs: The Charitable DAF Fund, L.P.
CLO Holdco, Ltd.

Attorney:

SBAITI & COMPANY PLLC

Mazin A. Sbaiti (TX Bar No. 24058096)

Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts): Not applicable.

Dated: July 2, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbitilaw.com

jeb@sbitilaw.com

Counsel for Plaintiffs

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

Assigned to: Stacey G. Jernigan
Chapter 11
Voluntary
Asset

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

Debtor

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201
DALLAS-TX

represented by **Zachery Z. Annable**

Hayward PLLC
10501 N. Central Expressway
Suite 106
Dallas, TX 75231
(972) 755-7108
Fax : (972) 755-7108
Email: zannable@haywardfirm.com

David Grant Crooks

Fox Rothschild LLP
5420 LBJ Freeway, Suite 1200
Dallas, TX 75240
(972) 991-0889
Fax : (972) 404-0516
Email: dcrooks@foxrothschild.com

Gregory V. Demo

Pachulski Stang Ziehl & Jones L.L.P.
780 Third Avenue
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: gdemo@pszjlaw.com

Robert Joel Feinstein

Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: rfeinstein@pszjlaw.com

Eric Thomas Haitz

Katten Muchin Rosenman LLP
1301 McKinney Street, Suite 3000
Houston, TX 77010
(713) 270-3410

Melissa S. Hayward
Hayward PLLC
10501 N. Central Expry, Ste. 106
Dallas, TX 75231
972-755-7104
Fax : 972-755-7104
Email: MHayward@HaywardFirm.com

Hayward & Associates PLLC
10501 N. Central Expwy., Ste 106
Dallas, TX 75231

Juliana Hoffman
Sidley Austin LLP
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 969-3581
Fax : (214) 981-3400
Email: jhoffman@sidley.com

Ira D Kharasch
10100 Santa Monica Boulevard
13th Floor
Los Angeles, CA 90067
310-227-6910
Fax : 310-201-0760
Email: ikharasch@pszjlaw.com

Alan J. Kornfeld
Pachulski Stang Ziehl & Jones LLPL
10100 Santa Monica Blvd., 13 Fl
Los Angeles, CA 90067
310-277-6910
Fax : 301-201-0760

Maxim B Litvak
Pachulski Stang Ziehl & Jones LLP
150 California Street
15th Floor
San Francisco, CA 94111
415-263-7000
Email: mlitvak@pszjlaw.com

John A. Morris
Pachulski Stang Ziehl & Jones, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700
Fax : (212) 561-7777
Email: jmorris@pszjlaw.com

James E. O'Neill

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Fl.
Wilmington, DE 19801
302-652-4100
Fax : 302-652-4400
Email: joneill@pszjlaw.com

Jeffrey N. Pomerantz

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
310-277-6910
Fax : 310-201-0760
Email: jpomerantz@pszjlaw.com

Jeffrey Nathan Pomerantz

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 11th Floor
Los Angeles, CA 90067
(310) 277-6910
Fax : (310) 201-0760
Email: jpomerantz@pszjlaw.com

Elissa A. Wagner

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
310-277-6910
Fax : 310-201-0760

Hayley R. Winograd

Pachulski Stang Ziehl & Jones LLP
780 3rd Avenue #36
New York, NY 10017
(212) 561-7700
Fax : (212) 561-7777
Email: hwinograd@pszjlaw.com

Plaintiff

CLO Holdco, Ltd.

represented by **Mazin Ahmad Sbaiti**

Sbaiti & Company PLLC
JP Morgan Chase Tower
2200 Ross Avenue, Suite 4900 W
Dallas, TX 75201
(214) 432-2899
Fax : (214) 853-4367
Email: mas@sbaitilaw.com

Plaintiff

The Charitable DAF Fund, L.P.

represented by **Mazin Ahmad Sbaiti**

(See above for address)

U.S. Trustee

United States Trustee

represented by **Lisa L. Lambert**

Office of the United States Trustee

1100 Commerce Street
Room 976
Dallas, TX 75202
214-767-8967

1100 Commerce St., Rm. 976
Dallas, TX 75242
(214) 767-8967 ext 1080
Fax : (214) 767-8971
Email: lisa.l.lambert@usdoj.gov

Creditor Committee
Official Committee of Unsecured Creditors

represented by **Sean M. Beach**
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
302-571-6600
Email: bankfilings@ycst.com

Jessica Boelter
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
212-839-5300
Fax : 212-839-5599
Email: jboelter@sidley.com

Matthew A. Clemente
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7539
Email: mclemente@sidley.com

David Grant Crooks
(See above for address)

Gregory V. Demo
(See above for address)

Bojan Guzina
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
312-853-7323
Fax : 312-853-7036
Email: bguzina@sidley.com

Bojan Guzina
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
3128537323
Email: bguzina@sidley.com

Juliana Hoffman
(See above for address)

Page Holder Montgomery
Sidley Austin LLP
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 981-3300
Fax : (214) 981-3400
Email: pmontgomery@sidley.com

Edmon L. Morton
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
1000 North King Street
Wilmington, DE 19801
302-571-6637
Fax : 302-571-1253
Email: emorton@ycst.com

Michael R. Nestor
YOUNG CONAWAY STARGATT &
TAYLOR, LL
Rodney Square
1000 North King Street
Wilmington, DE 19801
302-571-6600
Email: mnestor@ycst.com

Charles Martin Persons, Jr.
Sidley Austin LLP
2020 McKinney Avenue, Suite 2000
Dallas, TX 75210
(214) 981-3300
Fax : (214) 981-3400
Email: cpersons@sidley.com

Jeffrey N. Pomerantz
(See above for address)

Penny Packard Reid
Sidley Austin LLP
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 981-3413
Fax : (214) 981-3400
Email: preid@sidley.com

Alyssa Russell
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7422
Fax : (312) 853-7036
Email: alyssa.russell@sidley.com

Dennis M. Twomey

004754

Sidley Austin, LLP
 One South Dearborn Street
 Chicago, IL 60603
 (312) 853-7438
 Fax : (312) 853-7036
 Email: dtwomey@sidley.com

Jaclyn C. Weissgerber
 YOUNG CONAWAY STARGATT &
 TAYLOR, LLP
 Rodney Square
 1000 North King Street
 Wilmington, DE 19801
 302-571-6600
 Email: bankfilings@ycst.com

**Sean M. Young Conway Stargatt &
 Taylor, LLP**
 Young Conway Stargatt & Taylor, LLP
 Rodney Square
 1000 North King Street
 Wilmington, DE 19801
 302-571-6600
 Email: sbeach@ycst.com

Filing Date	Docket Text
12/04/2019	<p>● 1 (2 pgs) Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)</p>
12/04/2019	<p>● 2 (15 pgs) DOCKET SHEET filed in 19-12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)</p>
12/04/2019	<p>● 3 (106 pgs; 2 docs) Chapter 11 Voluntary Petition . Fee Amount \$1717. Filed by Highland Capital Management, L.P.. (Attachments: # 1 Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 4 (31 pgs; 2 docs) Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 5 (23 pgs; 2 docs) Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Proposed Order)(O'Neill, James) [ORIGINALLY FILED</p>

	AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<p>● 6 (9 pgs; 2 docs) Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 7 (24 pgs; 2 docs) Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 8 (32 pgs; 2 docs) **WITHDRAWN** - 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Order) (O'Neill, James) Modified on 10/30/2019 (DMC)[ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]</p>
12/04/2019	<p>● 9 (36 pgs; 4 docs) Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Engagement Agreement # 2 Exhibit B - Gershbein Declaration # 3 Exhibit C - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 10 (10 pgs; 2 docs) Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 11 (44 pgs) Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)</p>
12/04/2019	<p>● 12 (3 pgs) Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>

12/04/2019	<p>● 13 (13 pgs; 2 docs) Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 14 (3 pgs) Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 15 (3 pgs) Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 16 (1 pg) Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 17 (1 pg) Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 18 (1 pg) Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 19 (1 pg) Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 20 (3 pgs) Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]</p>
12/04/2019	<p>● 21 (1 pg) Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY</p>

	FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	22 (1 pg) Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	23 (1 pg) Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	24 (1 pg) Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	25 (1 pg) Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	26 (1 pg) Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	27 (1 pg) Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	28 (1 pg) Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	29 (1 pg) Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	30 (1 pg) Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	31 (1 pg) Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<p>● 32 (1 pg) Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 33 (1 pg) Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 34 (1 pg) Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 35 (7 pgs) Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 36 (1 pg) Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)</p>
12/04/2019	<p>● 37 (3 pgs) Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 38 (1 pg) Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 39 (5 pgs) Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 40 (9 pgs; 2 docs) Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # 1 Agreement)) (NAB) Modified Text on 10/21/2019 (LB)</p>

	[ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	41 (3 pgs) Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	42 (7 pgs) Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	43 (6 pgs) Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	44 (3 pgs) Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	45 (1 pg) Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County , Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	46 (4 pgs) Notice of hearing/ <i>scheduling conference</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1 Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	47 (40 pgs; 3 docs) Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s) 2 , 39) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	48 (83 pgs; 4 docs) Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (related document(s) 7 , 43) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.).

12/04/2019	<p>● 49 (13 pgs; 2 docs) Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 50 (37 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 51 (36 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s)5, 42) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 52 (22 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 53 (36 pgs; 2 docs) Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>● 54 (7 pgs) Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo</p>

	<p>[Docket No. 32], (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)</p>
12/04/2019	<p>55 (4 pgs; 2 docs) Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # 1 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)</p>
12/04/2019	<p>56 (1 pg) Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>57 (1 pg) Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>58 (1 pg) Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>59 (4 pgs; 3 docs) Notice of Appearance and Request for Notice by Michael I. Baird filed</p>

	by Interested Party Pension Benefit Guaranty Corporation. (Attachments: # <u>1</u> Certification of United States Government Attorney # <u>2</u> Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	60 (1 pg) Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	61 (1 pg) Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	62 (1 pg) Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	63 (2 pgs) Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	64 (1 pg) Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	65 (1 pg) Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	66 (2 pgs) Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	67 (27 pgs; 4 docs) Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A - Proposed Form of Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	68 (48 pgs; 8 docs) Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl.,

	<p>Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C - Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)</p>
12/04/2019	<p>69 (37 pgs; 7 docs) **WITHDRAWN per 437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Hurst Declaration # 3 Exhibit B - Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)</p>
12/04/2019	<p>70 (30 pgs; 7 docs) Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # 1 Notice # 2 Rule 2016 Statement # 3 Declaration of Jeffrey N. Pomerantz in Support # 4 Declaration of Frank Waterhouse # 5 Proposed Form of Order # 6 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>71 (9 pgs; 2 docs) Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>72 (28 pgs; 4 docs) Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>73 (41 pgs; 5 docs) Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - Gershbein Declaration # 4 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>74 (48 pgs; 6 docs) Application/Motion to Employ/Retain Development Specialists, Inc.</p>

	<p>as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Engagement Letter # 3 Exhibit B - Sharp Declaration # 4 Exhibit C - Proposed Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>75 (37 pgs; 6 docs) Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - OCP List # 4 Exhibit C - Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>76 (99 pgs; 6 docs) **WITHDRAWN by # 360** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Appendix I # 3 Appendix II # 4 Proposed Form of Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)</p>
12/04/2019	<p>77 (2 pgs) Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p>78 (2 pgs) Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>79 (1 pg) Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311-27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>80 (4 pgs; 2 docs) Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # 1 Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>

12/04/2019	<p>● 81 (3 pgs) Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 82 (21 pgs; 2 docs) Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 83 (1 pg) Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 84 (4 pgs; 2 docs) Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # 1 Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 85 (159 pgs; 6 docs) Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E - Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 86 (15 pgs; 3 docs) Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 87 (1 pg) Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 88 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 89 (1 pg) Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240,</p>

	Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	90 (1 pg) Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	91 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	92 (1 pg) Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	93 (1 pg) Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	94 (11 pgs; 2 docs) HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	95 (3 pgs; 2 docs) Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # 1 Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	96 (3 pgs; 2 docs) Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # 1 Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	98 (1 pg) Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	101 (17 pgs; 4 docs) Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals

	Utilized by the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 102 (8 pgs) Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 103 (10 pgs) Notice of Deposition - Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 104 (2 pgs) Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 106 (2 pgs) Notice of Service - Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 107 (10 pgs; 2 docs) Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # 1 Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 108 (3 pgs) Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 110 (1 pg) Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 111 (1 pg) Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 112 (1 pg) Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach,

	Seam) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 113 (1 pg) Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 114 (1 pg) Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 115 (1 pg) Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 116 (1 pg) Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 117 (1 pg) Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 118 (1 pg) Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 119 (1 pg) Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 120 (94 pgs; 11 docs) Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 121 (26 pgs; 3 docs) Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain

	Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # 1 Exhibit A # 2 Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 122 (27 pgs) Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 123 (5 pgs) Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 124 (6 pgs) **WITHDRAWN per # 456 ** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	● 125 (4 pgs) Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 126 (11 pgs) Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 127 (12 pgs; 3 docs) Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<p>● 128 [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 130 (162 pgs; 6 docs) Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 131 (2 pgs) Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 132 (5 pgs) Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 133 (7 pgs) Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p>● 134 (5 pgs) Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 135 (7 pgs; 2 docs) Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # 1 Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>

12/04/2019	<p>● 136 (1 pg) Certificate of Service of United States Trustee's Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 137 (17 pgs; 3 docs) Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 138 (17 pgs; 2 docs) Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 139 (5 pgs; 2 docs) Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 140 (2 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 141 (6 pgs) ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 142 (14 pgs) ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 143 (2 pgs) ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENT OF FINANCIAL AFFAIRS, AND (II) GRANTING</p>

	RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	144 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	145 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	146 (11 pgs) Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	147 (18 pgs; 2 docs) Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	148 (7 pgs) Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s)136, 137, 138) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	149 (2 pgs) Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	150 (9 pgs; 2 docs) Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<p>● 151 (17 pgs; 2 docs) Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 152 (2 pgs) Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 153 (2 pgs) Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 154 (3 pgs) Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph) [ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 156 (4 pgs) Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 158 (5 pgs; 2 docs) Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p>● 159 (2 pgs; 2 docs) Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p>● 162 (8 pgs) Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 163 (7 pgs) Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef)</p>

	[ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 164 (4 pgs) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 165 (265 pgs; 11 docs) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	● 166 (46 pgs; 5 docs) Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Redline Order Approving Ordinary Course Protocols Motion # 2 Exhibit B - Redline Order Approving Cash Management Motion # 3 Exhibit C - Redline Order Approving DSI Retention Motion # 4 Exhibit D - Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 168 (8 pgs) Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 169 (16 pgs; 4 docs) Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 170 (15 pgs; 3 docs) Certification of Counsel Regarding Motion of Debtor for Entry of

	<p>Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A # 2 Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 171 (19 pgs; 3 docs) **WITHDRAWN** - 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 172 (2 pgs) Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 173 (29 pgs; 3 docs) Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # 1 Exhibit A # 2 Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 174 (17 pgs; 2 docs) Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 175 (5 pgs) FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 176 (12 pgs; 2 docs) ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 177 (24 pgs; 3 docs) Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee</p>

	<p>Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A - Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 178 (32 pgs; 3 docs) Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1 # 2 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 179 (11 pgs; 3 docs) Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 180 (58 pgs; 6 docs) Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - Declaration of John Dempsey in Support # 4 Exhibit C - Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 181 (7 pgs) Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 182 (18 pgs; 2 docs) Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # 1 Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p>● 183 (3 pgs) ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND</p>

	LOCAL RULE 2014-1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 184 (6 pgs) Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 185 (8 pgs) Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 186 (2 pgs) ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	● 187 (118 pgs) Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ([ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	● 97 (3 pgs) Motion to appear pro hac vice for Bojan Guzina. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228141, amount \$ 100.00 (re: Doc# 97). (U.S. Treasury)
12/05/2019	● 99 (2 pgs) Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	● 100 (3 pgs) Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	● 105 (3 pgs) Motion to appear pro hac vice for Alyssa Russell. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)

12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# 100). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# 105). (U.S. Treasury)
12/05/2019	109 (3 pgs) Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27228644, amount \$ 100.00 (re: Doc# 109). (U.S. Treasury)
12/05/2019	129 (1 pg) Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	155 (3 pgs) Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	157 (3 pgs) Motion to appear pro hac vice for Marc B. Hankin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	160 (5 pgs; 2 docs) Motion to appear pro hac vice for Richard Levin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Addendum) (Platt, Mark)
12/05/2019	161 (3 pgs) Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# 157). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# 160). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# 161). (U.S. Treasury)
12/05/2019	167 (3 pgs) Motion to appear pro hac vice for Gregory V. Demo. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27230422, amount \$ 100.00 (re: Doc# 167). (U.S. Treasury)
12/05/2019	188 (4 pgs) Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	189 (3 pgs) Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)

12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27233957, amount \$ 100.00 (re: Doc# 189). (U.S. Treasury)
12/06/2019	● 190 (3 pgs) Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: 189) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	● 191 (3 pgs) Motion to appear pro hac vice for John A. Morris. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27233983, amount \$ 100.00 (re: Doc# 191). (U.S. Treasury)
12/06/2019	● 192 (2 pgs) INCORRECT ENTRY - Incorrect Event Used; Refiled as Document 220 . Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	● 193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) 1 Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1 , (Edmond, Michael)
12/06/2019	● 194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) 1 Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for 1 , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)
12/06/2019	● 195 (1 pg) Request for transcript regarding a hearing held on 12/6/2019. The requested turn-around time is hourly. (Edmond, Michael)
12/06/2019	● 196 (1 pg) Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # 97) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 197 (1 pg) Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # 100) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 198 (1 pg) Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # 105) Entered on 12/6/2019. (Banks, Courtney)

12/06/2019	● 199 (1 pg) Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # 109) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 200 (1 pg) Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # 160) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 201 (1 pg) Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # 161) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 202 (1 pg) Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # 167) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 203 (1 pg) Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # 157) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	● 204 (44 pgs) INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	● 205 (37 pgs) Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	● 206 (44 pgs) Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: 204) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	● 220 (2 pgs) Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 41 Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	● 207 (27 pgs) Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO

	<p>THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800-665-6251. (RE: related document(s) 193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u>, 194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u>, (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)</p>
12/08/2019	<p>● <u>208</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document <u>100</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/08/2019	<p>● <u>209</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document <u>105</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/08/2019	<p>● <u>210</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document <u>109</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/08/2019	<p>● <u>211</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document <u>160</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/08/2019	<p>● <u>212</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document <u>161</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/08/2019	<p>● <u>213</u> (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) <u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document <u>167</u>) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>

12/08/2019	<p>● 214 (5 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 203)</p> <p>Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document 157) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)</p>
12/09/2019	<p>● 215 (1 pg) Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19-12239. (Okafor, M.)</p>
12/09/2019	<p>● 216 (1 pg) Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # 190) Entered on 12/9/2019. (Banks, Courtney)</p>
12/09/2019	<p>● 217 (1 pg) Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # 191) Entered on 12/9/2019. (Banks, Courtney)</p>
12/09/2019	<p>● 218 (15 pgs; 3 docs) Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order) (Crooks, David)</p>
12/09/2019	<p>● 219 (3 pgs) Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)</p>
12/09/2019	<p>Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] (181.00). Receipt number 27240994, amount \$ 181.00 (re: Doc# 218). (U.S. Treasury)</p>
12/09/2019	<p>● 221 (2 pgs) Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)</p>
12/09/2019	<p>● 222 (3 pgs) Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
12/09/2019	<p>Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27241671, amount \$ 100.00 (re: Doc# 222). (U.S. Treasury)</p>
12/09/2019	<p>● 223 (10 pgs) Certificate of service re: <i>1) Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)205) Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official</p>

	<p>Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 206 Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: 204) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/10/2019	<p>● 224 (1 pg) Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)218 Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). (Crooks, David)</p>
12/10/2019	<p>● 225 (4 pgs; 2 docs) Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)218 Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181., 224 Certificate (generic)). (Attachments: # 1 Service List) (Crooks, David)</p>
12/10/2019	<p>● 226 (32 pgs) Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (<i>Co-Counsel</i>) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
12/10/2019	<p>● 227 (2 pgs) INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 - Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).</p>
12/10/2019	<p>● 228 (2 pgs) Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)</p>
12/10/2019	<p>● 229 (2 pgs) Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)</p>
12/10/2019	<p>● 230 (2 pgs) Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
12/10/2019	<p>● 231 (2 pgs) Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

12/11/2019	● 232 (11 pgs; 3 docs) Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued) <i>Joint Motion to Continue Status Conference</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order # 2 Service List) (Hayward, Melissa)
12/11/2019	● 233 (4 pgs; 2 docs) Motion to appear pro hac vice for Michael I. Baird. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # 1 Certificate of Service) (Baird, Michael)
12/11/2019	● 234 (2 pgs) Order granting joint motion to continue hearing on (related document # 232) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	● 235 (80 pgs) Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	● 236 (3 pgs) Motion to appear pro hac vice for Lauren Macksoud. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27250084, amount \$ 100.00 (re: Doc# 236). (U.S. Treasury)
12/11/2019	● 237 (3 pgs) Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (100.00). Receipt number 27250165, amount \$ 100.00 (re: Doc# 237). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt Number KF - No Fee Due, amount \$ 0.00 (re: Doc 233). (Floyd)
12/11/2019	● 238 (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 216 Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document 190) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	● 239 (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 217 Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document 191) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	● 240 (3 pgs) Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	● 241 (8 pgs) Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 176 Document). (Annable, Zachery)

12/12/2019	<p>● 242 (1 pg) Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # 233) Entered on 12/12/2019. (Okafor, M.)</p>
12/12/2019	<p>● 243 (4 pgs) BNC certificate of mailing. (RE: related document(s)227 INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 - Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)</p>
12/12/2019	<p>● 244 (4 pgs) BNC certificate of mailing. (RE: related document(s)228 Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)</p>
12/13/2019	<p>● 245 (9 pgs) Certificate of service re: <i>1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt & Taylor, LLP as Co-Counsel, Nunc Pro Tunc to November 8, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)226 Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (Co-Counsel) Nunc Pro Tunc Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/13/2019	<p>● 246 (10 pgs) Certificate of service re: <i>1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)235 Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/13/2019	<p>● 247 (82 pgs; 2 docs) Schedules: Schedules A/B and D-H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s)228 Notice of deficiency). (Attachments: # 1 Global notes regarding schedules) (Hayward, Melissa)</p>
12/13/2019	<p>● 248 (42 pgs; 2 docs) Statement of financial affairs for a non-individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s)228 Notice of deficiency). (Attachments: # 1 Global notes regarding SOFA) (Hayward, Melissa)</p>
12/13/2019	<p>● 249 (4 pgs) BNC certificate of mailing - meeting of creditors. (RE: related document(s)229 Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)</p>

12/13/2019	<p>● 250 (4 pgs) BNC certificate of mailing - PDF document. (RE: related document(s)234 Order granting joint motion to continue hearing on (related document 232) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)</p>
12/16/2019	<p>● 251 (1 pg) Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # 236) Entered on 12/16/2019. (Dugan, S.)</p>
12/16/2019	<p>● 252 (1 pg) Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # 237) Entered on 12/16/2019. (Dugan, S.)</p>
12/16/2019	<p>● 253 (1 pg) Order rescheduling status conference (RE: related document(s)1 Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)</p>
12/17/2019	<p>● 254 (2 pgs) Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)</p>
12/18/2019	<p>● 255 (8 pgs) Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T.</i> (Hoffman, Juliana)</p>
12/18/2019	<p>● Hearing held on 12/18/2019. (RE: related document(s)1 Status/Scheduling Conference; Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20-1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)</p>
12/18/2019	<p>● 256 (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s)251 Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document 236) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)</p>
12/18/2019	<p>● 257 (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s)252 Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document 237) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)</p>

James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [Docket No. 2311] (the “Objection”) filed by Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor”); (c) the documents admitted into evidence during the hearing held on June 25, 2021 with respect to the Motion (the “Hearing”); and (d) the arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **DENIED** for the reasons stated on the record during the Hearing.
2. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

SBAITI & COMPANY PLLC
Mazin A. Sbaiti (TX Bar No. 24058096)
Jonathan Bridges (TX Bar No. 24028835)
J.P. Morgan Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
T: (214) 432-2899
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.
and CLO Holdco, Ltd.*

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

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

**PLAINTIFFS’ COURT-ORDERED POST-HEARING BRIEF
REGARDING MOTION FOR MODIFICATION OF ORDER**

The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. (“Movants”) respectfully submit this Supplemental Brief as required by this Court’s Order Requiring Post-Hearing Submissions, dated June 28, 2021 [Doc. 2494], and would show the Court as follows:

A. THE SECOND AMENDED AND RESTATED ADVISORY AGREEMENT IS ONLY BETWEEN THE DAF AND HIGHLAND

After investigating, Movants agree that the Second Amended and Restated Investment Advisory Agreement (“Second Amended Agreement”), between The Charitable DAF Fund, L.P. (“Charitable DAF” or “DAF”) and the Debtor [Doc.# 2495] is an authentic document. It was executed by James Dondero and Grant Scott on June 21, 2017. And it was the last operative

agreement between the Charitable DAF and the Debtor regarding the subject matter that it covers. Movant CLO Holdco, Ltd. (“CLO Holdco” or “Holdco”) did not execute any version of the Advisory Agreement and was not a party to it.

B. MOVANTS’ COUNSEL WAS UNAWARE OF THE SECOND AMENDED AGREEMENT DUE TO INADVERTENCE

In their district court complaint, Movants reference and rely on the Amended and Restated Investment Advisory Agreement from 2014 (“First Amended Agreement”). *See* Cause No. 3:21-cv-00842-B, Doc.# 1, ¶ 58 (“[Highland] and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014[.]. It renews annually and continued until the end of January 2021.”). The Complaint was filed on April 12, 2021.

More than two months later, at the time of the June 25, 2021 hearing in this matter, no filing in this Court or the district court had alerted counsel that they were relying on a superseded version of the contract. *See* Declaration of J. Bridges (“Bridges Decl.”). ¶¶ 1-4. Movants’ counsel did not have the Second Amended Agreement in their file and were unaware that it existed until the hearing. *See* Bridges Decl. ¶¶ 13-18. This was a good faith mistake and was inadvertent. *Id.* at ¶ 17. This was also due to the fact that when counsel was retained by the DAF and Holdco, both the Charitable DAF and CLO Holdco had just transitioned control persons, and the back office—including the documents—were maintained by Highland under a shared services agreement. *Id.*

No issue related to the Second Amended Agreement was briefed by the parties or raised in advance of the June 25 hearing. At that hearing, the Court, *sua sponte*, asked whether any of the contracts between any of the parties contained jury waivers, and neither side’s counsel knew the answer immediately. *See* Bridges Decl., Exhibit 2, June 25, 2021 Hearing Tr. at 18.

During the June 25th hearing, the Court remarked about whether the existence of a jury waiver in the Second Amended Agreement meant the Motion for Modification was baseless and thus had wasted time. Movants respectfully submit that any time wasted as a result of the mistake was non-existent or de minimis, especially in light of Movants' proposal that their Motion be decided on the papers. *See* Exhibit 1, June 8, 2021 Hearing Tr. at 288. It was Debtor's counsel who objected and insisted on a full hearing in the first place, *id.*, even when undersigned counsel became sick.

C. THE SECOND AMENDED AGREEMENT CHANGES NOTHING OF SUBSTANCE IN MOVANTS' ARGUMENT ON THE MOTION FOR MODIFICATION

This Court and the Debtor have identified the jury waiver in section 14(f) of the Second Amended Agreement as potentially undermining Movants' arguments at the June 25th hearing. Movants respectfully submit that this is not the case for a number of reasons.

First, during the June 25, 2021 hearing, Movants' counsel emphasized that Movants' jury rights were merely *illustrative* of the legal problems raised by the Court's exculpation language in its two Orders appointing Jim Seery. *See* Bridges Decl., Exhibit 2, June 25, 2021 Hearing Tr. at 12-13. The jury rights accompanying other claims, including claims that have not yet accrued, were also at issue in the Movants' Motion for Modification, precisely because the broader application to investors in Highland's managed funds—investors like CLO Holdco who did not have advisory agreements with Highland—was at issue.

Second, Highland has correctly noted that Movant CLO Holdco is neither a party to the Advisory Agreement, nor a "covered person" or "indemnified party" who is bound by it. In its Memorandum in Support of its Motion to Dismiss the Original Complaint under Rule 12(b)(6), Highland took the position that it owed no Advisers Act fiduciary duties, or any other duties either,

directly to CLO Holdco. *See* Cause No. 3:21-cv-00842-B, Doc. 27, p. 22, ¶ 46 (“There is also no fiduciary duty owed to Plaintiff [CLO Holdco] as an investor in HCLOF. [CLO Holdco] does not have any investment advisory relationship with Defendant Debtor (or HCFA). Plaintiff CLOH is merely an investor in HCLOF and not an advisory client of Defendant Highland or HHCFA.”). *Compare id. with* Second Amended Agreement §§ 14. Thus, there is no basis to believe that Holdco has waived its jury right. We are surprised that the Debtor allowed the Court to believe otherwise given that they had, at the time, just asserted the foregoing argument. Nor can such a waiver be implied. The Fifth Circuit has recognized the “fundamental” role of juries, explaining that jury waivers are narrowly construed and that a court is to indulge “every reasonable presumption” against a finding of a waiver of one’s jury right. *See Jennings v. McCormick*, 154 F.3d 542, 545 (5th Cir. 1998) (quoting *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393, 81 L. Ed. 1177, 57 S. Ct. 809 (1937)). No authority Movants can find holds that a non-party’s jury rights can be waived by implication, much less by a contract that they did not sign or expressly agree to be bound by. Again, CLO Holdco’s claims arise independently by operation of law, as a result, in part, of its role as an investor in HCLOF.¹ On the other hand, HCLOF’s subscription and company agreements have no jury waiver. *See* Exhibits 3 and 4, HCLOF Subscription and Transfer Agreement and Members Agreement Relating to the Company (“Company Agreement”), respectively. Therefore, Holdco’s claims are still subject to a jury right.

Third, several key arguments raised in the Motion for Modification and during the hearing keyed into the Court’s exculpation of damages claims, such as negligence and breach of fiduciary duty. This Court’s gatekeeper provisions in the Seery Orders exculpate him from liability for

¹ The legal and factual basis for this duty was recently briefed to the District Court. *See* Cause No. 3:21-cv-00842-B, Doc. 38, Plaintiffs’ Response to Motion to Dismiss, pp. 18-20.

negligence and fiduciary duties, as well as other duties under federal law “as a condition of employment.” Movants respectfully do not agree that the Court’s *equitable* jurisdiction enables it to relieve Mr. Seery of liability for *damages*, even if the Court’s equitable jurisdiction gives it some power to institute a gatekeeper provision (i.e., one that does not expressly exculpate and otherwise does not impinge on the District Court’s jurisdiction under 28 U.S.C. § 157). Nothing Movants could find supports the proposition that a bankruptcy court’s equitable powers include the power to release future claims that have not accrued, which is itself a separate consideration from whether there is a jury right. and the purpose of the Motion was to challenge that. Bridges Decl. at ¶ 11. The Motion for Modification also questioned the Court’s jurisdiction to claim sole provenance to decide cases like the one between Holdco and the Debtor, given the mandatory withdrawal of the reference required under 28 U.S.C. § 157(d). Accordingly, the waiver of a jury right by the DAF against the Debtor would not have implicated the other core issues raised in the Motion for Modification.

Fourth, as to the Charitable DAF, to enforce the jury waiver in the agreement, the Debtor will have to prove that signatory Grant Scott’s agreement to a transaction with signatory James Dondero was knowing, voluntary, and intelligent. *See RDO Fin. Servs. Co. v. Powell*, 191 F. Supp. 2d 811, 813-14 (N.D. Tex. 2002) (“Although the right of trial by jury in civil actions is protected by the Seventh Amendment to the Constitution, that right, like other constitutional rights, may be waived by prior written agreement of the parties. However, that waiver must be made knowingly and voluntarily, and courts will indulge every reasonable presumption against a waiver of that right. The federal standard for determining the validity of a contractual waiver of the right to a jury trial is thus whether the waiver was made in a knowing, voluntary, and intelligent manner.”); *Servicios Comerciales Lamosa, S.A. v. De La Rosa*, 328 F.Supp. 3d 598, 619 (N.D. Tex. 2018)

(denying motion to strike jury demand due to lack of negotiation and unequal bargaining power in the agreement including the jury waiver, rendering it not knowing, voluntary, and intelligent); *see also Jennings*, 154 F.3d 545 (calling the jury-trial right too important “to find a knowing and voluntary relinquishment of the right in a doubtful situation,” deeming the right fundamental and requiring courts to “indulge every reasonable presumption against waiver,” noting the importance of the right in our nation’s history and jurisprudence as necessitating “that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care”). Debtor cannot meet its burden of proof in light of its firm, contrary position and factual representations to this Court regarding Scott’s *lack* of independence in his dealings with Dondero, and it is thus estopped from attempting to make the required showing in contradiction of those representations. The agreement carves out from its general exculpation clause any claims that the parties do not have the “ability to waive” any rights provided in connection with the Advisers Act. *See* Second Amended Agreement § 11(j). This is an explicit reference to the unwaivable fiduciary duties that arise by operation of law under the Advisers Act, for example which the agreement plainly cannot extinguish, and thus, undoes the jury waiver.

Fifth, the Second Amended Agreement ***requires*** Movants to file their action in the district court and prohibits filing it anywhere else. *See* Second Amended Agreement § 14(f) (“The Parties hereby agree that any action, claim, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including claims sounding in contract, equity, tort, fraud and statute (“Dispute”) shall be submitted **exclusively** to the U.S. District Court for the Northern District of Texas.”) (parens in original, bolding added). In combination with these contractual provisions, the gatekeeper order that is the subject of Movants’ Motion for Modification effectively precludes the Charitable DAF from

bringing its action in any other jurisdiction. Therefore, not only does the Second Amended Agreement's jury waiver not undermine the core arguments raised in the Motion for Modification, its other provisions reinforce them.

In summary, Movants respectfully contend that the fact that the Charitable DAF may have waived a jury right to some of its claims against Highland, it changes nothing of the core bases for bringing the Motion for Modification.

D. THIS COURT LACKS JURISDICTION OVER ANY PROCEEDING REGARDING MOVANTS' SEVENTH AMENDMENT JURY RIGHTS UNDER 28 U.S.C. § 157(d)

To the extent that this Court intends to make any decision regarding Movants' right to a jury trial—which it has not been asked to do and need not do for the already denied Motion brought by Movants here—Movants respectfully move to withdraw the reference under 28 U.S.C. § 157(d) and (e). Deciding whether Movants have a right to a jury will require consideration of the Advisers Act, the RICO statute, and the Seventh Amendment, all of which are federal laws regulating and affecting interstate commerce or constitutional provisions.

And this Court cannot reach those issues here, in a proceeding under the Bankruptcy Code, without considering this Court's previous rulings, the laws that authorize them, and the provisions of 28 U.S.C. § 959(a). *Accord Levine v. Blake (In re Blake)*, 400 B.R. 200, 206 (Bankr. S.D. Tex. 2008) (withdrawing the reference where Seventh Amendment jury trial at issue—stating that “no further ‘cause’ ... must be shown” because “[a] bankruptcy court may not conduct a jury trial without the consent of all parties.”).

Dated: July 8, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

Texas Bar No. 24058096

Jonathan Bridges

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

Counsel for Movants

EXHIBIT 1

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

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, June 8, 2021
) 9:30 a.m. Docket
Debtor.)
) - SHOW CAUSE HEARING (2255)
) - MOTION TO MODIFY ORDER
) AUTHORIZING RETENTION OF
) JAMES SEERY (2248)
) - MOTION FOR ORDER FURTHER
) EXTENDING THE PERIOD WITHIN
) WHICH DEBTOR MAY REMOVE
) ACTIONS (2304)

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

APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 THE COURT: I can potentially do something, you know,
2 10:00 o'clock Friday morning. Other than that, then you've
3 got to wait a while, because I have a seven-day trial, live
4 human beings in the courtroom starting next Monday. And so my
5 point is mainly to tell you, as much as I would like to rule
6 very, very fast, it's going to be, it looks like, a couple of
7 weeks or so before I can give you a ruling on this.

8 MR. BRIDGES: Your Honor?

9 THE COURT: Yes?

10 MR. BRIDGES: May I? It's our motion. I would
11 propose, if counsel would agree, that we just submit it on the
12 papers.

13 THE COURT: Everybody good with that? I'm certainly
14 good with that.

15 MR. POMERANTZ: Your Honor, I'd like there to be
16 argument. I have a lengthy argument. I think I'd like to
17 address a number of the things that -- Mr. Bridges made his
18 argument today. Okay?

19 THE COURT: Okay.

20 MR. POMERANTZ: His deck, it was entitled, Motion to
21 Modify.

22 THE COURT: Okay.

23 MR. POMERANTZ: So that's very nice of him, but I
24 would like to make my argument.

25 THE COURT: Okay. Let's try to nail this down right

1 now. Friday at 10:00 o'clock, can we do the oral argument
2 WebEx?

3 MR. POMERANTZ: On that one, yes, Your Honor.

4 THE COURT: On that one? Everybody good? Okay. So
5 we'll come back Friday, 10:00 o'clock, WebEx, for that motion.

6 You know, I'm going to say a couple of things where --
7 I've leaned toward thinking this is a pretty simple motion
8 before me, the motion for contempt, but when people offer into
9 evidence documents, I read your documents. Okay? That's my
10 duty. And so I have however many exhibits I admitted today
11 that I am going to look at and see how they sway me one way or
12 another on this issue. But I will tell you that my gut is
13 there has been contempt of court. Okay? I don't see anything
14 ambiguous at all about Paragraph 5 of my July 16th, 2020
15 order. Somebody may think I overreached, but if that was the
16 case, someone should have argued at the time I was
17 overreaching. Someone should have appealed the order. And I
18 think it's a *Shoaf/Espinosa* problem at this point for anyone
19 to argue about the enforceability of that order.

20 I think there's nothing ambiguous in the wording. Pursue
21 is not ambiguous. There's nothing confusing about the
22 requirement that any entity who wanted to sue or pursue a
23 claim, you know, commence claim, pursue a claim against Mr.
24 Seery, had to come to the Bankruptcy Court. Standard-fare
25 gatekeeping order.

1 THE COURT: I guess I'll see you Thursday on the
2 WebEx. Thank you.

3 THE CLERK: All rise.

4 (Proceedings concluded at 6:00 p.m.)

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CERTIFICATE

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

23 **/s/ Kathy Rehling**

06/09/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

EXHIBIT 2

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

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3 In Re:) **Case No. 19-34054-sgj-11**
4) Chapter 11
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HIGHLAND CAPITAL
MANAGEMENT, L.P.,

Debtor.

Dallas, Texas
Friday, June 25, 2021
9:30 a.m. Docket

EXCERPT: MOTION FOR
MODIFICATION OF ORDER
AUTHORIZING RETENTION OF JAMES
P. SEERY, JR. DUE TO LACK OF
SUBJECT MATTER JURISDICTION
(2248)

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

WEBEX APPEARANCES:

13 For the Debtor: Jeffrey Nathan Pomerantz
14 PACHULSKI STANG ZIEHL & JONES, LLP
15 10100 Santa Monica Blvd.,
16 13th Floor
17 Los Angeles, CA 90067-4003
18 (310) 277-6910

17 For the Debtor: John A. Morris
18 PACHULSKI STANG ZIEHL & JONES, LLP
19 780 Third Avenue, 34th Floor
20 New York, NY 10017-2024
21 (212) 561-7700

20 For CLO Holdco, Ltd. and Jonathan E. Bridges
21 The Charitable DAF Fund, Mazin Ahmad Sbaiti
22 LP: SBAITI & COMPANY, PLLC
23 JP Morgan Chase Tower
24 2200 Ross Avenue, Suite 4900 W
25 Dallas, TX 75201
(214) 432-2899

24 For Get Good Trust and Douglas S. Draper
25 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
650 Poydras Street, Suite 2500
New Orleans, LA 70130
(504) 299-3300

1 that his advisor role obligated him to do as a manager of that
2 property?

3 The District Court suit really is only being used to
4 illustrate the issues that we're raising here. It's
5 important, it's timely to address those issues now because of
6 the District Court action, but that's an illustration of the
7 problems with the order. It is not exclusively that that
8 action is what we're attempting to address. Rather, the order
9 exculpating Mr. Seery from ordinary negligence liability and
10 similar liability is problematic, is contrary to the law. On
11 top of that, the Court is asserting jurisdiction over gross
12 negligence and intentional misconduct claims. To the extent
13 that 157(d) applies, it is problematic and contrary to law as
14 well.

15 THE COURT: Okay. We're occasionally getting some
16 breakup of your sound. So please -- I don't know what you can
17 do to adjust, but it was just now, and intermittently we get a
18 little bit of garbly. So if you could just say your last
19 sentence one more time, and we'll see if it improves.

20 MR. BRIDGES: Your Honor, I'm not sure I can say this
21 last sentence again.

22 THE COURT: Okay.

23 MR. BRIDGES: I was -- I was mentioning that the
24 District Court case is an illustration of our argument. Our
25 argument is not merely that the District Court case should be

1 exempted or excepted from the order. Our argument is that the
2 order is legally infirm and that the District Court case and
3 the claims there illustrate some of those infirmities, but
4 that the infirmities go beyond just what's at issue in the
5 District Court case.

6 In sum, there are four problems with the order that render
7 parts of it legally infirm. It deprives the right of a jury
8 trial -- in fact, of any trial -- in contravention of 959(a)
9 for some causes of action.

10 It asserts jurisdiction -- two, it asserts jurisdiction
11 over claims that are subject to the mandatory withdrawal of
12 the reference provision (garbled) 157(d).

13 And three, it lacks the specificity required to discharge
14 future claims under *Applewood*.

15 Finally, Your Honor, number four, the order relies on the
16 *Barton* doctrine, which doesn't apply and which 959(a) creates
17 an exception to.

18 Movants respectfully submit the order should be modified
19 for those reasons.

20 MR. SBAITI: Tell him Mark Patrick is here, for the
21 record.

22 THE COURT: All right. I have a couple of follow-up
23 questions for you. I want to drill down on the issue of your
24 client not having appealed the July 2020 order. Or the
25 HarbourVest settlement order, for that matter. Tell me as

1 Well, what my brain is thinking about here is, of the
2 umpteen agreements I've seen -- more than umpteen -- of the
3 many, many agreements I've seen over time in this case, so
4 often there's a waiver of jury trial rights, as I recall, as
5 well as an arbitration clause. I just was curious, hmm, you
6 know, you talked a lot about your clients' jury trial rights:
7 do we know that these agreements have not waived those?

8 MR. BRIDGES: Your Honor, I think I can answer that
9 by the end of our hearing. I don't have an answer off the top
10 of my head. What I can tell you is a jury right has been
11 demanded in the federal court complaint, which is in evidence,
12 and that opposing counsel has brought no evidence indicating
13 that they have the defense of our having waived the right to a
14 jury trial here.

15 THE COURT: Okay. Well, I just --

16 MR. BRIDGES: Or arbitra...

17 THE COURT: -- would think that you would know that.
18 Does anyone know that on the Debtor's side off the top of your
19 head?

20 MR. POMERANTZ: I do not, Your Honor.

21 THE COURT: Uh-huh.

22 MR. POMERANTZ: And to Mr. Bridges' last point, we
23 have filed a motion to dismiss. We have not answered the
24 complaint. So any time to object to their jury trial right
25 would be in the context of the answer. So the implication

1 right to a trial, a jury trial.

2 THE COURT: Well, you mentioned it again, jury trial
3 rights. Do you have any argument --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- of why that hasn't flown out the
6 window?

7 MR. BRIDGES: Yes, Your Honor. I am told that
8 Section 14(f) that counsel for the Debtor referred to is not a
9 waiver of jury rights at all. It is an arbitration agreement.
10 Your Honor is probably familiar how arbitration agreements
11 work, is that they need not be elected. They need not be
12 invoked by the parties. When they are, they create a
13 situation where arbitration may be required. But a waiver of
14 a jury right outside of arbitration is not part of this
15 arbitration clause, or of any. The issue is not briefed or in
16 evidence before the Court. We're relying on representations
17 of counsel as to what that provision contains. That Mr. Seery
18 wasn't even a party to that agreement, the advisory agreement,
19 with the Charitable DAF. The arbitration agreement is subject
20 to defenses that are not at issue here before the Court. That
21 Movants' rights, their contractual rights to invoke the
22 arbitration clause, also appear to be terminated by the
23 orders' assertion of sole jurisdiction in this matter.

24 Your Honor, yes, our jury rights survive Section 14(f) in
25 the advisory agreement with the DAF for all of those potential

1 reasons.

2 On top of that, it doesn't go to all of our causes of
3 action. It goes to the contract cause of action. And to the
4 extent they can argue that the other claims are subject to
5 arbitration, that also is a defense and -- defensible and
6 complex issue requiring the application of the Federal
7 Arbitration Act, requiring consideration of the Federal
8 Arbitration Act, which this Court doesn't have jurisdiction to
9 do under 157(d).

10 THE COURT: What? Repeat that.

11 MR. BRIDGES: Yes. This Court does not have
12 jurisdiction to determine whether or not arbitration --
13 arbitration is enforceable due to the mandatory withdrawal of
14 the reference provisions of 157(d).

15 THE COURT: That's just not consistent with Fifth
16 Circuit authority. *National Gypsum*. What are some of these
17 other arbitration cases? I've written an article on it. I
18 can't remember them. That's just not right. Bankruptcy
19 courts look at arbitration clauses all the time. Motions to
20 compel arbitration.

21 MR. BRIDGES: Your Honor, under 157(d), in the
22 circumstances of this case, if the Court is going to take into
23 consideration an arbitration clause under the Federal
24 Arbitration Act, when that clause is not in evidence and is
25 not before the Court, then Movants respectfully move to

1 hereby. Each party certifies and acknowledges that no
2 representative of the owner of the other party has represented
3 expressly or otherwise that the other party won't seek to
4 enforce the foregoing waiver in the event of a legal action.
5 It has considered the implications of this waiver, it makes
6 this waiver knowingly and voluntarily, and it has been induced
7 to enter into this agreement by, among other things, the
8 mutual waivers and certifications in this section.

9 Your Honor, I will forgive Mr. Bridges. I assume he just
10 did not read that. But to represent to the Court that that
11 language does not contain a jury trial waiver is -- is just
12 wrong.

13 THE COURT: All right. I'm going to stop right
14 there. And you were reading from the Second Amended and
15 Restated Shared Services Agreement between Highland --

16 MR. POMERANTZ: Not shared services. I'm reading
17 from the Second Amended and Restated Investment Advisory
18 Agreement --

19 THE COURT: Investment --

20 MR. POMERANTZ: -- between the Charitable DAF, the
21 Charitable DAF GP, and Highland Capital Management. The
22 agreement whereby the Debtor was the investment advisor to the
23 Charitable DAF Fund and the Charitable DAF GP.

24 THE COURT: All right. Well, Mr. Bridges, I'm going
25 to bounce quickly back to you. This is your chance to defend

1 your honor.

2 MR. BRIDGES: Yeah, we're -- we're looking at a
3 different agreement, where -- where literally the words that
4 were read to you are not in the agreement in front of us and
5 it is news to me. So, Your Honor, this is a problem --

6 THE COURT: What is the agreement you're looking at?

7 MR. BRIDGES: It is the Amended -- I assume that
8 means First Amended -- Restated Advisory Agreement.

9 MR. POMERANTZ: Your Honor, we are happy to file this
10 agreement with the Court so the Court has the benefit of it in
11 connection with Your Honor's ruling.

12 THE COURT: Okay. I would like you to do that. Uh-
13 huh.

14 MR. BRIDGES: I'd like -- I'd like to request -- I'll
15 withdraw that.

16 THE COURT: Okay. Go on, Mr. Pomerantz.

17 MR. POMERANTZ: Mr. Bridges, if you could put us on
18 mute. If you could put us on mute, Mr. Bridges, so I don't
19 hear your feedback. Thank you.

20 Mr. Bridges also complains about the language "to the
21 extent permissible by law." As Your Honor knows and as has
22 been my practice over 30 years, that language is probably in
23 every plan where there's a retention of jurisdiction: to the
24 extent permissible by law. And Mr. Bridges says that this
25 will create ambiguity in the order that couldn't be enforced.

1 THE COURT: All right. Here's what we're going to
2 do. We've been going a very long time. I'm going to take a
3 break to look through these exhibits, see if there's anything
4 in there that I haven't looked at before and that might affect
5 the decision here. So we will come back at 3:00 o'clock
6 Central Time -- it's 2:22 right now -- and I will give you my
7 bench ruling on this. All right.

8 So, Mike, they can all stay on the line, right?

9 Okay. You can stay on, and we'll be back at 3:00 o'clock.

10 THE CLERK: All rise.

11 (A recess ensued from 2:22 p.m. to 3:04 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated. All right.
14 Everyone presented and accounted for. We're going back on the
15 record.

16 MR. POMERANTZ: Your Honor, before you start, this is
17 Jeff Pomerantz. We had sent to your clerk, and hopefully it
18 got to you, a copy of the Second Amended and Restated
19 Investment Advisory Agreement. We also copied Mr. Sbaiti with
20 it as well. And we would also like to move that into
21 evidence, just so that it's part of the Court's record.

22 THE COURT: All right.

23 MR. BRIDGES: We would object to that, Your Honor.
24 We haven't had an opportunity to even verify its authenticity
25 yet.

1 annoyance or anything like that. I guess what I'm trying to
2 do is I don't want anyone to mistake the delay in ruling on
3 the contempt motion to mean I'm just not that -- you know, I'm
4 not prioritizing it, other things are more serious to me or
5 important to me, or I'm going to take two months to get to it.
6 It's literally been I've been in trial almost all day long
7 every day since you were here. But trust me, I'm about as
8 upset as upset can be about what I heard on June 8th, and I'm
9 going to get to that ruling, and I know what I'm going to do.
10 And, well, like I said, it's just a matter of figuring out
11 dollars and whom, okay? There's going to be contempt. I just
12 haven't put it on paper because I've been in court all day and
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20 CERTIFICATE

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

23 **/s/ Kathy Rehling**

06/29/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

EXHIBIT 3

SUBSCRIPTION AND TRANSFER AGREEMENT

FOR ORDINARY SHARES

**HIGHLAND CLO FUNDING, LTD.
 (the “Fund”)**

This Subscription and Transfer Agreement, dated as of November 15, 2017 (this “**Subscription and Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), CLO Holdco, Ltd. (the “**Existing Shareholder**”) and each of HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., Highland Capital Management, L.P., Lee Blackwell Parker, III, Quest IRA, Inc., fbo Lee B. Parker, III, Acct. # 3058311, Quest IRA, Inc., fbo Hunter Covitz, Acct. # 1469811, Quest IRA, Inc., fbo Jon Poglitsch, Acct. # 1470612, Quest IRA, Inc., fbo Neil Desai, Acct. # 3059211 (collectively, the “**New Shareholders**” and each a “**New Shareholder**” and together with the Existing Shareholder, the “**Shareholders**”).

Reference is made to the Offering Memorandum, dated November 15, 2017 (the “**Offering Memorandum**”) relating to the Fund in connection with the issue of Placing Shares in the Fund. Capitalised terms not specifically defined in this Subscription and Transfer Agreement have the meanings set out in the section of the Offering Memorandum.

A. TRANSFER OF EXISTING SHARES

The Existing Shareholder hereby transfers and sells currently existing Shares to the New Shareholders, and the New Shareholders hereby accept and buy Shares at \$1.02535 per Share, which is based on the NAV of the Fund as of September 30, 2017, adjusted with respect to a dividend of \$9,000,000 on October 10, 2017, and a buyback of the Shares from Acis Capital Management, L.P. for an aggregate purchase price of \$991,180.13 on October 24, 2017 (the “**Adjusted NAV**”), such that the New Shareholders and Existing Shareholder will hold currently existing Shares on a *pro rata* basis as set forth below (the percent of Shares with respect to each Shareholder, its “**Share Percentage**”).

Name	Immediately prior to the Placing		Immediately following the Placing	
	Number of Shares	Share Percentage	Number of Shares	Share Percentage
CLO Holdco, Ltd.	143,454,001.00	100.00%	70,314,387.44	49.02%
HarbourVest Dover Street IX Investment L.P.	0.00	0.00%	50,917,791.20	35.49%
HarbourVest 2017 Global Fund, L.P.	0.00	0.00%	3,478,649.09	2.42%
HarbourVest 2017 Global AIF L.P.	0.00	0.00%	6,957,226.48	4.85%
HV International VIII Secondary L.P.	0.00	0.00%	9,317,699.94	6.50%
HarbourVest Skew Base AIF L.P.	0.00	0.00%	1,034,136.77	0.72%
Highland Capital Management, L.P.	0.00	0.00%	898,708.98	0.63%
Lee Blackwell Parker, III	0.00	0.00%	94,173.23	0.07%
Quest IRA, Inc., fbo Lee B. Parker, III, Acct. # 3058311	0.00	0.00%	58,798.51	0.04%
Quest IRA, Inc., fbo Hunter Covitz, Acct. # 1469811	0.00	0.00%	239,018.34	0.17%
Quest IRA, Inc., fbo Jon Poglitsch, Acct. # 1470612	0.00	0.00%	95,607.34	0.07%
Quest IRA, Inc., fbo Neil Desai, Acct. # 3059211	0.00	0.00%	47,803.67	0.03%

Name	Immediately prior to the Placing		Immediately following the Placing	
	Number of Shares	Share Percentage	Number of Shares	Share Percentage
TOTAL:	143,454,001.00	100.00%	143,454,001.00	100.00%

The transfer of the Shares as referred to herein shall be effective as of the date hereof. Payment will take place by wire transfer to the bank account designated by the Existing Shareholder in writing to New Shareholders.

The Existing Shareholder hereby agrees to indemnify the New Shareholders and their affiliates and their respective officers, directors, partners, members, employees, agents, successors and assigns, from and against any and all losses, damages, claims, suits, proceedings, liabilities, fees, costs and expenses (including settlement costs, interest, penalties, reasonable attorneys’ fees and any reasonable legal or other expenses for investigation or defense of any actions or threatened actions) (collectively, the “**Losses**”) which may be imposed, sustained, incurred or suffered or asserted as a result of, relating to or arising out of (i) any inaccuracy in or breach of any representation or warranty of Existing Shareholder made by it under any documents or agreements in connection with the Shares, (ii) any actions, suits, litigations, arbitrations, proceedings, investigations or claims against the New Shareholders or the Company which arise, accrue or relate to the period prior to the date hereof, (iii) any tax, fee or other governmental charge attributable to the ownership by Existing Shareholder of the Shares prior to the date hereof or the sale by Existing Shareholder of the Shares pursuant to this Subscription and Transfer Agreement and (iv) any and all actions, suits, litigations, arbitrations, proceedings, investigations, claims or liabilities of whatever nature arising out of any of the foregoing. Notwithstanding anything herein to the contrary, the term “**Losses**” shall not include any indirect, special, consequential or punitive damages or any lost profits or diminution in value.

B. SUBSCRIPTION FOR PLACED SHARES

Application and Subscription for Ordinary Shares

The Shareholders hereby irrevocably commit to purchase \$153,000,000.00 of Ordinary Shares from the Fund, *pro rata* alongside the Existing Shareholder based upon its Share Percentage as set forth below, at a price per Ordinary Share determined in reference to the most recent quarterly determined net asset value of the Fund, to be settled from time to time during the Investment Period.

Name	Subscription Commitment	
	Commitment Amount	Share Percentage
CLO Holdco, Ltd.	\$74,993,386.07	49.02%
HarbourVest Dover Street IX Investment L.P.	\$54,306,063.26	35.49%
HarbourVest 2017 Global Fund L.P.	\$3,710,132.22	2.42%
HarbourVest 2017 Global AIF L.P.	\$7,420,187.96	4.85%
HV International VIII Secondary L.P.	\$9,937,736.71	6.50%
HarbourVest Skew Base AIF L.P.	\$1,102,952.34	0.72%
Highland Capital Management, L.P.	\$958,512.64	0.63%
Lee Blackwell Parker, III	\$100,439.89	0.07%
Quest IRA, Inc., fbo Lee B. Parker III, Acct. # 3058311	\$62,711.20	0.04%

Name	Subscription Commitment	
	Commitment Amount	Share Percentage
Quest IRA, Inc., fbo Hunter Covitz, Acct. # 1469811	\$254,923.57	0.17%
Quest IRA, Inc., fbo Jon Poglitsch, Acct. # 1470612	\$101,969.43	0.07%
Quest IRA, Inc., fbo Neil Desai, Acct. # 3059211	\$50,984.71	0.03%
TOTAL:	\$153,000,000.00	100.00%

The Portfolio Manager may call such Shares for settlement from time to time on a *pro rata* basis (based on the Shareholder’s respective Share Percentages) upon 10 Business Days’ written notice to the Shareholders (the “**Settlement Notice**”) to the Shareholders setting forth:

- (i) the aggregate amount of Shares to be settled by each Shareholder based upon its Share Percentage;
- (ii) the price per Share determined in reference to the most recent quarterly determined net asset value of the Fund and the aggregate purchase price for each Shareholder;
- (iii) the date by which such settlement must be made (the “**Settlement Date**”), which shall be at least ten (10) Business Days following the Settlement Notice by a Shareholder, unless agreed otherwise by each Shareholder;
- (iv) the bank account or collateral account, as applicable, to which such the purchase price for the Shares settled is to be paid.

Each Shareholder shall pay to the Fund, by wire transfer of immediately available funds, in each case in U.S. Dollars, to such account or accounts as shall be designated in the Settlement Notice for such settlement on or prior to the Settlement Date as specified in such Settlement Notice, the U.S. Dollar amount specified for such Shareholder in such Settlement Notice.

Upon the expiration of the Investment Period, all Shareholders will be released from any further obligation with respect to purchase Shares under this Agreement, except to the extent necessary to:

- (i) complete, no later than 180 days after the expiration of the Investment Period, the purchase of Shares pursuant to written commitments, letters of intent or similar contractual commitments that were in process as of the end of the Investment Period; and
- (ii) fund any indebtedness of the Fund permitted hereunder incurred prior to the end of the Investment Period (including to repay outstanding indebtedness under any Warehouse Loan Facilities).

C. Shareholder Subscription Supplement

Each Shareholder has had an adequate opportunity to review the Offering Memorandum, and the Shareholder will have received, and will have had an adequate opportunity to review the contents of, the Offering Memorandum prior to the purchase of Shares on the Closing Date and settlement of their respective commitments, and such purchase and/or funding by such Shareholder shall be deemed to be confirmation by such Shareholder that it has received, reviewed and approved of the Offering Memorandum.

Each Shareholder hereby makes the representations and warranties to each of the Fund and the Registrar set forth under “*Placing Arrangements—Purchase and Transfer Restrictions—Subscriber and Shareholder warranties*” in the Offering Memorandum.

All information which the Shareholder has provided to the Fund, the Registrar, the Portfolio Manager or any other Person in connection with the transactions contemplated by this Agreement, including the information in the Shareholder’s representation supplement in the form attached hereto as Exhibit A (the “**Shareholder Subscription Supplement**”), is correct and complete as of the date hereof, and the Shareholder agrees to notify the Fund, the Registrar, the Portfolio Manager immediately if any representation, warranty or information contained in this Agreement, including its Shareholder Subscription Supplement, becomes untrue. The Shareholder agrees to provide such information and execute and deliver such documents as the Fund, the Portfolio Manager may reasonably request from time to time to verify the accuracy of the Shareholder’s representations and warranties herein or to comply with any law or regulation to which the Fund, the Portfolio Manager may be subject.

D. Representations of the Existing Shareholder

The Existing Shareholder hereby makes to each of the New Shareholders the representations and warranties in Exhibit B hereto.

E. Representations of the Fund

The Fund hereby makes to each of the New Shareholders the representations and warranties in Exhibit C hereto.

F. Several Liability of the New Shareholders

The representations, warranties, covenants, agreements and obligations of the New Shareholders under this Subscription and Transfer Agreement shall be several and not joint. Nothing contained in this Subscription and Transfer Agreement shall be construed to create as among the New Shareholders an association, trust, partnership, joint venture, association taxable as a corporation or other entity for the conduct of any business for profit, or impose a trust or partnership duty, obligation or liability on, or with regard to any New Shareholder, nor shall any New Shareholder have the right or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of any such other New Shareholder without the prior written consent of such other New Shareholder.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date first written above.

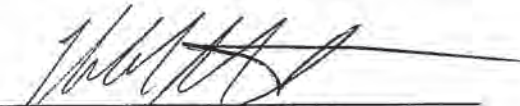
CLO HOLDCO, LTD.

By: _____
Name: Grant Scott
Title: Director




**HARBOURVEST DOVER STREET IX
INVESTMENT L.P.**

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manger

By: 
Name: Michael J. Pugatch
Title: Authorised Person

HARBOURVEST 2017 GLOBAL AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manger


By: 
Name: Michael J. Pugatch
Title: Authorised Person

HARBOURVEST 2017 GLOBAL FUND L.P.

By: HarbourVest 2017 Global Associates L.P.,
its General Partner

By: HarbourVest GP LLC,
its General Partner

By: HarbourVest Partners, LLC,
its Managing Member

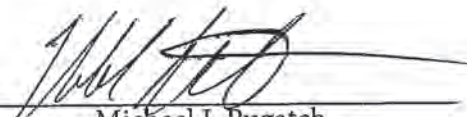
By: 
Name: Michael J. Pugatch
Title: Managing Director

**HV INTERNATIONAL VIII SECONDARY
L.P.**

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

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: 
Name: Michael J. Pugatch
Title: Managing Director

HARBOURVEST SKEW BASE AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorised Person

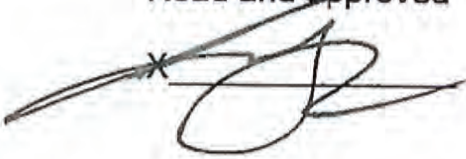
LEE BLACKWELL PARKER, III,




SIGNATURE PAGE TO SUBSCRIPTION AND TRANSFER AGREEMENT

004821

Read and approved



QUEST IRA, Inc.
fbo Lee B. Parker III, Acct. # 3058311

By: 
Name: Emmanuel Madiel
Title: Transactions Supervisor

QUEST IRA, Inc.
fbo Hunter Covitz, Acct. # 1469811

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Jon Poglitsch, Acct. # 1470612

By: _____
Name: _____
Title: _____


QUEST IRA, Inc.
fbo Neil Desai, Acct. # 3059211

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Lee B. Parker III, Acct. # 3058311

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Hunter Covitz, Acct. # 1469811

By: 
Name: Emmanuel Maitl
Title: transcript supervisor

Read & Approved



QUEST IRA, Inc.
fbo Jon Poglitsch, Acct. # 1470612

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Neil Desai, Acct. # 3059211

By: _____
Name: _____
Title: _____


QUEST IRA, Inc.
fbo Lee B. Parker III, Acct. # 3058311


By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Hunter Covitz, Acct. # 1469811

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Jon Poglitsch, Acct. # 1470612

Read and Approved:
 11/7/17

By: 
Name: Emmanuel Nagel
Title: Transactions Supervisor

QUEST IRA, Inc.
fbo Neil Desai, Acct. # 3059211

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Lee B. Parker III, Acct. # 3058311

By: _____
Name: _____
Title: _____


QUEST IRA, Inc.
fbo Hunter Covitz, Acct. # 1469811

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Jon Poglitsch, Acct. # 1470612

By: _____
Name: _____
Title: _____

QUEST IRA, Inc.
fbo Neil Desai, Acct. # 3059211

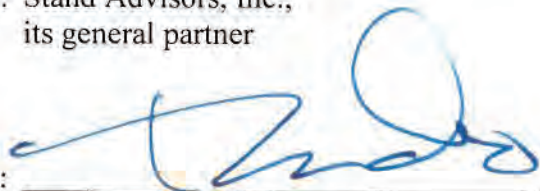
By: 
Name: Emmanuel Masei
Title: Transactions Supervisor

*Read and approved
Neil Desai*

HIGHLAND CAPITAL MANAGEMENT, L.P.,

By: Stand Advisors, Inc.,
its general partner

By: _____



Name: James Dondero
Title: President

ACKNOWLEDGED AND AGREED:

HIGHLAND CLO FUNDING, LTD.,
as the Fund

By: 

Name: William Scott

Title: Director

HIGHLAND HCF ADVISOR, LTD.,
as the Portfolio Manager

By: _____

Name: James Dondero

Title: President

ACKNOWLEDGED AND AGREED:

HIGHLAND CLO FUNDING, LTD.,
the Fund

By: _____
Name:
Title: Director

HIGHLAND HCF ADVISOR, LTD.,
the Portfolio Manager

By: _____
Name: James Dondero
Title: President



EXHIBIT A

SHAREHOLDER SUBSCRIPTION SUPPLEMENT

Each Shareholder, individually and separately for itself, hereby makes the following declarations to, and covenants and agreements with the Fund:

A. General Declarations

1. I/We hereby acknowledge that the Fund has the right to reject any application for Ordinary Shares. I/We hereby acknowledge that I/we have received and read the current Offering Memorandum (including the risk warnings contained therein) relating to the Fund and that this application is made subject to the terms of the Offering Memorandum and to the Memorandum and Articles of Incorporation of the Fund.
2. I/We hereby declare that the Ordinary Shares are not being acquired and will not be held in violation of any applicable laws.
3. I/We agree not to duplicate or to furnish particulars of the Offering Memorandum, or to divulge any of its contents, to any person other than our investment, legal or tax advisers (who may use the information contained in the Offering Memorandum solely for purposes relating to our investment in the Fund).
4. I/We hereby confirm that I/we shall be deemed to make, on a continuing basis, each of the statements contained herein unless I/we notify you to the contrary in relation to any Ordinary Shares I/we may hold or obtain at any time.
5. I/We hereby agree to indemnify and hold harmless the Fund, the Directors, the Portfolio Manager and the Administrator against any loss, liability, cost or expense (including without limitation legal fees, taxes and penalties) which may result directly or indirectly, from any misrepresentation or breach of any warranty, condition, covenant or agreement contained herein or in any other document delivered by the undersigned to the Fund.
6. [Reserved.]
7. I/We consent to our shareholding being disclosed to the Portfolio Manager or any other companies within the Portfolio Manager's group of affiliated companies.
8. I/We hereby authorise the Fund and the Administrator to retain all documentation provided by us in relation to our investment in the Fund for such period of time as may be required by Guernsey law, but not for less than six (6) years after the period of investment has ended.

C. Additional Declarations

9. I/We hereby confirm that I/we have the full right and power to make this application and invest in Ordinary Shares and all necessary corporate action has been taken to authorise this application and such investment.

D. Data Protection

10. I/We consent to personal information obtained in relation to us being handled by the Administrator, the Fund, or the Portfolio Manager and their delegates, agents or affiliates in accordance with the Data Protection (Bailiwick of Guernsey) Law 2001, as amended. Information in relation to us will be held, used, disclosed and processed for the purposes of

(a) managing and administering our holdings of Ordinary Shares in the Fund and any related account on an ongoing basis; (b) for any other specific purposes where the Shareholder has given specific consent to do so; (c) to carry out statistical analysis and market research; (d) to comply with any applicable legal or regulatory obligations including legal obligations under company law and anti-money laundering legislation; (e) for disclosure and transfer whether in Guernsey or elsewhere (including companies situated in countries outside of the European Economic Area which may not have the same data protection laws as in Guernsey) to third parties including our financial adviser (where appropriate), regulatory bodies, auditors, technology providers or to the Fund and its delegates and its or their duly appointed agents and any of their respective related, associated or affiliated companies for the purposes specified above; and/or (f) for other legitimate business interests of the Fund. I/We hereby acknowledge our right of access to and the right to amend and rectify our personal data, as provided herein. I/We understand that the Administrator is a data controller and will hold any personal information provided by us in confidence and in accordance with the Data Protection (Bailiwick of Guernsey) Law 2001, as amended. I/We consent to the recording of telephone calls that I/we make to and receive from the Administrator, the Fund or the Portfolio Manager and their delegates or duly appointed agents and any of their respective related, associated or affiliated companies for record keeping, security and/or training purposes. I/We consent to the Fund or the Portfolio Manager sending information about other investment services to us by letter, telephone or other reasonable means of communication. I/We understand that I/we have a right not to receive such information.

E. **United States Securities Act Compliance**

11. **You must check the box below and confirm your compliance with Regulation S or Rule 144A of the US Securities Act of 1933.**

The Purchaser represents, warrants and undertakes that it is either (i) a U.S. Person who is reasonably believed to be (x) a Qualified Institutional Buyer and a Qualified Purchaser, (y) an Accredited Investor and a Qualified Purchaser or (z) an Accredited Investor and a Knowledgeable Employee with respect to the Company and to whom the Company is privately placing a certain number of the Placing Shares in reliance on exemptions from registration under the U.S. Securities Act and the U.S. Investment Company Act or (ii) not a U.S. Person, it is acquiring the Shares in an offshore transaction meeting the requirements of Regulation S and it is not acquiring the Shares for the account or benefit of a U.S. Person.

The Purchaser represents, warrants and undertakes that neither it, its affiliates (as defined in Regulation 501 under the Securities Act), nor any persons acting on its or their behalf has engaged or will engage in any directed selling efforts (as defined in Regulation S) with respect to the Ordinary Shares.

The Purchaser acknowledges that the Ordinary Shares have not been and will not be registered under the Securities Act, and may not be offered or sold within the United States except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act. The Purchaser represents, warrants and undertakes that it has not offered or sold, and will not offer and sell any Ordinary Shares constituting part of its or their allotment within the United States except in accordance with Regulation S. Terms used in this paragraph have the meanings given to them by Regulation S.

F. Anti-Money Laundering Declarations

12. I/We acknowledge that measures aimed at the prevention of money laundering may require verification of our identity, address and source of the assets. I/We acknowledge that Ordinary Shares will not be issued until such time as the Administrator has received and is satisfied with all the information and documentation requested to verify our identity, address and source of the Assets. I/We acknowledge that the Administrator shall be held harmless and indemnified against any loss arising as a result of a failure to process our application for Ordinary Shares if such information and documentation as has been requested by the Administrator has not been provided by us or has been provided in incomplete form.

I/We acknowledge that the Fund or the Administrator on its behalf also reserves the right to refuse to make any distribution to an Ordinary Shareholder if any of the Directors of the Fund or the Administrator suspects or is advised that the payment of any distribution monies to such Ordinary Shareholder might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund, its Directors or the Administrator with any such laws or regulations in any relevant jurisdiction.

I/We understand and agree that the Fund prohibits the investment of funds by any persons or entities that are acting, directly or indirectly, (i) in contravention of any applicable laws and regulations, including anti-money laundering regulations or conventions, (ii) on behalf of terrorists or terrorist organisations, including those persons or entities that are included on the List of Specially Designated Nationals and Blocked Persons maintained by the US Treasury Department's Office of Foreign Assets Control (“**OFAC**”), as such list may be amended from time to time, (iii) for a senior foreign political figure, any member of a senior foreign political figure's immediate family or any close associate of a senior foreign political figure, unless the Fund, after being specifically notified by us in writing that I/we are such a person, conducts further due diligence, and determines that such investment shall be permitted, or (iv) for a foreign shell bank (such persons or entities in (i) - (iv) are collectively referred to as “**Prohibited Persons**”).

I/We represent, warrant and covenant that: (i) I/we are not, nor is any person or entity controlling, controlled by or under common control with us, a Prohibited Person, and (ii) to the extent I/we have any beneficial owners, (a) I/we have carried out thorough due diligence to establish the identities of such beneficial owners, (b) based on such due diligence, I/we reasonably believe that no such beneficial owners are Prohibited Persons, and (c) I/we hold the evidence of such identities and status and will maintain all such evidence for the earlier of at least five years from the date of our complete exit from or termination of the Fund.

If any of the foregoing representations, warranties or covenants ceases to be true or if the Fund no longer reasonably believes that it has satisfactory evidence as to their truth, notwithstanding any other agreement to the contrary, the Fund may be obligated to freeze our investment, either by prohibiting additional investments, suspending any dividends and/or segregating the assets constituting the investment in accordance with applicable regulations, or our investment may immediately be redeemed by the Fund, and the Fund may also be required to report such action and to disclose our identity to OFAC or other authority. In the event that the Fund is required to take any of the foregoing actions, I/we understand and agree that I/we shall have no claim against the Fund, the Portfolio Manager, the Administrator, and their respective affiliates, directors, shareholders, officers, employees and agents for any form of damages as a result of any of the aforementioned actions.

I/We understand and agree that any dividends paid to us will be paid to the same account from which our investment in the Fund was originally remitted, unless the Fund, in its sole discretion, agrees otherwise.

I/We agree to indemnify and hold harmless the Fund, the Portfolio Manager, the Administrator, and their respective affiliates, directors, shareholders, officers, employees and agents from and against any and all losses, liabilities, damages, penalties, costs, fees and expenses (including legal fees and disbursements) which may result, directly or indirectly, from any inaccuracy in or breach of any representation, warranty, covenant or agreement contained herein or in any other document delivered by the undersigned to the Fund.

Please complete the following:

Anti-Money Laundering verification requirements in accordance with The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007.

13. Measures aimed at the prevention of money laundering will, subject as set out below, require a subscriber to verify its identity and/or the source of the Assets to the Administrator. Depending on the circumstances of each application, the Administrator may accept as partial or complete verification of identity or of the source of the Assets evidence that the application is made either through a regulated financial intermediary or by a regulated financial institution, provided that in each case such intermediary/institution is domiciled in a country which has been prescribed by the Guernsey Financial Services Commission as having anti-money laundering regulations in place equivalent to those in force in Guernsey.

14. Please tick the following box, if appropriate:

We are a bank/provider of financial services or a nominee company/nominee account which is part of/used by a bank/provider of financial services authorised and regulated in Austria, Australia, Belgium, Bulgaria, Canada, Cayman Islands, Cyprus, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States.

YES

If answer is Yes, please supply the name of regulated entity and also the name of your regulator: _____

Note: the Fund or the Administrator may require further documentation to be provided upon written request.

15. **In the case of joint account holders, please supply the relevant documentation in respect of all holders.**

Before submitting your application, please ensure that you have satisfied the following requirements.

(A) Verification from private individuals:

<input type="checkbox"/>	A fully completed Shareholder Subscription Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	A certified* copy of the passport or national identity card of each applicant (bearing a photo), together with a recent original or certified* copy of a utility bill or other as proof of the residential address.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the applicant's own name.
<input type="checkbox"/>	A telephone number for the first named applicant.

(B) Verification from Financial Fund, Bank, Nominee that has completed paragraph 20:

<input type="checkbox"/>	A fully completed Shareholder Subscription Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	*Certified authorised signatory list.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the applicant's own name.
<input type="checkbox"/>	If you are acting on behalf of a third party, please contact the Administrator regarding further documentation requirements.

(C) Verification from trustees:

<input type="checkbox"/>	A fully completed Subscription and Transfer Agreement Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	List of names, date of birth, occupation and permanent addresses of all trustees/settlors and protectors.
<input type="checkbox"/>	*Certified copies of the above trustees'/settlors and protectors full identification as detailed per parts 1 for an individual and part 3 for a company.
<input type="checkbox"/>	A recent original or certified* copy of the Trust Deed, or extracts showing the name of the trust, the date of the settlement, the governing law, the name of the settlor, the name of the protector and the schedule of named beneficiaries.
<input type="checkbox"/>	*Certified authorised signatory list.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the trustee's own name.

(D) Verification from corporations:

	Public
<input type="checkbox"/>	A fully completed Shareholder Subscription Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	*Certified authorised signatory list.
<input type="checkbox"/>	If the company is a subsidiary of a listed parent, a structure diagram or other evidence of the relationship to the listed parent is to be provided.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the company's own name.
	Private
<input type="checkbox"/>	A fully completed Shareholder Subscription Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	A certified* copy of the company's certificate of incorporation, the memorandum & articles of association, or equivalent constitutive documents.
<input type="checkbox"/>	List of all directors' names, occupations, residential and business addresses and dates of birth.
<input type="checkbox"/>	Register of shareholders.
<input type="checkbox"/>	Identification as per individual investor (see part 1 above) for at least 2 directors and all shareholders holding a beneficial interest in the Fund of more than 25%.
<input type="checkbox"/>	Organisation Structure Diagram.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the company's own name.
<input type="checkbox"/>	A certified* copy of the passport or national identity card of each company employee authorised to deal on this account.
<input type="checkbox"/>	*Certified authorised signatory list.

(E) Verification for partnerships:

<input type="checkbox"/>	A fully completed Shareholder Subscription Supplement. If any information is not provided, we reserve the right to reject or delay the application until all information is complete.
<input type="checkbox"/>	A certified* copy of the partnership deed or agreement, or equivalent constitutive documents.

<input type="checkbox"/>	List of names, date of birth, occupation and permanent addresses of all partners.
<input type="checkbox"/>	*Certified copies of the above partners' identification as detailed per part (A) for an individual and part (D) for a company.
<input type="checkbox"/>	The initial and any subsequent investments must be received from an account held in the partnership's own name.
<input type="checkbox"/>	*Certified copy of the authorised signatory list.
<p>* All documents must be originals or certified as true copies.</p> <p>Copies of the requested documentation must be supplied in the form of a "certified true and exact copy". Certification of copies of documentation may be made by the following types of person (although this list is not exhaustive):- Solicitor/Notary Public/ Accountant/ Banker/Local Police Station or other professional persons. Documentation cannot be certified by the applicant whether that is an individual, trust, company or partnership. The person certifying the copy document must sign, date and officially stamp all the documentation, detailing in what capacity they are acting.</p>	

Entities not classified by 15(A) to 15(E) above, should contact the Administrator for documentation requirements.

G. Savings Directive Declarations

16. I/We acknowledge that details of my/our shareholding, including information provided by me/us for the purposes of my/our application for Ordinary Shares, may be required by law to be disclosed. Without prejudice to the generality of the foregoing, I/we consent to disclosure of my/our identity, shareholding and details of my/our income derived from that shareholding by the Administrator, the Portfolio Manager or any person deemed to be a "paying agent" for the purposes of the EC Council Directive 2003/48/EC of 3 June 2003 (the "**Savings Directive**") to any relevant tax authority.

I/We agree to provide such information as may be required (whether in this Shareholder Subscription Supplement or otherwise), and I/we consent to the disclosure of such information to such person or persons as may be deemed to be a "paying agent" for the purposes of the Savings Directive in order to permit them to comply with their obligations under that Directive. I/We undertake to ensure that such information as I/we provide is kept up-to-date and to notify to the Administrator any change to such information which may be relevant for the purposes of the Savings Directive as soon as reasonably practicable (including without limitation any change in my/our name, permanent residential address or registered office and/or the State in which I/we are resident for tax purposes).

I/We hereby agree to indemnify and hold harmless such person or persons as may be treated as a "paying agent" for the purposes of the Savings Directive against any loss, liability, cost or expense (including without limitation legal fees, taxes and penalties) which may result directly or indirectly from any failure by me/us to provide information or from any

information which I/we provide being incorrect or ceasing to be correct in accordance with this Shareholder Subscription Supplement.

I/We acknowledge that Ordinary Shares will not be issued until such time as the Administrator has received and is satisfied with all the information and documentation requested in order to comply with the terms of the Savings Directive. I/We acknowledge that the Company or the Administrator on its behalf also reserves the right to refuse to make any distribution to an Ordinary Shareholder where the Fund or the Administrator is not satisfied with the information and documentation that has been provided.

(Individuals only) **Please supply the following (to the extent not already provided pursuant to section 15(A) above):**

- (A) A certified** copy of your passport (or national identity card) showing the photograph and your date and place of birth and (if available) the Taxpayer Identification Number (“TIN”) allocated to you by the State in which you are resident for tax purposes;
- (B) Proof of your permanent residential address: for example an original or certified** copy of a recent utility bill (not more than 3 months’ old); and
- (C) If your passport (or national identity card) does not show your TIN, other documentary proof of identity showing your TIN (if available), such as a certificate of residence for tax purposes from the tax authorities of the state in which you are resident for tax purposes.

**All certified copies should be certified by a Notary Public, Solicitor, Company Registrar or any other person appropriately authorised under the laws of your country or domicile and should be certified or otherwise authenticated in such manner as would make them admissible in evidence in proceedings before a court.

(Non-natural persons only) **We declare as follows:**

- (D) We are a legal person not being an individual (and are not acting in a representative capacity on behalf of an individual*) and are not any of the following types of legal person:
- (E) Our profits are taxed under general arrangements for business taxation (corporation tax or similar).

Yes / No **

- (F) We are (a) an undertaking for collective investment in transferable securities eligible for recognition in accordance with EC Council Directive 85/611/EEC of 20 December 1985 or (b) have elected to be so treated for the purposes of the Savings Directive and enclose an original certificate from the State in which I/we are resident for tax purposes to that effect.

Yes / No **

Applicants who are unable to make this declaration should contact the Administrator.

** Please delete as appropriate.

G. Governing Law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Guernsey. The parties hereto hereby agree to submit to the non-exclusive jurisdiction of the Guernsey courts in connection herewith and further waive the right to object to an action brought in the Guernsey courts on the basis of an action brought in an inconvenient forum.

If you are unable to complete any part of this agreement please contact the Administrator on +44 (0) 1481 704543.

PLEASE COMPLETE THE FOLLOWING SECTION AND SIGN ON PAGE 13.

17. Details of applicant(s)

Name(s) of applicant(s)
Correspondence Address
.....
.....
Contact Details
Telephone Fax
Email

1. Registration details

Individual Shareholders

Shares may be registered in a single name or in up to four names, but only one address

Mr/Mrs/Ms/Title
Surname
First Name(s)
Address
.....
.....
Tel.....
Fax
Email.....

3. Registration details

Individual Shareholders

Shares may be registered in a single name or in up to four names, but only one address

Mr/Mrs/Ms/Title
Surname
First Name(s)
Tel.....
Fax
Email.....

2. Registration details

Individual Shareholders

Shares may be registered in a single name or in up to four names, but only one address

Mr/Mrs/Ms/Title
Surname
First Name(s)
Tel.....
Fax
Email.....

4. Registration details

Individual Shareholders

Shares may be registered in a single name or in up to four names, but only one address

Mr/Mrs/Ms/Title
Surname
First Name(s)
Tel.....
Fax
Email.....

Corporate Shareholders

Full title of body corporate
.....
Address
.....
.....
Tel.....
Fax
Email.....

Authorised Signatories

The Fund and Administrator are authorised to act on the written instructions of any person listed below until further notice.

	Name	Signature
1.
2.
3.
4.

Bank Details for Payments to Shareholders

Until further notice, funds may be wired to the Shareholder as follows:

Bank Name:
Bank Address:
.....
.....
ABA or CHIPS no:

Account Name:
Account Number:
IBAN Number:
For further credit:

PLEASE NOTE THAT NO THIRD PARTY PAYMENTS WILL BE UNDERTAKEN

To be valid, the Subscription and Transfer Agreement and Shareholder Subscription Supplement must be signed by each applicant. In the case of a partnership/firm application should be signed by all the partners/proprietors. In the case of a corporation, applications under the Subscription and Transfer Agreement should be executed under seal or signed by a duly authorised signatory provided that a certified copy of the authority authorising the signatory and an authenticated list of signatories accompanies the application. If this application is signed under power of attorney, such power of attorney or a duly certified copy thereof must accompany the Subscription and Transfer Agreement and this Shareholder Subscription Supplement.

PLEASE SIGN BELOW

DECLARATION - We declare that the information contained in this form and the attached documentation, if any, is true and accurate to the best of our knowledge and belief.

Signature of all duly authorised signatories

- 1. Name Date
- 2. Name Date
- 3. Name Date
- 4. Name Date

Notes

- Terms defined in the Offering Memorandum have the same meaning in the Subscription and Transfer Agreement and this Shareholder Subscription Supplement.
- The Shareholder Subscription Supplement may be returned to the Administrator by facsimile provided that the original must be received by the Administrator within twenty (20) calendar days after 15 November 2017.
- No Ordinary Shares will, unless the Directors otherwise determine, be issued unless and until the Assets have been received by or on behalf of the Fund. Once the Assets are received, the Directors may issue the shares.
- The relevant Bank Instruction Letter must be completed for the purposes of transferring cash funds, as applicable. Your bank should also be instructed to fax the Administrator with details of the transfer it is making.
- An acknowledgement will be sent to the applicant on acceptance of the application no later than two Business Days after 15 November 2017.
- Once completed applications have been received by the Administrator, they are irrevocable.
- All the Ordinary Shares will be registered shares and will only be issued in bookstock form, meaning that a Shareholder's entitlement will be evidenced by an entry in the Fund's register of Shareholders, as maintained by the Administrator, and not by a share certificate.
- Signatories may be required to produce evidence of authority.
- The Administrator reserves the right to retain the Subscription and Transfer Agreement and Shareholder Subscription Supplements and any surplus application monies as well as the right to reject an application or to treat as valid any applications which do not fully comply with the terms and conditions of the application. If any application is not accepted, the amount paid with regard to that application will be returned to the applicant, without interest (if any), by telegraphic transfer to the bank account from which such amounts were originally remitted at the applicant's risk. Any interest on any amount held, pending acceptance of an application, accrues for the account of the Fund.

BANK INSTRUCTION LETTER

**USE THIS LETTER IN CONJUNCTION WITH APPLICATIONS FOR
ORDINARY SHARES**

To: The Manager

Name of Financial Institution.....

Address.....

.....

Branch Number/Sort Code.....

Dear Sir,

To the debit of our account number [●] with you, please remit by direct transfer the total sum of \$[●] net of bank charges for value not later than 5:00 p.m. (Guernsey time) on [●] November 2017.

State Street (Guernsey) Limited

Swift Code: [●]

IBAN: [●]

A/C Number: [●] (\$ Account Number)

A/C Name: Highland CLO Funding, Ltd.

Please also fax the Administrator, State Street (Guernsey) Limited (attention: Shareholder Services) with the details of the transfer (fax number +44 (0) 1481 704543).

Entity name.....

(typed or in block capitals)

Account name.....

Date

Signature(s).....

EXHIBIT B

REPRESENTATIONS AND WARRANTIES OF THE EXISTING SHAREHOLDER

The Existing Shareholder hereby makes the following representations and warranties to each of the New Shareholders:

(a) Authorization. Existing Shareholder is an entity duly organized and validly existing in good standing under the laws of its jurisdiction of organization. Existing Shareholder has the requisite power and authority to enter into, execute and deliver this Subscription and Transfer Agreement and to perform all of the obligations to be performed by it hereunder. This Subscription and Transfer Agreement and the transactions contemplated hereby have been duly authorized, executed and delivered by it, and this Subscription and Transfer Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization and moratorium laws and other laws of general application affecting enforcement of creditors' rights generally.

(b) Title to Interest. Existing Shareholder owns all right, title and interests (legal and beneficial) in and to the Shares being sold to the New Shareholders, as of the date hereof free and clear of all liens other than restrictions under federal and state securities laws. Upon delivery of the Shares to the New Shareholders and payment to Existing Shareholder of the purchase price, the New Shareholders will acquire good and marketable title to the Shares free and clear of all liens other than restrictions under federal and state securities laws. Existing Shareholder was the original purchaser of the Shares from the Fund and has been the legal and beneficial owner of the Shares since that date.

(c) No Conflicts. Neither the execution and delivery of this Subscription and Transfer Agreement nor the performance or consummation of the transactions contemplated hereby or thereby by Existing Shareholder will conflict with, result in the breach of, constitute a default under or violation of, or accelerate the performance required by the terms of (i) any law, rule or regulation of any government or governmental or regulatory agency; (ii) any judgment, order, writ, decree, permit or license of any court or governmental or regulatory agency to which Existing Shareholder may be subject; (iii) any contract, agreement, commitment or instrument to which Existing Shareholder is a party or by which it or any of its assets is bound or (iv) Existing Shareholder's constituent documents or other governing instruments or constitute an event which, with the passage of time or action by a third party, would result in any of the foregoing. The execution and delivery of this Subscription and Transfer Agreement and the performance and consummation of the transactions contemplated hereby and thereby do not and will not require any registration, filing, qualification, consent or approval under any such law, rule, regulation, judgment, order, writ, decree, permit or license to which the Existing Shareholder may be subject or from or with any creditor of the Existing Shareholder, any court or other governmental authority having jurisdiction over it or its property or any third party. Neither the execution and delivery of this Subscription and Transfer Agreement nor the performance or consummation of the transactions contemplated hereby by Existing Shareholder will result in the creation of any lien upon any of the Shares.

EXHIBIT C

REPRESENTATIONS AND WARRANTIES OF THE FUND

The Fund hereby makes the following representations and warranties to each of the New Shareholders:

(d) Authorization. The Fund is an entity duly organized and validly existing in good standing under the laws of its jurisdiction of organization. The Fund has the requisite power and authority to enter into, execute and deliver this Subscription and Transfer Agreement and to perform all of the obligations to be performed by it hereunder. This Subscription and Transfer Agreement and the transactions contemplated hereby have been duly authorized, executed and delivered by it, and this Subscription and Transfer Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization and moratorium laws and other laws of general application affecting enforcement of creditors' rights generally.

(e) No Conflicts. Neither the execution and delivery of this Subscription and Transfer Agreement nor the performance or consummation of the transactions contemplated hereby or thereby by the Fund will conflict with, result in the breach of, constitute a default under or violation of, or accelerate the performance required by the terms of (i) any law, rule or regulation of any government or governmental or regulatory agency; (ii) any judgment, order, writ, decree, permit or license of any court or governmental or regulatory agency to which the Fund may be subject; (iii) any contract, agreement, commitment or instrument to which the Fund is a party or by which it or any of its assets is bound or (iv) the Fund's constituent documents or other governing instruments or constitute an event which, with the passage of time or action by a third party, would result in any of the foregoing. The execution and delivery of this Subscription and Transfer Agreement and the performance and consummation of the transactions contemplated hereby and thereby do not and will not require any registration, filing, qualification, consent or approval under any such law, rule, regulation, judgment, order, writ, decree, permit or license to which the Existing Shareholder may be subject or from or with any creditor of the Existing Shareholder, any court or other governmental authority having jurisdiction over it or its property or any third party. Neither the execution and delivery of this Subscription and Transfer Agreement nor the performance or consummation of the transactions contemplated hereby by the Fund will result in the creation of any lien upon any of the Shares.

(f) Litigation. As of the date hereof (i) there are no actions, proceedings or investigations threatened or pending before any court or governmental authority, including without limitation the U.S. Securities and Exchange Commission or any state securities regulatory authority, against the Company or the Portfolio Manager that, if adversely determined, could have a material adverse effect on the Company or its investments and (ii) none of the Company or the Portfolio Manager has been found liable for any such violation in any such action, proceeding or investigation.

EXHIBIT 4

Between

CLO HOLDCO, LTD.

And

HARBOURVEST DOVER STREET IX INVESTMENT L.P.

And

HARBOURVEST 2017 GLOBAL AIF L.P.

And

HARBOURVEST 2017 GLOBAL FUND L.P.

And

HV INTERNATIONAL VIII SECONDARY L.P.

And

HARBOURVEST SKEW BASE AIF L.P.

And

HIGHLAND CAPITAL MANAGEMENT, L.P.

And

LEE BLACKWELL PARKER, III

And

QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311

And

QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811

And

QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612

And

QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211

And

HIGHLAND CLO FUNDING, LTD.

And

HIGHLAND HCF ADVISOR, LTD.

MEMBERS AGREEMENT RELATING TO THE COMPANY

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THIS AGREEMENT is made the 15th day of November 2017

BETWEEN

- (1) **CLO HOLDCO, LTD.** whose registered office address is at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands;
- (2) **HARBOURVEST DOVER IX INVESTMENT L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (3) **HARBOURVEST 2017 GLOBAL AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (4) **HARBOURVEST 2017 GLOBAL FUND L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (5) **HV INTERNATIONAL VIII SECONDARY L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (6) **HARBOURVEST SKEW BASE AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (7) **HIGHLAND CAPITAL MANAGEMENT, L.P.** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (8) **LEE BLACKWELL PARKER, III** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (9) **QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311** of 17171 Park Row #100, Houston, Texas 77084, USA
- (10) **QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811** of 17171 Park Row #100, Houston, Texas 77084, USA
- (11) **QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612** of 17171 Park Row #100, Houston, Texas 77084, USA
- (12) **QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211** of 17171 Park Row #100, Houston, Texas 77084, USA

(together the "**Members**") and

- (13) **HIGHLAND CLO FUNDING, LTD.**, with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**") and
- (14) **HIGHLAND HCF ADVISOR, LTD.**, whose registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

WHEREAS:

- (A) The Company is a limited company incorporated under the laws of the Island of Guernsey on 30 March 2015.
- (B) The Company has been established to provide its investors with exposure to CLO Notes on both a direct basis and indirect basis and senior secured loans on an indirect basis, through the use of the investments described in its investment policy as set forth in the Offering Memorandum dated 15 November 2017, the (the "**Offering Memorandum**"), subject to the restrictions set forth therein.

- (C) The Members are the owners of the entire issued capital of the Company.
- (D) The Parties are entering into this Agreement to regulate the relationship between them and the operation and management of the Company.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement, including the Schedule:

- 1.1 the following words and expressions shall have the following meanings, unless they are inconsistent with the context:

"Adherence Agreement" means the agreement under which a person agrees to be bound by the terms of this Agreement in the form substantially similar as set out in the Schedule;

"Advisers Act" shall mean the U.S. Investment Advisers Act of 1940, as amended from time to time, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder;

"Affiliate" means, with respect to a person, (i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person or (ii) any other person who is a director, officer or employee (a) of such person, (b) of any subsidiary or parent company of such person or (c) of any person described in clause (i) above. For the purposes of this definition, control of a person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such persons or (ii) to direct or cause the direction of the management and policies of such person whether by contract or otherwise. For purposes of this definition, the management of an account by one person for the benefit of any other person shall not constitute "control" of such other person and no entity shall be deemed an "Affiliate" of the Company solely because the administrator or its Affiliates serve as administrator or share trustee for such entity;

"Agreement" means this agreement together with the Schedule;

"Articles" means the articles of incorporation of the Company as amended from time to time;

"Business" means the business of the Company as described in Recital (B);

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for ordinary banking business in Guernsey;

"Directors" means the directors of the Company from time to time;

"CLO Holdco" means CLO Holdco, Ltd. (or any permitted successor to the business of CLO Holdco, Ltd. or interest in the Company);

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Directors" means the directors of the Company from time to time;

"Dover IX" means HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or any interest in the Company);

"DOL" shall mean the U.S. Department of Labor, or any governmental agency that succeeds to the powers and functions thereof.

"DOL Regulations" shall mean the regulations of the DOL included within 29 C.F.R. section 2510.3-101.

"Dover IX" shall mean HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or interest in the Company);

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time;

"ERISA Member" shall mean a Member that (a) is a "benefit plan investor" (as such term is defined in the DOL Regulations as modified by section 3(42) of ERISA) subject to the fiduciary responsibility provisions of part 4 of title I of ERISA or is a "plan" (as such term is defined in section 4975(e) of the Code) subject to section 4975 of the Code or (b) is designated as an ERISA Member by the General Partner in writing on or before the date at which such ERISA Member is admitted to the Company;

"HarbourVest Entities" means: Dover IX; HarbourVest 2017 Global AIF L.P.; HarbourVest 2017 Global Fund L.P.; HV International VIII Secondary L.P.; and HarbourVest Skew Base AIF L.P. (or any of their respective permitted successors to their businesses or interests in the Company);

"Highland Principals" means: Highland Capital Management, L.P.; Lee Blackwell Parker, III, Quest IRA, Inc., fbo Lee B. Parker III Acct. # 3058311; Quest IRA, Inc., fbo Hunter Covitz Acct. # 1469811; Quest IRA, Inc., fbo Jon Poglitsch Acct. # 1470612; Quest IRA, Inc., fbo Neil Desai Acct. # 3059211 (or any of their respective permitted successors to their businesses or interests in the Company);

"Law" means the Companies (Guernsey) Law, 2008, as amended;

"Member" means a person whose name is from time to time entered in the register of members of the Company as the holder of shares in the Company;

"Parties" means the parties to this Agreement and any other person who agrees to be bound by the terms of this Agreement under an Adherence Agreement;

"Shares" means ordinary shares in the Company;

"Subsidiary" shall have the meaning ascribed to it in the Law;

"Subscription and Transfer Agreement" means the Subscription and Transfer Agreement, dated as of 15 November 2017, entered into by and among CLO HoldCo, Ltd. and each of the Members and acknowledged and agreed by the Company and the Portfolio Manager.

Any capitalized terms used herein without definition have the meanings specified in the Offering Memorandum.

- 1.2 any reference to the Parties being obliged to procure shall so far as they are able includes, without limitation, procuring by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company;
- 1.3 any reference to a person includes, where appropriate, that person's heirs, personal representatives and successors;
- 1.4 any reference to a person includes any individual, body corporate, corporation, firm, unincorporated association, organisation, trust or partnership;
- 1.5 any reference to time shall be to Guernsey time;
- 1.6 except where the context otherwise requires words denoting the singular include the plural and vice versa and words denoting any one gender include all genders;

1.7 unless otherwise stated, a reference to a Clause or a Schedule is a reference to a Clause or a Schedule to this Agreement; and

1.8 Clause headings are for ease of reference only and do not affect the construction of any provision.

2. THE BUSINESS OF THE COMPANY

2.1 The Parties hereby agree that the objects and purpose of the Company shall be to carry on the Business.

2.2 The Parties shall so far as they are able (including without limitation by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company) procure that (i) the Company's principal activities shall be the pursuit of the objects and purposes described in Clause 2.1 conducted in accordance with the provisions hereof and with the Offering Memorandum, the Subscription and Transfer Agreement and Articles of the Company and (ii) the Parties shall not take any action inconsistent with the provisions of the Offering Memorandum, including, without limitation the investment strategy set forth in the "Summary" and the applicable restrictions during and after the Investment Period and the suspension or termination of the Investment Period following a Key Person Event.

2.3 The Members shall (so long as they hold shares in the capital of the Company) use all reasonable endeavours to promote and develop the Business of the Company.

3. VOTING RIGHTS

3.1 The Parties agree that the following provisions of this Clause 3 shall apply during such period or periods as the Members parties hereto are Members.

3.2 The Parties shall procure that the Company shall not take any action at any meeting requiring the sanction of an ordinary or special resolution or by written resolution, in each case of the Directors or of the Members, without the affirmative vote or prior written consent, as applicable, of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company, including, but not limited to, the following actions:

3.2.1 any issuance of new shares of the Company or a new class of shares of the Company or payment of any dividend by issuance of new shares of the Company, other than issuances of Shares pursuant to the Offering Memorandum and the Subscription and Transfer Agreement;

3.2.2 any alteration or cancellation of any rights of any Shares or of the Share capital of the Company,

3.2.3 any conversion or redemption of Shares, except pursuant to Clause 5.5,

3.2.4 any payment of commission in consideration for subscribing or agreeing to subscribe for any shares in the Company,

3.2.5 the creation of any lien on any Shares, except pursuant to the remedies in Clause 5.3. or

3.2.6 the suspension of the calculation of the NAV; other than a temporary suspension of the calculation of the NAV and NAV per Share by the Board of Directors during any period if it determines in good faith that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any market on which the Company's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs, including as a result of political, economic, military or monetary events or any circumstances outside the control of the Portfolio Manager or the Company, as a result of which,

in the reasonable opinion of the Portfolio Manager, the determination of the value of the assets of the Company, would not be reasonably practicable or would be seriously prejudicial to the Members taken as a whole; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Company's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Company cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Portfolio Manager, be effected at normal rates of exchange; or (v) automatically upon liquidation of the Company.

4. **ADVISORY BOARD.**

- 4.1 Composition of Advisory Board. The Company shall establish an advisory board (the "**Advisory Board**") composed of two individuals, one of whom shall be a representative of CLO Holdco and one of whom shall be a representative of Dover IX (or, in each case, or any permitted successor to the interest in the Company of such Member). No voting member of the Advisory Board shall be a controlled Affiliate of the Portfolio Manager (including, for the avoidance of doubt, following a permitted transfer of CLO Holdco's interest to an Affiliate of the Portfolio Manager, if applicable), it being understood that for the purposes of this sentence none of CLO Holdco, its wholly-owned subsidiaries nor any of their respective directors or trustees shall be deemed to be a controlled Affiliate of the Portfolio Manager due to their pre-existing non-discretionary advisory relationship with the Portfolio Manager. None of the members of the Advisory Board shall receive any compensation (other than reimbursement for reasonable and documented out-of-pocket expenses) in connection with their position on the Advisory Board. The Company shall bear any fees, costs and expenses related to the Advisory Board.
- 4.2 Meetings of Advisory Board; Written Consents. The Advisory Board shall meet with the Portfolio Manager at such times as requested by the Portfolio Manager from time to time. The quorum for a meeting of the Advisory Board shall be all of its members entitled to vote. All actions taken by the Advisory Board shall be (i) by a unanimous vote of all of the members of the Advisory Board in attendance in a meeting at which a quorum is present and entitled to vote and not abstaining from voting or (ii) by a written consent in lieu of a meeting signed by all of the members of the Advisory Board entitled to consent and not abstaining from consenting. Meetings of the Advisory Board may be held in person, by telephone or by other electronic device.
- 4.3 Functions of Advisory Board. The Advisory Board shall provide (or determine not to provide) any consents or approvals expressly contemplated by this Agreement and the Offering Memorandum to be provided by the Advisory Board and, at the request of the Portfolio Manager in its sole discretion, provide general advice (which, for the avoidance of doubt, shall be non-binding) to the Portfolio Manager or the Company with regard to Company activities and operations and other matters. For the avoidance of doubt, no consent or approval of the Advisory Board shall be required for any action or determination expressly permitted or contemplated hereunder or in the Offering Memorandum and not conditioned on such a consent or approval. The Portfolio Manager shall not act contrary to the advice of the Advisory Board with respect to any action or determination expressly conditioned herein or in the Offering Memorandum on the consent or approval of the Advisory Board. Without limiting the foregoing, the Advisory Board shall be authorized to give any approval or consent required or deemed necessary or advisable under the Advisers Act on behalf of the Company and the Members, including under Section 206(3) of the Advisers Act. The Portfolio Manager may from time to time in its discretion request the Advisory Board to review and ratify certain Company matters. The consent of the Advisory Board shall be required to approve the following actions: (i) any extension of the Investment Period; (ii) any extension of the Term (other than an automatic extension following an extension of the Investment Period that has been approved by the Advisory Board); (iii) any allotment of additional equity securities by the Company; and (iv) any investment in a Related Obligation or any other transaction between the Company or any entity in which the Company holds a direct or indirect interest, on the one hand, and Highland or any of its Affiliates, on the other hand and (v) other matters as set forth in the Offering

Memorandum. Notwithstanding the foregoing or anything to the contrary set forth herein, no transaction that is specifically authorized in the governing documents of the Company shall require approval of the Advisory Board, including, without limitation, sales or securitizations of all or a portion of the Company's loan portfolio into new Qualifying CLOs (i.e. the transfer of warehoused assets into new Qualifying CLOs), investments in CLO Notes issued by CLOs managed by Highland Affiliates, and the NexBank Credit Facility and any Permitted NexBank Credit Facility Amendments, in each case as described in the Offering Memorandum. Any such approval, consent or ratification given by the Advisory Board shall be binding on the Company and the Members. Neither the Advisory Board nor any member thereof shall have the power to bind or act for or on behalf of the Company in any manner, and no shareholder who appoints a member of the Advisory Board shall be deemed to be an Affiliate of the Company or Highland solely by reason of such appointment.

- 4.4 Term of Members of Advisory Board. A member of the Advisory Board shall be deemed removed from the Advisory Board (i) if such member is no longer an officer, director, manager, trustee, employee, consultant or other representative of CLO Holdco or Dover IX, as applicable, or their respective Affiliates and shall be replaced as soon as practicable with a representative of CLO Holdco or Dover IX, or their respective Affiliates, as applicable, or (ii) if the Member represented by such member either becomes a Defaulting Member or such member ceases to be eligible to represent such Member pursuant to Clause 4.1.
- 4.5 No Duties to Other Members. No Advisory Board member who is the representative of any Member shall, to the extent permitted by law, owe a fiduciary duty to the Company or any other Member (other than the duty to act in good faith), and may, to the fullest extent permitted by law, in all instances act in such member's own interest and in the interest of the Member that appointed such member.

5. **DEFAULTING MEMBERS**

- 5.1 In the event any Member defaults in its obligation to pay the full amount of the purchase price of Shares called for settlement under the Subscription and Transfer Agreement on the applicable Settlement Date (such unpaid amount, an "**Outstanding Settlement Amount**"), the Portfolio Manager, on behalf of the Company, shall provide written or telephonic notice of such default to such Member. If such default is not cured within 5 business days after written (or if applicable telephonic or email) notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member, such Outstanding Settlement Amount shall automatically accrue interest on a retroactive basis from the date such Outstanding Settlement Amount was due at 12% (the "**Default Interest Rate**") (which interest, once paid, shall not be applied to the purchase of the unsettled Shares of such Member, but which will upon receipt be distributed pro rata to those Members who have funded any such Outstanding Settlement Amounts pursuant to this Clause 5). No such Shares which have failed to be settled will be issued to any Member until settlement of the full amount of the purchase price has been made. In addition, if such default is not cured within 10 business days after written or telephonic notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member (a "**Defaulting Member**"), the following provisions shall apply:
- 5.2 Whenever the vote or consent of the Defaulting Member would otherwise be required or permitted hereunder or under the Articles, the Defaulting Member shall not be entitled to participate in such vote or consent in respect of his existing shareholding and with respect to any representative of such Defaulting Member on the Advisory Board, and such vote or consent shall be calculated as if such Defaulting Member were not a Member and, as applicable, any representative of such Defaulting Member on the Advisory Board were not a member of the Advisory Board.
- 5.3 The Portfolio Manager, on behalf of the Company, may pursue and enforce all rights and remedies available, including the commencement of legal proceedings against the Defaulting Member to collect the Outstanding Settlement Amounts, together with interest thereon for the account of the Company from the date due at the Default Interest Rate, plus the costs and expenses of collection (including attorneys' fees and expenses).

- 5.4 The Portfolio Manager, on behalf of the Company, may (at the sole cost of the Defaulting Member) borrow funds from any person (other than the Defaulting Member or its Affiliates) to cover such shortfall and/or advance all or a portion of the Defaulting Member's Outstanding Settlement Amount to the Company on behalf of the Defaulting Member, and such advance shall be repaid by the Defaulting Member to the Portfolio Manager, on behalf of the Company, with interest for the account of the Portfolio Manager, on behalf of the Company, on the amount outstanding from time to time commencing on the date of the advance at the Default Interest Rate. To the extent the Portfolio Manager, on behalf of the Company, advances funds to the Company on behalf of a Defaulting Member, all distributions from the Company that would otherwise be made to the Defaulting Member shall be paid to the Portfolio Manager, on behalf of the Company, (with any such amounts being applied first against accrued but unpaid interest and then against principal), until all amounts payable by the Defaulting Member to the Portfolio Manager, on behalf of the Company, under this Clause 5.4 (including interest) have been paid in full.
- 5.5 The Portfolio Manager, on behalf of the Company, may elect, upon notice to the Defaulting Member, to redeem the Defaulting Member's shares in an amount equal to 50% of the outstanding amount existing as of the date of the default at a price of \$0.0001 per Share. Thereupon, the commitment of the Defaulting Member under the Subscription and Transfer Agreement shall be zero, the Defaulting Member shall not be obligated to make any further settlements, the voting capital of such Defaulting Member and of each other Member shall be re-determined as of the date of such default to reflect the new commitment of the Defaulting Member, and the Portfolio Manager shall revise the books and records of the Company to reflect the reduction of the commitment of the Defaulting Member. The Members agree (x) that the damages suffered by the Company as the result of a failure by a Member to settle a commitment to purchase Shares that is required by this Agreement cannot be estimated with reasonable accuracy and (y) that the foregoing provisions of this Clause 5.5 shall act as liquidated damages for the default by the Defaulting Member (which each Member hereby agrees are reasonable).
- 5.6 The Board may offer to the non-Defaulting Members (pro rata in accordance with their respective Commitments) the option of purchasing the Defaulting Member's unsettled Shares on the terms set forth in the applicable Settlement Notice (as defined in the Subscription and Transfer Agreement).
- 5.7 At the election of the Board, distributions of dividends otherwise payable to the Defaulting Member under the Articles shall not be paid to the Defaulting Member, but instead shall be applied against the amount of the Outstanding Settlement Amount (plus interest at the Default Interest Rate and related costs); provided that any amounts so applied shall be deemed to have been distributed to the Defaulting Member under the Articles.
- 5.8 The Portfolio Manager may send an amended or new Settlement Notice to the Members other than the Defaulting Member in an amount equal to the Defaulting Member's Outstanding Settlement Amount and otherwise in accordance with the Subscription and Transfer Agreement.
- 5.9 Each Defaulting Member further appoints the Portfolio Manager as agent and attorney-in-fact for the Defaulting Member and hereby grants to the Portfolio Manager an irrevocable power of attorney to take all actions necessary on its behalf to sell, assign, or transfer the commitment to purchase unsettled Shares of such Defaulting Member pursuant to Clause 5.6 or as necessary on its behalf to effect the other remedies or rights set forth in this Clause 5; provided that the Portfolio Manager shall not bind any Defaulting Member to an indemnification or other similar obligation which guarantees the financial performance of the Company or which exceeds the ability of the Defaulting Member to provide indemnification under applicable law.

6. **TRANSFERS OR DISPOSALS OF SHARES**

- 6.1 No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio

Manager, which consent shall be in the sole discretion of the Portfolio Manager; provided that no such Transfer shall be made unless in the opinion of counsel reasonably satisfactory to the Portfolio Manager (who may be counsel for the Company, and which requirement for an opinion may be waived, in whole or in part, in the sole discretion of the Portfolio Manager) that:

- 6.1.1 such Transfer would not require registration under the Securities Act or any state securities or "Blue Sky" laws or other laws applicable to the Shares to be assigned or transferred and is conducted in conformance with the restrictions set forth in the Offering Memorandum;
 - 6.1.2 such Transfer would not be reasonably likely to cause the Company to be subject to tax in any jurisdiction other than of its incorporation on a net income basis, not be reasonably likely to cause the Company to become subject to registration as an investment company under the Investment Company Act of 1940, as amended;
 - 6.1.3 such Transfer would not cause the Company to be considered to be an entity whose underlying assets are considered to include "plan assets" by reason of investment by an "employee benefit plan" or "plan" in such entity pursuant to the U.S. Plan Assets Regulations; and
 - 6.1.4 such sale, assignment, disposition or transfer would not cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or the Code.
- 6.2 Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal) a Member must first offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter. The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred. If the other Members do not accept the offer, the Member may (subject to complying with the other Transfer restrictions in this Agreement) Transfer the applicable Shares that such Members have not elected to purchase to a third party at a price equal to or greater than the price described in the offer letter, provided that if the Member has not (a) entered into a definitive agreement to effect such sale within 90 days after the expiration of the period that the other Members have to accept the offer in the offer letter or (b) consummated the sale within 120 day after the entry into the definitive agreement to consummate the sale, it must comply with these right of first refusal procedures again. Any Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to any other Member (subject to complying with the other Transfer restrictions in this Agreement), any initial Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to an Affiliate (subject to complying with the other Transfer restrictions in this Agreement), and CLO Holdco and the Highland Principals (unless such Member is the Member proposing the Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to Highland, an Affiliate of Highland or other Highland Principals (subject to complying with the other Transfer restrictions in this Agreement).
- 6.3 No Highland Principal may transfer his or its interests in the Company other than (i) to a trust or other tax or estate planning vehicle or (ii) to the Portfolio Manager, its Affiliates or another Highland Principal upon the termination of such Highland Principal's (or the beneficial owner of such Highland Principal, if applicable) employment by Highland Capital Management, L.P.
- 6.4 Any transferor of any Share shall remain bound by the terms of this Agreement applicable to it prior to such transfer and that nothing in this Agreement shall constitute a waiver of any rights a Party to this Agreement may have by reason of a breach of this Agreement by a transferor prior to transfer. The transferor and/or the transferee shall bear all costs of any Transfer.
- 6.5 The Parties agree not to Transfer their Shares to any person unless such transferee agrees to be bound by the terms of this Agreement.
- 6.6 All Adherence Agreements executed pursuant to this Clause shall be executed by the transferee or allottee and each Party.

7. CONFIDENTIALITY

- 7.1 Each Party agrees to keep any information received by it pursuant to this Agreement or relating to the Business as confidential and not (save with the relevant Party's consent or as may be required by Law or the rules of any regulatory authority or any stock exchange) disclose to any person such information.
- 7.2 Notwithstanding the foregoing, the Parties agree that the HarbourVest Entities may disclose to their limited partners and prospective limited partners (including any agents of such limited partners or prospective limited partners), clients and applicable governmental agencies (a) the name and address of the Company, (b) the capital commitment and the remaining capital commitment, (c) the net asset value of such HarbourVest Entity's interest in the Company, (d) the amount of distributions that have been made to such HarbourVest Entity by the Company and the amount of contributions that have been made by such HarbourVest Entity to the Company, (e) such ratios and performance information calculated by such HarbourVest Entity using the information in clauses (a) through (d) above, including the ratio of net asset value plus distributions to contributions (i.e., the "multiple") and such HarbourVest Entity's internal rate of return with respect to its investment in the Company, and (f) tax information with respect to the Company.

8. DIVIDENDS

- 8.1 The Company agrees that it shall not, and the Portfolio Manager agrees it shall not cause the Company to, make any dividends except pursuant to the section titled "Summary—Dividend Policy" of the Offering Memorandum.

9. TERM OF THE COMPANY

- 9.1 Each Party agrees to cause the winding up and dissolution of the Company after the ten year anniversary of the date hereof (the "**Term**"); provided that the Portfolio Manager, in its reasonable discretion, may postpone dissolution of the Company for up to 180 days in order to facilitate orderly liquidation of the investments; provided, further, that the Term shall be automatically extended for any amount of time for which the Investment Period may be extended.
- 9.2 Notwithstanding the foregoing, the Term may be extended with the consent of the Portfolio Manager and the Advisory Board for up to two successive periods of one year each.

10. ERISA MATTERS

- 10.1 The Portfolio Manager, the Company and each Member shall use their reasonable best efforts to conduct the affairs and operations of the Company so as to limit investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to less than the U.S. Plan Threshold. In the event the U.S. Plan Threshold is met or exceeded, the Portfolio Manager, on behalf of the Company, may require any Non-Qualified Holder that is a U.S. Plan Investor to sell or transfer their Shares to a person qualified to own the same that is not a U.S. Plan Investor within 30 days and within such 30 days and to provide the Company with satisfactory evidence of such sale or transfer such that such sale or transfer, together with other sale or transfers pursuant to this Clause, would result in the investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to be less than the U.S. Plan Threshold. Where the conditions above are not satisfied within 30 days after the serving of the notice to transfer, such Non-Qualified Holder will be deemed, upon the expiration of such 30 days, to have forfeited their Shares.

11. TAX MATTERS

- 11.1 PFIC. For each fiscal year of the Company, the Company will no later than 120 days after the end of such fiscal year, commencing with the first fiscal year for which the Company is determined to be a PFIC (a "passive foreign investment company"), furnish to each of the

HarbourVest Entities (x) all information necessary to permit such HarbourVest Entity or any of its partners to complete United States Internal Revenue Service Form 8621 with respect to their interests in the Company and (y) a PFIC Annual Information Statement under section 1295(b) of the Code with respect to the Company; provided that if the Company is unable to furnish such final information and Statement within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information and Statement on or before the 120th day after the end of such fiscal year.

11.2 CFC. The Company shall furnish to each of the HarbourVest Entities within 120 days after the end of each fiscal year of the Company, a United States Internal Revenue Service Form 5471 for such fiscal year, completed for all information concerning the Company required to be filed by such HarbourVest Entity or any of its partners (i.e., all portions applicable to the relevant category of filer other than page 1 items A-D and page 2 Schedule B), to the extent such Form 5471 is required to be filed by such HarbourVest Entity or any of its partners; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year.

11.3 Other Tax Information. The Company shall furnish to each of the HarbourVest Entities (a) within 120 days after the end of each fiscal year of the Company such other information reasonably requested by the HarbourVest Entities that any HarbourVest Entity may require in order for it or any of its partners to comply with its U.S. federal income tax reporting obligations with respect to its interest in the Company; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of such fiscal year and (b) promptly upon request such other information reasonably requested by such HarbourVest Entity in order to withhold tax or to file tax returns and reports or to furnish tax information to any of its partners with respect to the Company.

11.4 Withholding and Other Taxes. The Company will use reasonable best efforts to acquire investments that will not result in withholding or other taxes being imposed directly or indirectly on the Company by any jurisdiction with respect to income or distributions from such investments.

12. **AMENDMENTS TO CERTAIN AGREEMENTS**

12.1 The Portfolio Manager and the Company shall not amend or terminate, or agree to amend or terminate, the Memorandum or Articles of Incorporation of the Company or that certain Portfolio Management Agreement between the Portfolio Manager and the Company dated as of the date hereof (the "**Management Agreement**") without the consent of the Parties.

12.2 The Portfolio Manager agrees that it shall not assign its rights, duties and obligations under the Management Agreement without the consent of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company. Notwithstanding the foregoing, the Portfolio Manager may, without the consent of the Members, assign any of its rights or obligations under the Management Agreement to an Affiliate; provided that such Affiliate (A) has demonstrated ability, whether as an entity or by its personnel, to professionally and competently perform duties similar to those imposed upon the Portfolio Manager pursuant to the Management Agreement, (B) has the legal right and capacity to act as Portfolio Manager thereunder and (C) shall not cause the Company or the pool of collateral to become required to register under the provisions of the Investment Company Act and such action does not cause the company to be subject to tax in any jurisdiction outside of its jurisdiction of incorporation.

12.3 The Company agrees that it shall not hire any portfolio manager without the consent of the Parties and such new portfolio manager shall be required to join and abide by this Agreement.

13. **FINANCIAL REPORTS**

13.1 The books and records of account of the Company shall be audited as of the end of each fiscal year of the Company by a nationally recognized independent public accounting firm selected by

the Portfolio Manager that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules. During the Term, the Portfolio Manager or the Company shall prepare and mail, deliver by fax, email or other electronic means or otherwise make available a financial report (audited in the case of a report sent as of the end of a fiscal year and unaudited in the case of a report sent as of the end of a quarter) to each Member on or before the 120th day after the end of each fiscal year and the 45th day after the end of each of the first three quarters of each fiscal year, setting forth for such fiscal year or quarter (a) the assets and liabilities of the Company as of the end of such fiscal year or quarter; (b) the net profit or net loss of the Company for such fiscal year or quarter; and (c) such Member's closing capital account balance as of the end of such fiscal year or quarter; provided that if the Portfolio Manager or the Company is unable to furnish final information with respect to any of the above, then the Portfolio Manager or the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year and the 45th day after the end of the first three quarters of each fiscal year. On or before the 60th day after the end of each fiscal year, the Portfolio Manager or the Company shall provide to each Member an unaudited draft of the financial report for such fiscal year.

- 13.2 After the end of each fiscal year or quarter, the Portfolio Manager or the Company shall cause to be delivered to the Advisory Board a reasonably detailed summary of the expenses incurred by the Company during such period.

14. **TERMINATION AND LIQUIDATION**

- 14.1 Save as provided for in Clause 13.2, this Agreement shall terminate:

- 14.1.1 when one Party holds all the Shares;
- 14.1.2 when a resolution is passed by the Company's Members or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, Members or other contributors; or
- 14.1.3 with the written consent of all the Parties.

- 14.2 The following provisions of this Agreement remain in full force after termination: Clause 1 (Interpretation), Clause 7 (Confidentiality), this Clause, Clause 14 (Whole Agreement), Clause 16 (Assignments), Clause 17 (Variation and Waiver), Clause 18 (Service of Notice), Clause 19 (General) and Clause 21 (Governing Law and Jurisdiction).

- 14.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties may have accrued under it.

- 14.4 Where the Company is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 14.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 14.4.2 the Company shall not enter into any new contractual obligations;
- 14.4.3 the Company is dissolved and its assets are distributed as soon as practical; and
- 14.4.4 any other proprietary information belonging to or originating from a Party shall be returned to it by the other Parties.

15. **WHOLE AGREEMENT**

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.
- 15.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this Agreement or those documents.
- 15.3 Nothing in this Clause 14 operates to limit or exclude any liability for fraud.

16. **STATUS OF AGREEMENT**

- 16.1 Each Party shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement.
- 16.2 If any provision in the memorandum of incorporation of the Company or the Articles conflicts with any provision of this Agreement, the provisions of this Agreement shall prevail as between the Parties. Each of the Parties shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure the modification of the memorandum of association of the Company or the Articles (as the case may be) in order to eliminate the conflict, but this Agreement shall not itself constitute a modification of the memorandum of association of the Company or the Articles.

17. **ASSIGNMENTS**

Save as expressly permitted by this Agreement, no person may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it without the prior written consent of the Parties.

18. **VARIATION AND WAIVER**

- 18.1 A variation of this Agreement shall be in writing and signed by or on behalf of the Parties.
- 18.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 18.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

19. **SERVICE OF NOTICE**

- 19.1 Any notice required to be given by any of the Parties may be sent by post or facsimile to the address and facsimile number of the addressee as set out in this Agreement, in either case marked for the attention of the relevant person named below, or to such other address and/or facsimile number and/or marked for the attention of such other person as the addressee may from time to time have notified for the purposes of this Clause.

19.1.1 to the Company:
Address:
First Floor, Dorey Court, Admiral Park
St Peter Port, Guernsey GY1 6HJ
Channel Islands

19.1.2 to CLO Holdco:

Address:
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Attn: General Counsel
Tel: +1 (972) 628-4100
Email: Notices@highlandcapital.com

19.1.3 to any HarbourVest Entity:

Address:
c/o HarbourVest Partners, LLC
One Financial Center, 44th Floor
Boston, MA 02111
USA
Attn: Michael Pugatch
Tel: +1 (617) 348-3712
F
Email: mpugatch@harbourvest.com

19.1.4 to any other Party: by post or hand delivery only to the address specified in the register of members of the Company.

19.2 Communications sent by post shall be deemed to have been received 24 hours after posting. Communications sent by facsimile transmission shall be deemed to have been received at the time the transmission has been received by the addressee **PROVIDED THAT** if the facsimile transmission, where permitted, is received after 5.00pm or on a day which is not a Business Day, it shall be deemed to have been received 11.00am the Business Day following thereafter.

19.3 In proving service by post it shall only be necessary to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this Clause and in the case of facsimile transmission it shall be necessary to prove that the facsimile was duly transmitted to the correct number.

20. **GENERAL**

20.1 Each of the Parties hereby agree not to enter into or abide by any agreement whether written or oral with any one or more of the other Parties in respect of the voting of Shares or the submission of Member resolutions to any Members for voting by them, or otherwise to direct or influence, or attempt to direct or influence, the day-to-day management of the Company, either directly or indirectly, other than in order to comply with the other terms of this Agreement or the Articles. In this regard, each of the Parties agrees to not to direct or influence or to attempt to direct or influence any of the Directors through any employment relationship that the Directors may have outside of the Company other than in order to comply with the other terms of this Agreement or the Articles. Each of the Parties hereby agree that this provision shall continue to apply to them whether or not they are or remain a Member.

20.2 Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

20.3 The Parties are not in partnership with each other and there is no relationship of principal and agent between them.

20.4 All transactions entered into between any Party and the Company shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement, as may be agreed by the Parties and, in the absence of such agreement, on an arm's length basis.

20.5 Each Party shall at all times act in good faith towards the other Parties and shall use all reasonable endeavours to ensure that this Agreement is observed.

20.6 Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

20.7 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document. This Agreement may not be amended except with the consent of each Party.

21. STATUS OF AGREEMENT

21.1 The Parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this Agreement.

21.2 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the Parties.

22. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Island of Guernsey and each of the Parties submits to the non-exclusive jurisdiction of the Royal Courts of the Island of Guernsey.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first before written.

SIGNED for and on behalf of **CLO HOLDCO, LTD.**


By:.....

Name: Grant Scott

Title: Director

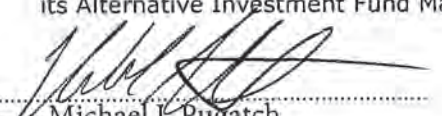
SIGNED for and on behalf of
HARBOURVEST DOVER STREET IX INVESTMENT L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager


By: 
Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL FUND L.P.

By: HarbourVest 2017 Global Associates L.P.,
its General Partner

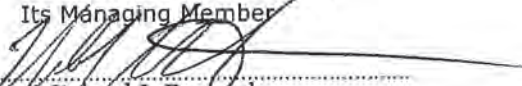
By: HarbourVest GP LLC,
its General Partner

By: HarbourVest Partners, LLC,
its Managing Member

By: 
Name: Michael J. Pugatch
Title: Managing Director

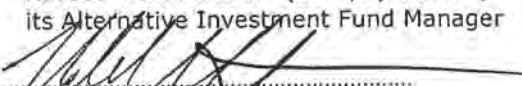
SIGNED for and on behalf of
HV INTERNATIONAL VIII SECONDARY L.P.

By: HIPEP VIII Associates L.P.
Its General Partner
By: HarbourVest GP LLC
Its General Partner
By: HarbourVest Partners, LLC
Its Managing Member

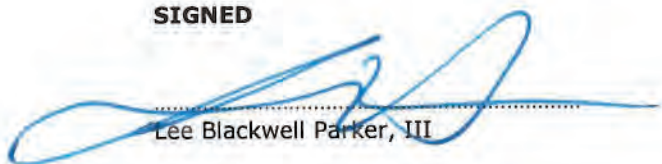
By: 
Name: Michael J. Pugatch
Title: Managing Director

SIGNED for and on behalf of
HARBOURVEST SKEW BASE AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorized Person


SIGNED



Lee Blackwell Parker, III

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

Read and approved

By: 
Name: Emmanuel Maciel
Title: transactions supervisor

 X

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:


SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

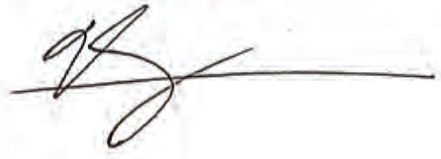
SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By: 
Name: Emmanuel Magee
Title: Transaction Supervisor

Read & Approved



SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

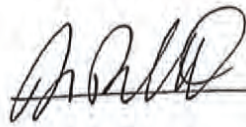
By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By: 
Name: Emmanuel Maggi
Title: Transactions Supervisor

Read and Approved:
 11/7/17

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:


SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

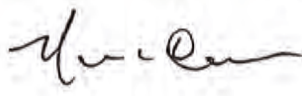
By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By: 
Name: Emmanuel Madet
Title: Transaction Supervisor

Read and approved


SIGNED for and on behalf of
HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its General Partner



By:

Name: James Dondero

Title: President

SIGNED for and on behalf of
HIGHLAND HCF ADVISOR, LTD.



By:

Name: James Dondero

Title: President

SIGNED for and on behalf of
HIGHLAND CLO FUNDING, LTD.

By: 

Name: William Scott

Title: Director

SCHEDULE

Adherence Agreement

THIS ADHERENCE AGREEMENT is made on [●] 200[●]

BETWEEN:

- (1) [●] of [●] (the "**Covenantor**");
- (2) CLO HOLDCO, LTD. of [] (a "**Member**");
- (3) [●] of [] (a "**Member**");
- (4) [●] of [] (a "**Member**");
- (5) HIGHLAND CLO FUNDING, LTD., with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**")
- (6) HIGHLAND HCF ADVISOR, LTD., registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

RECITAL

This Agreement is supplemental to the members agreement made on November 15 2017 between the Members, the Portfolio Manager and the Company (the "**Members Agreement**").

IT IS HEREBY AGREED as follows:

1. The Covenantor hereby confirms that he has been supplied with a copy of the Members Agreement and hereby covenants with each of the parties thereto to observe, perform and be bound by all the terms of the Members Agreement as if it were a party thereto.
2. Each of the other parties to the Members Agreement hereby covenants with the Covenantor that the Covenantor shall be entitled to the benefit of the terms of the Members Agreement as if he were a party thereto.
3. This Agreement shall be governed by and construed in accordance with Guernsey law.

IN WITNESS of which this Agreement has been executed by the Covenantor and each of the parties to the Members Agreement on the date shown above.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054-sgj11
Debtor.	)	Re: Docket Nos. 2534

**DEBTOR'S REPLY TO PLAINTIFFS' POST-HEARING BRIEF REGARDING
MOTION FOR MODIFICATION OF ORDER**

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

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) in response to *Plaintiffs’ Court-Ordered Post-Hearing Brief Regarding Motion for Modification of Order* [Docket No. 2534] (the “Plaintiffs’ Brief”). In support of the Reply, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. On April 27, 2021, Plaintiffs filed their *Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr., Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248] (the “Motion”). After a full day hearing, this Court denied the Motion on June 30, 2021 [Docket No. 2506] (the “Reconsideration Order”).

2. On June 28, 2021, the Court issued an *Order Requiring Post-Hearing Submissions* [Docket No. 2494] (the “Order”) pursuant to which Plaintiffs were directed to address “their position regarding to the application of the *Second Amended and Restated Investment Advisory Agreement* to the alleged jury trial rights of the Movants in Case No. 3:21-cv-00842B before the United States District Court for the Northern District of Texas.” Order ¶ 2.

3. Rather than follow the Order and address the narrow issue presented, Plaintiffs seek to deflect blame for their own error, minimize the importance of the jury waiver provisions in the applicable agreement, and re-argue the Motion even though the Court has already entered the Reconsideration Order.²

4. The Debtor replies briefly to address certain mischaracterizations and to otherwise correct the record.

REPLY

A. The Second Amended and Restated Advisory Agreement Is Binding Yet Plaintiffs’

² Not surprisingly, Plaintiffs have appealed the Reconsideration Order [Docket No. 2513]. This brings the total number of appeals from this Court’s rulings filed by Mr. Dondero and his related entities to seven.

Counsel Relied on an Outdated Agreement in the Complaint They Filed

5. The Debtor appreciates the Plaintiffs’ concession that the *Second Amended and Restated Investment Advisory Agreement*, effective from January 1, 2017, between the Debtor on the one hand and The Charitable DAF Fund, L.P. (“Charitable DAF”) and Charitable DAF GP, LLC on the other hand (the “Second Amended Agreement”), is a valid and authentic agreement “regarding the subject matter that it covers.” Plaintiffs’ Brief at 1-2.

6. Among the subject matter covered in the Second Amended Agreement is a clear and unambiguous waiver of any right to a trial by a jury:

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICIES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTEHRWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT AS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Docket No. 2495, Ex. A ¶14(f) (emphasis in original).

7. Confronted with this clear and convincing waiver, Plaintiffs were forced to admit that their hastily-filed district court complaint erroneously relied on an earlier version of the parties’ agreement – one that allegedly did not contain a jury trial waiver. According to Plaintiffs, however, because no one “had alerted counsel that they were relying on a superseded version of the contract,” and counsel “did not have the Second Amended Agreement in their file,” they chalked it up to a “good faith mistake” and asserted it was “inadvertent.” Plaintiffs’ Brief at 2.

8. Respectfully, lawyers have an obligation to conduct basic due diligence *before* filing pleadings rather than relying on their adversaries to confirm that they got it right. Indeed, Plaintiffs’ reliance on the wrong agreement here is but the latest in a series of errors which they attempt to dismiss or minimize.³

9. In fact, Plaintiffs’ counsel’s attempt to blame Debtor’s counsel for their failure is misplaced for a several reasons. *First*, Plaintiffs’ counsel raised the issue of a jury trial for the first time at the June 25 hearing, so Debtor’s counsel had no reason to focus on it until then. *Second*, as of June 25, the Debtor had not responded to the Plaintiffs’ underlying district court complaint and had no obligation to correct Plaintiffs’ counsel’s mistake. *Third*, while Plaintiffs’ counsel proposed that the Motion be decided “on the papers,” that was only after they spent more than an hour presenting their argument in support of their Motion during opening arguments on the Contempt Motion – even though the Court directed that those arguments be held after the Contempt Motion was fully litigated.⁴

10. Plaintiffs’ counsel reliance on the wrong document appears to have had a strategic purpose since they emphasized it. They should have simply accepted responsibility rather than minimizing the issue and deflecting blame to others. Their mistake matters.

B. Significance of the Jury Trial Waiver; Plaintiffs’ Citation to the Wrong Agreement

11. Plaintiffs make five arguments in support of their contention that the Second

³ As the Court will recall, Plaintiffs’ counsel (a) failed to note on the Civil Cover Sheet filed at the commencement of the district court action that a related case (the above-referenced bankruptcy case) was pending; (b) failed to mention 11 U.S.C. §1334 as a jurisdictional predicate for the district court action, and (c) were forced to “non-suit” yet another action they commenced against the Debtor, that one on behalf of the Dugaboy Investment Trust (“Dugaboy”) because they claimed to be unaware that Dugaboy had filed a proof of claim against the Debtor for the same claims. *The Dugaboy Investment Trust v. Highland Capital Management L.P.*, Case No. 3:21-cv-01479-S (N.D. Tex.) [Docket No. 5]. For the record, Plaintiffs’ Civil Cover Sheet is still inaccurate as it fails to reference the pending appeal – in the United States District Court for the Northern District of Texas – of the Debtor’s settlement with HarbourVest, which settlement is the foundation for Plaintiffs’ claims.

⁴ That is precisely why the Debtor “objected” to Plaintiffs’ attempt to have the Motion for Modification heard “on the papers.” Plaintiffs’ Brief at 3.

Amended Agreement “changes nothing in substance in Movants’ argument on the Motion for Modification.” Plaintiffs’ Brief at 3-7. Plaintiffs’ arguments are unavailing.

12. **First**, Plaintiffs assert that “Movants’ jury rights were merely illustrative of the legal problems raised by the Court’s exculpation language.” *Id.* at 3. But this back-tracking is merely an acknowledgment of the weakness of the argument in light of, among other things, the express jury waiver in the Second Amended Agreement.

13. **Second**, Plaintiffs claim that CLO Holdco is not a party to the Second Amended Agreement and there is no implied waiver. They also contend that “CLO Holdco’s claims arise independently by operation of law, as a result, in part, of its role as an investor in HCLOF,” an entity whose Subscription and Company Agreement contain no jury waiver. Plaintiffs’ Brief at 4. But Plaintiffs err again.

14. Assuming for the sake of argument only that there is no “implied waiver,” HCLOF is managed by HCF Advisors, Ltd (“HCFA”), a subsidiary of the Debtor, pursuant to a *Portfolio Management Agreement*, effective from November 15, 2017, and that agreement contains an express *jury trial waiver*. **Exhibit A** §14(e)(iii). Since HCFA’s and the Debtor’s fiduciary duties run to HCLOF and not CLO Holdco,⁵ there is no jury trial right for any claims that could conceivably be asserted by CLO Holdco against HCFA and the Debtor. Plaintiffs’ failure to alert the Court to yet another relevant agreement is either intentionally misleading or is another careless mistake. Either way it is unacceptable.

15. **Third**, Plaintiffs improperly attempt to re-litigate the Motion, repeating their

⁵ See, e.g., *Goldstein v. SEC*, 451 F.3d 873, 881(D.C. Cir. 2006) (“The adviser owes fiduciary duties only to the fund [*i.e.*, the client], not to the fund’s investors. . . . If the investors are owed a duty and the entity is also owed a fiduciary duty, then the adviser will inevitably face conflicts of interest.”); see also Inv. Adv. Act Re. No. 2628 (Aug. 3, 2007) (Rule 206(4)-8 ““does not create under the Advisers Act a fiduciary duty to investors or prospective investors in a pooled investment vehicle not otherwise imposed by law” or “a private right of action.”).

arguments that the Court lacked jurisdiction to grant Mr. Seery exculpation and to adopt the gatekeeper provision. Plaintiffs' Brief at 4-5. Not only is this not responsive to the question presented, it simply is wrong because – as has been discussed and debated in connection with the Motion – bankruptcy courts routinely grant such protections.

16. **Fourth**, Plaintiffs – apparently without irony – attempt to suggest that Grant Scott, then the authorized representative of the Charitable DAF, lacked independence when he agreed to the jury trial waiver. This suggestion contradicts every argument made by the Charitable DAF in this bankruptcy case and is nonsensical in the context of a jury trial waiver written in bold, capitalized letters that applies equally to both parties.

17. Plaintiffs also argue that (a) section 11(j) of the Second Amended Agreement describes the exculpation clause and contains an “explicit reference to the unwaivable fiduciary duties that arise by operation of law under the Advisers Act” and that (b) somehow the jury trial waiver cannot apply to such claims. Plaintiffs' Brief at 6. But section 11(j) contains no such “explicit reference,” and even if it did, it only means that those claims are retained, not that they are an exception to the express and unqualified jury trial waiver.⁶ Indeed, a waiver of jury rights *necessarily* applies to retained claims; otherwise, the jury waiver would have no meaning. Thus, even if Plaintiffs retained claims under the Advisers Act (which they could not, since they were owed not fiduciary duty and no private right of action exists under the Advisers Act), the jury trial waiver still applies.

18. **Finally**, Plaintiffs argue that they were contractually obligated to bring their suit in

⁶ The applicable portion of section 11(j) states that as a result of the exculpation granted to the Debtor and each Indemnified Party, the Charitable DAF “will be responsible for any Losses resulting from trading errors or similar human errors absent bad faith, willful misconduct, fraud or gross negligence or the ability to waive or limit such Losses under applicable law.” Contrary to Plaintiffs' argument, there is no mention (explicit or otherwise) of “fiduciary duties” or the Advisers Act.

the district court as it was identified as the exclusive forum for commencing an action under the Second Amended Agreement. Plaintiffs' Brief at 6. But, as Plaintiffs themselves have noted, the bankruptcy court's jurisdiction is derivative of the district court's such that filing an action in the bankruptcy court related to the bankruptcy would not have been a violation of the contract. Regardless, this has nothing to do with the jury trial waiver.

19. Separately, Plaintiffs "move to withdraw the reference" to the "extent this Court intends to make any decision regarding Movants' right to a jury trial." Plaintiffs' Brief at 7. This is improper for at least two reasons. **First**, the Court made clear that it was not relying on the jury trial waiver to decide the Motion; rather, it was only seeking an explanation for how Plaintiffs could have advanced arguments that were demonstratively false. In response, Plaintiffs' counsel admitted to their error (and should have left it at that). **Second**, the "motion" is plainly improper – if Plaintiffs want to withdraw the reference, they must file an actual motion on proper notice. Having failed to do so, the Court should ignore the request.⁷

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⁷ On May 19, 2021, the Debtor filed *Defendant Highland Capital Management, L.P.'s Motion for an Order to Enforce the Order of Reference*, Cause No. 3:21-cv-00842-B, Docket No. 22 (N.D. Tex. May 19, 2021) (the "Motion to Enforce") requesting that the District Court refer the Complaint to this Court (where it likely would have automatically been referred had Plaintiffs correctly completed their Civil Cover Sheet). The Motion to Enforce is *sub judice*. If and when the District Court grants the Motion, the Plaintiffs will have the opportunity to request a withdrawal of the reference. The Debtor reserves all rights to oppose any such motion at the appropriate time.

Dated: July 15, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

4 In Re:) **Case No. 19-34054-sgj-11**
5) Chapter 11
6)
7) Dallas, Texas
8) Friday, June 25, 2021
9) 9:30 a.m. Docket
10)
11) EXCERPT: MOTION FOR
12) MODIFICATION OF ORDER
13) AUTHORIZING RETENTION OF JAMES
14) P. SEERY, JR. DUE TO LACK OF
15) SUBJECT MATTER JURISDICTION
16) (2248)
17)
18)
19)
20)
21)
22)
23)
24)
25)

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

12 WEBEX APPEARANCES:

13 For the Debtor: Jeffrey Nathan Pomerantz
14 PACHULSKI STANG ZIEHL & JONES, LLP
15 10100 Santa Monica Blvd.,
16 13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

17 For the Debtor: John A. Morris
18 PACHULSKI STANG ZIEHL & JONES, LLP
19 780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

20 For CLO Holdco, Ltd. and Jonathan E. Bridges
21 The Charitable DAF Fund, Mazin Ahmad Sbaiti
22 LP: SBAITI & COMPANY, PLLC
23 JP Morgan Chase Tower
24 2200 Ross Avenue, Suite 4900 W
25 Dallas, TX 75201
(214) 432-2899

24 For Get Good Trust and Douglas S. Draper
25 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
650 Poydras Street, Suite 2500
New Orleans, LA 70130
(504) 299-3300

004882

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

5 Recorded by: Michael F. Edmond, Sr.
6 UNITED STATES BANKRUPTCY COURT
7 1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

8 Transcribed by: Kathy Rehling
9 311 Paradise Cove
Shady Shores, TX 76208
10 (972) 786-3063

11

12

13

14

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 provision that's at issue here. We submit that change is an
2 admission or at least a strong indication that the unmodified
3 order, at least as applied in some instances, contains
4 legally-impermissible provisions. The entire argument today
5 from our side is about what's not legally permissible in that
6 order.

7 And that starts with our concerns regarding the
8 application of 28 U.S.C. § 959(a). As Your Honor knows well,
9 959(a) is a provision of law that the Fifth Circuit and
10 *Collier on Bankruptcy* call an exception to the *Barton*
11 doctrine. I know from the last time we were here that the
12 Court is already aware of what 959(a) says. It's the second
13 sentence, I understand, which the Court pointed to in our
14 previous hearing that creates general equity powers or
15 authorizes the Court to use its general equity powers to
16 exercise some jurisdiction, some control over actions that
17 fall within the first sentence of 959(a). But that second
18 sentence also prohibits explicitly the Court's using general
19 equity powers to deprive a litigant of his right to trial by
20 jury.

21 Here, we're not under *Barton*, the statutory exception to
22 *Barton* applies, because Mr. Seery is a manager of hundreds of
23 millions of third-party investor property. Instead, we're
24 here under the Court's general equity powers, as authorized by
25 959(a). And those equity powers cannot deprive the right to

1 trial by jury.

2 But the order does deprive trials by jury, first by
3 asserting sole jurisdiction here, where jury trials are
4 unavailable, and secondly, by abolishing any trial rights for
5 claims that do not involve gross negligence or intentional
6 misconduct.

7 Movants' third cause of action in the District Court case
8 is for ordinary negligence. It comes with a Seventh Amendment
9 jury right. But it's barred by the order because the order
10 only allows colorable claims involving gross negligence or
11 intentional conduct, not ordinary negligence.

12 Movants' second cause of action in the District Court case
13 is for breach of contract. That comes with a Seventh
14 Amendment jury right, but it's barred by the order because the
15 order only allows colorable claims of gross negligence or
16 intentional misconduct, not negligent or faultless breaches of
17 contractual obligations.

18 Movants' first cause of action in the District Court case,
19 breach of Advisers Act fiduciary duties, comes with a jury
20 right. It's also barred by the order because the order only
21 allows colorable claims involving gross negligence or
22 intentional misconduct.

23 You see there what I mean. Congress couldn't have been
24 clearer. Courts cannot deprive litigants of their day in
25 court before a jury of their peers by invoking general equity

1 powers. Those powers don't trump the constitutional right to
2 a jury trial.

3 Yet this Court's order purports to do precisely that, not
4 only for the Movants, but also for future potential litigants
5 who may have claims that have not even accrued yet. If those
6 claims are for ordinary negligence or breach of contract or
7 breach of fiduciary duties and don't rise to the level of
8 gross negligence or intentional misconduct, this order says
9 that those claims are barred, and it would deprive them of
10 their day in court.

11 The Court's general equity powers are simply not broad
12 enough to uphold such an order.

13 This issue is even more problematic when the causes of
14 action at issue fall within the mandatory withdrawal of the
15 reference provisions of 28 U.S.C. § 157(d). As this Court
16 knows, it lacks jurisdiction over proceedings that require
17 consideration of non-bankruptcy federal law regulating
18 interstate commerce. Some such claims -- Movants' Advisers
19 Act claim, for instance -- do not involve culpability rising
20 to the level of gross negligence or intentional misconduct,
21 but the order purports to bar them nonetheless, despite this
22 Court's lacking jurisdiction over the subject matter of those
23 claims.

24 Even if there is gross negligence or intentional
25 misconduct, the order states that this Court will have sole

1 jurisdiction over such claims. And that can't be right if
2 withdrawal of the reference is mandatory.

3 Opposing counsel will tell you that 157(d) is inapplicable
4 here because they think our claims in the District Court won't
5 require substantial consideration of the Advisers Act or any
6 other federal laws regulating interstate commerce. But their
7 cases don't come anywhere close to making that showing, as the
8 briefing demonstrates.

9 And in any case, that argument is beside the point. This
10 order is contrary to 157(d) because it asserts jurisdiction
11 over claims that 157(d) does not apply -- I'm sorry, does
12 apply to. And that's true regardless of whether Movants'
13 claims are among those.

14 The idea that there's no substantial consideration of
15 federal law, however, in the District Court case is undermined
16 by Mr. Seery's testimony in support of his appointment in
17 which he confirmed that the Advisers Act applies to him and
18 that he has fiduciary duties under that Act to the investors
19 of the funds he manages.

20 Your Honor, importantly, the Advisers Act isn't the
21 typical federal statute with loads of case law under it. It's
22 actually an underdeveloped, less-relied-upon statute, and most
23 -- most of the law under that Act is promulgated by regulation
24 and supervised by the SEC. As a registered investment
25 advisor, Mr. Seery is bound by that Act, which he admits, he

1 agrees to. But to flesh out what his duties are requires a
2 close exam of more than three dozen regulations under 17
3 C.F.R. Part 275.

4 The obligations include robust duties of transparency and
5 disclosure, as well as duties against self-dealing and the
6 necessity of obtaining informed consent, none of which are
7 waivable, these duties.

8 The proceedings here in this Court reflect an effort to
9 have those unwaivable duties waived. The allegations in the
10 District Court are essentially insider trading allegations
11 that the Debtor and Mr. Seery knew or should have known
12 information that they had a duty under the Advisers Act to
13 disclose to their advisees. Both under the Act and
14 contractually, they had those duties. And, instead, they did
15 not disclose and consummated a transaction that benefited
16 themselves nonetheless.

17 In considering those claims, the presiding court will have
18 to consider and apply the Advisers Act and the many
19 regulations promulgated under it, in addition to other federal
20 laws regulating interstate commerce. For that reason,
21 withdrawal of the reference on the District Court action is
22 mandatory. That's the two major -- that's two major problems
23 out of four with the order that we're here on today.

24 First, it deprives litigants of their right to trial, to a
25 jury trial, when Section 959(a) says that can't be done. And,

1 two, the order asserts jurisdiction -- sole jurisdiction, even
2 -- over proceedings in which withdrawal of the reference is
3 mandatory under 157(d).

4 The fourth major problem is what the Court called
5 specificity at the previous hearing. The Fifth Circuit's
6 *Applewood Chair* case holds that the rule from *Shoaf* does not
7 apply without a "specific discharge or release," and that that
8 release has to be enumerated and approved by the Bankruptcy
9 Court. Thus, the order here can't exculpate Mr. Seery of
10 liability for ordinary negligence and the like in a blanket
11 fashion. The claims being released must be identified.

12 That's what happened in *Shoaf*. Shoaf's guaranty
13 obligation was explicitly released. That's also what happened
14 in *Espinosa*. Espinosa's plan listed his student loan as his
15 only specific indebtedness. But it's not what happened here.
16 And it couldn't happen here, because the ordinary negligence
17 and similar claims being discharged by the order had not yet
18 accrued and thus were not even in existence at the time the
19 order issued.

20 Instead, what we have here is a nonconsensual, nondebtor
21 injunction or release that's precisely what the Fifth Circuit
22 refused to enforce in the *Pacific Lumber* case.

23 So, lack of specificity is the third major problem with
24 the order. And that brings us to the fourth problem, which is
25 the *Barton* doctrine. *Barton* is the only possible basis for

1 this Court to assert exclusive or sole jurisdiction over
2 anything. Outside of *Barton*, it's plain black letter law that
3 the District Court's jurisdiction is equal to and includes
4 anything that this Court's derivative jurisdiction would also
5 reach.

6 But the exception to the *Barton* doctrine in 959(a) plainly
7 applies here, leaving no basis for exclusivity with regards to
8 jurisdiction and the District Court. That's because Mr. Seery
9 is carrying on the business of a debtor and managing the
10 property of others, rather than merely administering the
11 bankruptcy estate. The exclusive jurisdiction function of the
12 *Barton* doctrine has no applicability because 959(a) creates
13 that exception here.

14 Under its general equity powers, yes, 959(a) still
15 authorizes this Court to exercise some control over actions
16 against Mr. Seery, but short of depriving litigants of their
17 day in court. And nothing in 959(a), that exception to
18 *Barton*, says that the Court can nonetheless exercise
19 exclusivity in that jurisdiction. Those general equity powers
20 do not create exclusive or sole jurisdiction. They do not
21 deprive the District Court of its Congressionally-granted
22 original jurisdiction.

23 Moreover, Mr. Seery is not an appointed trustee entitled
24 to the protections of the *Barton* doctrine in any case. His
25 appointment was a corporate decision that the Court was asked

1 not to interfere with. The Court was asked to defer under the
2 business judgment rule to the Debtor's appointment of Mr.
3 Seery. And the Court did so.

4 As we asserted last time, no authority that we can find
5 combines these two unrelated doctrines, the *Barton* doctrine
6 and the business judgment rule. And they don't go together.
7 None of the testimony or the briefing or argument, in the July
8 order, in the January order that preceded it, none of that
9 indicated that Mr. Seery would be a trustee or the functional
10 equivalent of a trustee. The word "trustee" does not appear
11 in any of those briefs or transcripts.

12 Opposing -- and because of that, the District Court suit
13 is not about -- well, not because of that. The District Court
14 suit simply is not about any trustee-like role that Mr. Seery
15 may have played anyway. Opposing counsel will try to convince
16 you otherwise, will tell you that the District Court case is a
17 collateral attack on the settlement, but it's not. Wearing
18 his estate administrator hat, Mr. Seery can settle claims in
19 this court. Wearing his advisor hat, he has to fulfill his
20 Advisers Act duties and properly advise his clients.

21 He doesn't have to wear both hats, and it seems highly
22 unusual that he would choose to fill both of those roles
23 simultaneously. But he has chosen both roles. And the
24 District Court case is a hundred percent about his role as an
25 advisor. Did he comply with the Act? Did he do the things

1 that his advisor role obligated him to do as a manager of that
2 property?

3 The District Court suit really is only being used to
4 illustrate the issues that we're raising here. It's
5 important, it's timely to address those issues now because of
6 the District Court action, but that's an illustration of the
7 problems with the order. It is not exclusively that that
8 action is what we're attempting to address. Rather, the order
9 exculpating Mr. Seery from ordinary negligence liability and
10 similar liability is problematic, is contrary to the law. On
11 top of that, the Court is asserting jurisdiction over gross
12 negligence and intentional misconduct claims. To the extent
13 that 157(d) applies, it is problematic and contrary to law as
14 well.

15 THE COURT: Okay. We're occasionally getting some
16 breakup of your sound. So please -- I don't know what you can
17 do to adjust, but it was just now, and intermittently we get a
18 little bit of garbly. So if you could just say your last
19 sentence one more time, and we'll see if it improves.

20 MR. BRIDGES: Your Honor, I'm not sure I can say this
21 last sentence again.

22 THE COURT: Okay.

23 MR. BRIDGES: I was -- I was mentioning that the
24 District Court case is an illustration of our argument. Our
25 argument is not merely that the District Court case should be

1 exempted or excepted from the order. Our argument is that the
2 order is legally infirm and that the District Court case and
3 the claims there illustrate some of those infirmities, but
4 that the infirmities go beyond just what's at issue in the
5 District Court case.

6 In sum, there are four problems with the order that render
7 parts of it legally infirm. It deprives the right of a jury
8 trial -- in fact, of any trial -- in contravention of 959(a)
9 for some causes of action.

10 It asserts jurisdiction -- two, it asserts jurisdiction
11 over claims that are subject to the mandatory withdrawal of
12 the reference provision (garbled) 157(d).

13 And three, it lacks the specificity required to discharge
14 future claims under *Applewood*.

15 Finally, Your Honor, number four, the order relies on the
16 *Barton* doctrine, which doesn't apply and which 959(a) creates
17 an exception to.

18 Movants respectfully submit the order should be modified
19 for those reasons.

20 MR. SBAITI: Tell him Mark Patrick is here, for the
21 record.

22 THE COURT: All right. I have a couple of follow-up
23 questions for you. I want to drill down on the issue of your
24 client not having appealed the July 2020 order. Or the
25 HarbourVest settlement order, for that matter. Tell me as

1 directly as possible why you don't view that as a big problem.
2 Because it's high on my list of possible problems here.

3 MR. BRIDGES: I understand, Your Honor. The
4 *Applewood Chair* case is our -- our defense to that argument,
5 that without providing specifics as to the claims being
6 discharged in the July order, that *Shoaf* cannot apply to
7 create a res judicata effect from the failure to appeal that
8 order.

9 THE COURT: But is that really what we're talking
10 about, a discharge of certain claims? We're talking about a
11 protocol that the Court established which wasn't appealed.

12 MR. BRIDGES: Your Honor, your order does many
13 things. We're talking about a few of them in one paragraph of
14 the order. And in that order -- in that paragraph, yes, it
15 creates a protocol for determining the colorability of some
16 claims, claims that rise to the level of gross negligence or
17 intentional misconduct. It does not create a protocol for
18 claims that fall below that threshold, claims for ordinary
19 negligence, as an example.

20 THE COURT: Okay.

21 MR. BRIDGES: For breach of contract that's not
22 intentional, is not grossly negligent, it's just a breach of
23 contract. It can even be faultless. There's still liability.
24 There's still a jury right under the Seventh Amendment for
25 faultless breach of contract.

1 The protocols in the order do not address such claims
2 other than to bar them. To discharge them. And thus, yes,
3 it's a release, it's a discharge of those claims. It can be
4 viewed as a permanent injunction against bringing such claims.
5 It's what's -- it's what's not allowed by the *Applewood Chair*
6 case and by *Pacific Lumber*.

7 THE COURT: All right. So you're arguing that was --
8 the wording of the order was not specific enough to apprise
9 affected parties of what they were releasing, they're
10 releasing claims based on ordinary negligence against Mr.
11 Seery? That's not specific enough?

12 MR. BRIDGES: Correct. Future unproved claims, the
13 factual basis for which has not happened yet. Those cannot be
14 and were not disclosed with any specificity in this order.

15 If we compare it to *Shoaf* and to *Espinosa*, in *Shoaf* what
16 we had was a guaranty, Shoaf's guaranty on a transaction that
17 was listed in the actual release, describing what the
18 transaction was that was being -- that the guaranty was being
19 released for.

20 In *Espinosa*, what we had was a student loan --

21 THE COURT: Right.

22 MR. BRIDGES: -- that was listed in the plan
23 specifically, as the only specific indebtedness.

24 Here, we don't have any of that specificity. What we have
25 is a notice to the entire world, Your Honor, that for an

1 unlimited period of time any claim for ordinary negligence,
2 for ordinary breach of contract or fiduciary duty against Mr.
3 Seery is barred if it relates to his CEO role. And his CEO
4 role means as a manager of property, exactly precisely what
5 959(a) is talking about.

6 Those jury rights (garbled) claims cannot be released,
7 discharged, expunged, done away with, in an order that isn't
8 explicit.

9 On top of that, even in an explicit order, 959(a) tells
10 the Court it cannot deprive a litigant of its jury trial
11 right.

12 THE COURT: Well, as anyone knows who's been around a
13 while in this case, my brain sometimes goes down an unexpected
14 trail, and maybe this one is one of those situations. Are
15 there contracts that your clients would rely on in potential
16 litigation?

17 MR. BRIDGES: Yes, Your Honor.

18 THE COURT: What are those contracts?

19 MR. BRIDGES: It is a management contract. I don't
20 think I can give you the specifics at this moment, but I
21 probably can before we're done here today. A management
22 contract in which the Debtor provides advisory and management
23 services to the DAF --

24 THE COURT: Well, you know, the shared services
25 agreements that we heard so much about in this case? A shared

1 service agreement? I can't remember, you know, which entities
2 have them and which do not at times. So, --

3 MR. BRIDGES: The shared services agreement is one of
4 those contracts, Your Honor.

5 THE COURT: Okay.

6 MR. BRIDGES: It's not the only one.

7 THE COURT: And what are the others?

8 MR. BRIDGES: There's -- the other is the investment
9 advisory agreement.

10 THE COURT: Those two?

11 MR. BRIDGES: (no response)

12 THE COURT: Those are the only two?

13 MR. BRIDGES: There may be one other, Your Honor.
14 I'm not sure.

15 THE COURT: Are they in evidence?

16 MR. BRIDGES: I can find out shortly.

17 THE COURT: Are they in evidence? We haven't talked
18 about evidence yet, but are they going to be in evidence,
19 potentially?

20 MR. BRIDGES: They are referenced in the District
21 Court case, the complaint, which is in evidence.

22 THE COURT: I'm asking, are --

23 MR. BRIDGES: But those contracts I don't believe are
24 listed as exhibits here in this motion, no.

25 THE COURT: They are not? Okay.

1 Well, what my brain is thinking about here is, of the
2 umpteen agreements I've seen -- more than umpteen -- of the
3 many, many agreements I've seen over time in this case, so
4 often there's a waiver of jury trial rights, as I recall, as
5 well as an arbitration clause. I just was curious, hmm, you
6 know, you talked a lot about your clients' jury trial rights:
7 do we know that these agreements have not waived those?

8 MR. BRIDGES: Your Honor, I think I can answer that
9 by the end of our hearing. I don't have an answer off the top
10 of my head. What I can tell you is a jury right has been
11 demanded in the federal court complaint, which is in evidence,
12 and that opposing counsel has brought no evidence indicating
13 that they have the defense of our having waived the right to a
14 jury trial here.

15 THE COURT: Okay. Well, I just --

16 MR. BRIDGES: Or arbitra...

17 THE COURT: -- would think that you would know that.
18 Does anyone know that on the Debtor's side off the top of your
19 head?

20 MR. POMERANTZ: I do not, Your Honor.

21 THE COURT: Uh-huh.

22 MR. POMERANTZ: And to Mr. Bridges' last point, we
23 have filed a motion to dismiss. We have not answered the
24 complaint. So any time to object to their jury trial right
25 would be in the context of the answer. So the implication

1 that we have not raised the issue and therefore it doesn't
2 exist is just not a correct implication and connection he's
3 trying to draw.

4 THE COURT: Okay. All right.

5 Well, let me also ask you about this. I'm obsessing a
6 little over the *Barton* doctrine and your insistence that it
7 does not provide authority or an analogy here.

8 Well, for one thing, is there anything in the Fifth
9 Circuit case *Sherman v. Ondova* that you think either helps you
10 or hurts you on that point? I'm intimately familiar with it,
11 although I haven't read it in a while, because it was my
12 opinion that the Fifth Circuit affirmed. And I spent a lot of
13 time thinking about that. It was a trustee, a traditional --
14 well, no, a Chapter 11 trustee and his counsel. But anything
15 from that case that you think is worthy of pointing out here?

16 MR. BRIDGES: No, Your Honor. I'm not -- nothing
17 comes to mind. That case is not fresh on my mind.

18 What I would tell you is that *Barton* doctrine and the
19 business judgment rule are incompatible, and the appointment
20 of a trustee never involves application of the business
21 judgment rule or deference to the Debtor or another party in
22 terms of making that appointment.

23 The *Barton* doctrine, as it applies to trustees, is viewed
24 as an extension, to some extent, of judicial immunity to the
25 trustee, who is chosen by, selected by the Court and assigned

1 by the Court to carry out certain functions. That --

2 THE COURT: Well, let me --

3 MR. BRIDGES: -- quasi-immunity --

4 THE COURT: -- stop you there. You say it's an
5 extension of immunity. But isn't it, by nature, really a
6 gatekeeping provision? It's a gatekeeping provision, right?
7 Before you even get to immunity, maybe, in a lawsuit, it's a
8 gatekeeping function that the Supreme Court has blessed, you
9 know, obviously in the context of a receiver, but appellate
10 courts have blessed it in the bankruptcy context. The
11 Bankruptcy Court can be the gatekeeper on whether the trustee
12 or someone I think in a similar position can get sued or not.

13 And then we had that Fifth Circuit case after *Ondova*. It
14 begins with a *V, Villegas* or something like that. Didn't
15 that, I don't know, further ratify, if you will, the whole
16 *Barton* doctrine by saying, oh, just because they're noncore
17 claims, state law or non-bankruptcy law claims, doesn't mean,
18 after *Stern*, the Bankruptcy Court still cannot serve the
19 gatekeeper function.

20 Tell me what you disagree. That's my kind of combined
21 reading of all of that.

22 MR. BRIDGES: Your Honor, I have to parse it out.
23 There's a lot to unpack there. If I can make sure to get in
24 the follow-ups, I can start with saying it's okay for the
25 Court in many instances to act as a gatekeeper.

1 THE COURT: Okay.

2 MR. BRIDGES: Both under *Barton* -- under *Barton*, or
3 when the *Barton* exception in 959(a) applies, under the Court's
4 general equitable powers, that gatekeeping functions are not
5 across-the-board prohibited, --

6 THE COURT: Okay.

7 MR. BRIDGES: -- and we aren't trying to argue that
8 they're prohibited across the board.

9 THE COURT: Okay.

10 MR. BRIDGES: Now, to try to dig into that a little
11 deeper, the order does two things: gatekeeping as to some
12 claims, and, frankly, discharging or barring other claims.
13 Those are two separate functions.

14 The first one, the gatekeeping, may be, in some
15 circumstances, which we'll come to, many circumstances, may be
16 allowable, may be even mandatory under *Barton*, not even
17 requiring an order from this Court, for the gatekeeping of
18 *Barton* to apply. But nonetheless, allowable in many instances
19 under the Court's general equity powers under 959(a). That
20 part is right about gatekeeping.

21 It does not create jurisdiction in this Court where 157(d)
22 deprives this Court of jurisdiction. Just because it's
23 related to bankruptcy isn't enough to say that the Court
24 therefore has jurisdiction if, one, if mandatory withdrawal of
25 the reference is required.

1 Furthermore, Your Honor, that gatekeeping function, under
2 the equity powers authorized by 959(a), will not allow a court
3 to discharge or -- or deprive, is the word I'm looking for --
4 deprive a litigant of their right to a trial -- a specific
5 kind of trial, a jury trial -- but a trial. And by crafting
6 an order that says certain kinds of claims that do (garbled)
7 jury rights are barred, rather than just providing a
8 gatekeeper provision, flat-out bars them, that doesn't -- that
9 doesn't comply with 959.

10 THE COURT: Okay.

11 MR. BRIDGES: Your Honor, if I could add one last
12 thing.

13 THE COURT: Go ahead.

14 MR. BRIDGES: The Supreme Court's *Stern* case points
15 out that -- that it's -- well, actually, it's the *Villegas*
16 case from the Fifth Circuit --

17 THE COURT: The one I mentioned.

18 MR. BRIDGES: -- points out that *Stern* -- *Stern* --
19 yes, you did. *Stern* did not create an exception to the *Barton*
20 doctrine. And that gives -- that endorses a *Barton* court's
21 ability to perform gatekeeping, even over claims that *Stern*
22 says there would not be jurisdiction over.

23 Contrast that with 959(a), which *Collier on Bankruptcy* and
24 the Fifth Circuit have held is an exception to the *Barton*
25 doctrine. Because of that exception, *Barton* no longer

1 applies, and what you're using in invoking a gatekeeper order
2 is the Court's inherent equitable powers, its general powers
3 in equity. And those equity powers are cabined. They're
4 broad, but they're cabined by 959(a)'s prohibition of doing
5 away with a litigant's right to a trial, a jury trial.

6 Now, I also -- counsel is telling me I should note for the
7 record that Mr. Mark Patrick is here as a representative of
8 our clients. But Your Honor, I'll -- I will quit now unless
9 you have further questions for me.

10 THE COURT: All right. I do not at this time. Mr.
11 Morris or Mr. Pomerantz, who's going to make the argument?

12 MR. POMERANTZ: It's me, Your Honor.

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: And I'll start with the jury trial
15 right. In the last few minutes, we have been able to
16 determine that the Second Amended and Restated Investment
17 Advisory Agreement between the DAF and the Debtor has a broad
18 jury trial waiver under 14(f). And in addition, as I will
19 include in my discussion, there is no private right of action
20 under the Investment Advisers Act.

21 I think those two points are fatal to Movants' argument,
22 and probably I can get away with not even responding to the
23 others. But since I prepared a lengthy presentation to
24 address the issues that were raised today, and also the half
25 hour that Mr. Bridges spent with Your Honor on June 8th in

1 which was his first opening statement on the motion for
2 reconsideration, I'll now proceed.

3 THE COURT: All right.

4 MR. POMERANTZ: The arguments that the Movants made
5 in the original motion essentially boil down to one legal
6 proposition, that the Court did not have jurisdiction to enter
7 the July 16th order because those orders impermissibly
8 stripped the District Court from jurisdiction, in violation of
9 (inaudible) Supreme Court precedent and 28 U.S.C. Section
10 157(d).

11 As with all things Dondero, the arguments continue to
12 morph, and you heard argument at the contempt hearing on June
13 8th and further argument today that now the prospective
14 exculpation for negligence in the order is also unenforceable
15 and should be modified.

16 Movants continue to try to distance themselves from the
17 January 9th order and argue that it is not relevant because
18 they seek to pursue claims against Mr. Seery as CEO and not as
19 an independent director. Movants ignore, however, that the
20 January 9th order not only protects Mr. Seery in his role as
21 the independent director, but also as an agent of the board.
22 I will walk the Court through my arguments on that issue in a
23 few moments.

24 Of course, the Movants had no explanation, Your Honor, for
25 the question of why it took them until May of 2021, 10 months

1 after the entry of the July 16th order that appointed Mr.
2 Seery as CEO and CRO, and 16 months after the Court appointed
3 the independent board, with Mr. Dondero's blessing and
4 consent, as a substitute for what would have surely been the
5 imminent appointment of a Chapter 11 trustee.

6 Movants try to distance themselves from the prior orders
7 by essentially arguing that the DAF is a newcomer to the
8 Chapter 11 and is not under Mr. Dondero's control but is
9 rather managed separately and independently by Mr. Patrick,
10 who recently replaced Mr. Scott.

11 The Movants admit, as they must, that the DAF is the
12 parent and the sole shareholder of CLO Holdco and conducts its
13 business through CLO Holdco, and both entities conduct their
14 business through one individual. It was Grant Scott then;
15 it's Mark Patrick now. So even if Mr. Dondero does not
16 control the DAF and CLO Holdco, which issue was the subject of
17 lengthy testimony in connection with the DAF hearing, both the
18 DAF and the CLO Holdco are bound by the Debtor's res judicata
19 argument, which I will discuss shortly.

20 In any event, I really doubt the Court is convinced that
21 the DAF operates truly independently of Mr. Dondero any more
22 than the Court has been convinced that the Advisors, the
23 Funds, Dugaboy and Get Good, all operate independently from
24 Mr. Dondero. The only explanation for the delay is that Mr.
25 Dondero has been and continues to be unhappy with the Court's

1 rulings and has now hired a new set of lawyers in a desperate
2 attempt to evade this Court's jurisdiction. Having failed in
3 their attempt to recuse Your Honor from the case, this is
4 essentially their last hope.

5 And these new lawyers, Your Honor, have not only filed
6 this DAF lawsuit in the District Court which is the subject of
7 the contempt motion and today's motion, but they also filed
8 another lawsuit in the District Court on behalf of an entity
9 called PCMG, another Dondero entity, challenging yet another
10 of Mr. Seery's postpetition decisions.

11 And there's no doubt that this is only the beginning. Mr.
12 Dondero recently told Your Honor at a hearing that there were
13 many more sets of lawyers waiting in the wings. And as the
14 Court remarked at the hearing on the Trusts' motion to compel
15 compliance with Rule 2015.3, the Trusts were trying through
16 that motion to obtain information about the Debtor's control
17 entities so that they could file more lawsuits against the
18 Debtor, a concern that Mr. Draper unconvincingly denied.

19 I would like to focus the Court preliminarily on exactly
20 what the January 9th and July 16th orders do, because Movants
21 try to confuse things by casting the entire order with a broad
22 brush of their jurisdictional overreach arguments, and they
23 misinterpret Supreme Court and Fifth Circuit precedent.

24 I would like to put up on the screen the language of
25 Paragraph 10 of the January 9th order and Paragraph 35

1 (garbled) of the July 16th.

2 Your Honor is very familiar with these orders, I'm sure,
3 having dealt with them in connection with confirmation and in
4 prior proceedings. But to recap, the orders essentially do
5 three things.

6 First, they require the parties to first come to the
7 Bankruptcy Court before commencing or pursuing a claim against
8 certain parties.

9 Second, they provided the Court with the sole jurisdiction
10 to make a finding of whether the party has asserted a
11 colorable claim of negligence -- of willful misconduct or
12 gross negligence.

13 And lastly, the orders provided the Court with exclusive
14 jurisdiction over any claims that the Court determined were
15 colorable.

16 The protected parties under the January 9th order are the
17 independent directors, their agents and advisors, which, as I
18 mentioned earlier, includes Mr. Seery -- who, at least as of
19 March 2020, was acting as the agent on the board's behalf as
20 the CEO -- for any actions taken under their direction.

21 The protected parties under the July 16th order are Mr.
22 Seery, as the CEO and CRO, and his agents and advisors.

23 Movants spend a lot of time in their moving papers and
24 reply arguing that the Court may not assert exclusive
25 jurisdiction over any claims that pass through the gate. They

1 also spend a lot of time arguing that the Bankruptcy Court
2 does not even have jurisdiction at all to assert -- to
3 adjudicate claims against Mr. Seery because such claims are
4 subject to mandatory withdrawal under Section 157(d).

5 The Debtor doesn't agree, and has briefed why mandatory
6 withdrawal of the reference is inapplicable. The Debtor has
7 also filed in the District Court a motion to enforce the
8 reference in effect in this district which refers cases in
9 this district arising under, arising in, or related to Chapter
10 11 to the Bankruptcy Court.

11 The motion to enforce the reference, Your Honor, which
12 extensively briefs this issue, is contained in Exhibit 3 of
13 the Debtor's exhibits.

14 We were somewhat surprised that the complaint filed in the
15 District Court wasn't automatically referred to this Court
16 under the standing order in effect in this district, given the
17 related bankruptcy case, the Court's prior approval of the
18 HarbourVest settlement, and the appeal in the District Court
19 of the HarbourVest settlement.

20 When we dug a little further, we found out that Movants
21 filed a civil case cover sheet accompanying the complaint in
22 the District Court. They neglected in that initial filing to
23 point out that there was any related case to the lawsuit they
24 filed.

25 Mr. Bridges fell on his sword at the contempt hearing on

1 June 8th and took complete responsibility for the oversight.
2 I commend him for not trying to argue that the bankruptcy
3 case, the HarbourVest settlement, and the District Court
4 appeal are not related cases that would require disclosure, an
5 argument that surely would have been unsupportable.

6 But as I said at the contempt hearing, I find it curious
7 that such an important issue was overlooked, an issue which
8 would have likely changed the entire trajectory of the
9 proceedings and landed the DAF lawsuit in this Court rather
10 than the District Court.

11 And this Tuesday, Your Honor, Movants filed a revised
12 civil cover sheet with the District Court. Although they
13 referenced the bankruptcy case as a related case, they didn't
14 bother to mention the appeal already pending in the District
15 Court regarding the HarbourVest settlement -- surely, a
16 related case.

17 Your Honor also asked Mr. Bridges at the June 8th hearing
18 whether it was an oversight or intentional that he didn't
19 mention 28 U.S.C. Section 1334 as a basis for jurisdiction in
20 his complaint. Mr. Bridges had no answer for Your Honor then,
21 and has given no answer now. His only comment at the hearing
22 last time was that it must have been Ms. Sbaiti that wrote it
23 because he had no recollection of it.

24 So, Your Honor, it's no surprise that Movants conveniently
25 found themselves in the District Court, which was their

1 ultimate strategy from the get go.

2 In any event, Your Honor, we have briefed the withdrawal
3 of the reference issue. A response by the Movants is due --
4 CLO Holdco and DAF is due on June 29th. And we hope the
5 District Court will decide soon thereafter whether to enforce
6 the reference.

7 While I'm happy to argue why Movants' mandatory withdrawal
8 of the reference argument is [not] persuasive, I don't think
9 it's necessary, but I do, again, want to highlight that there
10 is no private right of action under the Investment Advisers
11 Act.

12 Your Honor, it's not really relevant to today's hearing,
13 since we have argued in opposition to the motion before Your
14 Honor that resolving the issue of the Bankruptcy Court's
15 jurisdiction to adjudicate claims contained in the complaint
16 as they relate to Mr. Seery is premature at this point. The
17 January 9th and July 16th orders first require the Court to
18 determine whether a claim is colorable. It's not until this
19 Court determines if a claim is colorable that the decision on
20 where the lawsuit should be tried is relevant.

21 Having said that, Your Honor, we read the Movants' reply
22 brief very carefully and noticed in Footnote 6 that the
23 Movants state that modifying the exclusive grant of
24 jurisdiction to adjudicate any claims that pass through the
25 gate to include the language "to the extent permissible by

1 law," in the same way the Debtor modified the plan, would
2 resolve the motion. So let's look at the provision as it
3 exists in the plans.

4 Ms. Canty, if you can put up the next demonstrative,
5 please.

6 This provision provides that the Bankruptcy Court will
7 have sole and exclusive jurisdiction to determine whether a
8 claim or cause of action is colorable, and, only to the extent
9 legally permissible and provided in Article XI, shall have
10 jurisdiction to determine -- to adjudicate the underlying
11 colorable claim or cause of action.

12 The Movants request in their reply brief in Footnote 6
13 that the July 16th order be given the plan treatment. That
14 treatment: sole authority to determine colorability and
15 jurisdiction, and, to the extent legally permissible, to
16 adjudicate underlying claim, only if jurisdiction existed.

17 After reviewing the reply brief and prior to the June 8th
18 hearing, we decided that we would agree to modify both the
19 January 9th and the July 16th orders to provide that the
20 Bankruptcy Court would only have jurisdiction to adjudicate
21 claims that pass through the colorability gate to the extent
22 permissible by law.

23 Prior to the June 8th hearing, Mr. Morris and I had a
24 conversation with Mr. Bridges. We conferred about a potential
25 resolution and a proposed modification. Mr. Bridges indicated

1 they were interested in exploring a resolution and wanted to
2 --

3 MR. BRIDGES: Objection, Your Honor.

4 THE COURT: There's an objection?

5 MR. BRIDGES: Objection, Your Honor. There's a Rule
6 408 settlement discussion. He's welcome to talk about the
7 results, but he shouldn't be talking about what was -- what
8 was proposed by opposing counsel in a settlement conversation.

9 THE COURT: Okay. I overrule.

10 MR. POMERANTZ: Your Honor, this was not --

11 THE COURT: I don't think this is a 408 issue.
12 Continue.

13 MR. BRIDGES: Thank you.

14 MR. POMERANTZ: The stipulation and order which we
15 provided to counsel is attached to my declaration, which is
16 found at Document 2418, and it was filed in connection with a
17 Notice of Revised Proposed Orders that we filed at Docket
18 2417. And I would like to put up on the screen the relevant
19 paragraphs of the order that we provided to the Movants.

20 So, you see, we agreed to modify each of the orders at the
21 end to do what the plan says. The Court would only have
22 jurisdiction for claims passing through the gate if the Court
23 had jurisdiction and it was legally permissible.

24 Movants' counsel, however, responded with a mark-up that
25 went beyond -- went beyond what Movants proposed in Footnote 6

1 and sought to fundamentally change the January 9th and July
2 16th orders in ways that were not acceptable to the Debtor and
3 not even contemplated by the original motion.

4 Ms. Canty, can you put up on the screen the relevant
5 paragraphs of the response we received?

6 Specifically, Your Honor, you see at the first part they
7 wanted to provide that the only -- the order only applied to
8 claims involving injury to the Debtor, presumably as opposed
9 to alleged injuries to affiliated funds or third parties.
10 They also provided that the Court's ability to make the
11 initial colorability determination was also qualified by "to
12 the extent permissible by law" in the way that the Court --
13 that the Debtor agreed to modify the ultimate adjudication
14 jurisdiction provision.

15 Your Honor, Movants haven't even talked about this back
16 and forth. They haven't talked about their about-face. And
17 I'll leave it for Your Honor to read their Footnote 6 that
18 said it would resolve their motion, the back and forth, our
19 proposal, and now Mr. Bridges' modified, morphed arguments
20 that now point out other issues.

21 In any event, Your Honor, we made the change, and we think
22 it should resolve the motion, or at least it resolves part of
23 the motion. There can't be any argument that the Court is
24 trying to exert exclusive jurisdiction on claims that pass
25 through the gate.

1 What apparently remains from the arguments raised by the
2 Movants is the argument that the Court does not even have
3 jurisdiction to act as a gatekeeper in the first place because
4 it doesn't have jurisdiction of the underlying lawsuit. And
5 on June 8th and today, they've added a new argument, that the
6 orders impermissibly exculpate Mr. Seery and others, violate
7 their jury trial rights, and are contrary to the Fifth Circuit
8 precedent.

9 Movants claims that the orders are a jurisdictional
10 overreach, a violation of constitutional proportions, a
11 violation of due process, and inconsistent with several U.S.
12 Supreme Court cases. But, of course, they cite no cases whose
13 facts are even remotely similar to this one. Instead, they
14 are content to rely on general statements regarding bankruptcy
15 jurisdiction, how it is derived from district court
16 jurisdiction and is constitutionally limited, legal
17 propositions which are not terribly controversial or even
18 applicable to these facts.

19 There are several arguments -- I mean, there are several
20 reasons, Your Honor, why Movants' arguments fail. Initially,
21 Movants have not cited any authority, any statute, or any rule
22 which would allow this Court to revisit the January 9th and
23 July 16th orders. As I will discuss in a moment, Your Honor,
24 *Republic v. Shoaf*, a case the Court is very familiar in and
25 relied on in connection with plan confirmation, bars a

1 collateral attack on these orders under the doctrine of res
2 judicata.

3 Similarly, as the Court remarked on June 8th, the Supreme
4 Court's *Espinosa* decision, which rejected an attack based upon
5 Federal Rule of Civil Procedure 60(b)(4) to a prior order that
6 may have been unlawful, prohibits the Court from now
7 reconsidering the January 9th and July 16th orders.

8 But even if Your Honor rules that res judicata does not
9 apply, there are two independent reasons why the orders were
10 not an unlawful extension of the Court's jurisdiction. The
11 first is because the Court had jurisdiction to enter both of
12 those orders as the ability to determine the colorability of
13 claims is within the jurisdiction of the Court. The second is
14 because the orders are justified by the *Barton* doctrine.

15 Lastly, Your Honor, Movants' argument that the Court may
16 not act as a gatekeeper to determine the colorability of a
17 claim for which it may not have jurisdiction is incorrect, and
18 as Your Honor has mentioned and as Mr. Bridges unconvincingly
19 tried to distinguish, the Fifth Circuit *Villegas v. Schmidt*
20 case is a case on point and resolves that issue.

21 Turning to res judicata, Your Honor, it prevents the Court
22 from revisiting these governance orders. CLO Holdco had
23 formal notice of the Seery CEO motion and the opportunity to
24 respond. It failed to do so. It is clearly bound.

25 As reflected on Debtor's Exhibit 4, CLO Holdco is a

1 wholly-owned subsidiary of the DAF. The DAF is its sole
2 shareholder. There is no dispute about that. Importantly, at
3 the time of both the January and July orders, Grant Scott was
4 the only human being authorized to act on behalf of CLO Holdco
5 and the DAF. The DAF did not respond to the Seery CEO motion,
6 either.

7 And why is that important, Your Honor? It's because
8 Movants argue in their reply that the DAF cannot be bound by
9 res judicata because they did not receive notice of the July
10 16th order. However, Your Honor, that is not the law. Res
11 judicata binds parties to the dispute and their privies, and
12 the DAF is bound to the prior orders even though it did not
13 receive notice.

14 There are several cases, Your Honor, that stand for this
15 unremarkable proposition. First I would point Your Honor to
16 the Fifth Circuit's opinion of *Astron Industrial Associates v.*
17 *Chrysler*, found at 405 F.2d 958, a Fifth Circuit case from
18 1968. In that case, Your Honor, the Fifth Circuit held that
19 the appellant was barred by the doctrine of res judicata from
20 bringing a claim because its parent, which was its sole
21 shareholder, would have been bound by res judicata.

22 *Astron* is consistent with the 1978 Fifth Circuit case of
23 *Pollard v. Cockrell*, 578 F.2d 1002 (1978). And the Northern
24 District of Texas in 2000 case of *Bank One v. Capital*
25 *Associates*, 2000 U.S. Dist. LEXIS 11652, found that a parent

1 and a sole shareholder of an entity couldn't assert res
2 judicata as a defense when those claims could have been
3 brought against its wholly-owned subsidiary.

4 And lastly, Your Honor, the 2011 Southern District of
5 Texas case, *West v. WRH Energy Partners*, 2011 LEXIS 5183, held
6 that res judicata applied with respect to a partnership's
7 general partner because the general partner was in privity
8 with the partnership.

9 These cases are spot on and make sense. DAF is CLO
10 Holdco's parent. Grant Scott was the only live person to
11 represent these entities in any capacity at the relevant
12 times. Accordingly, just as CLO Holdco is bound, DAF is
13 bound.

14 Allowing DAF to assert a claim when its wholly-owned and
15 controlled subsidiary is barred would allow entities to
16 transfer claims amongst their related entities in order to
17 relitigate them and they would never be finality. And, of
18 course, Jim Dondero, as we know, consented to the January 9th
19 order, which provided Mr. Seery protection in a variety of
20 capacities.

21 And as Your Honor has pointed out, and as Mr. Bridges
22 didn't have an answer for, neither CLO Holdco nor the DAF or
23 any other party appealed any of the governance orders. And
24 nobody challenged the validity of these orders at the
25 confirmation hearing, where the terms of these orders were

1 front and center.

2 And importantly, Your Honor, the orders are clear and
3 unambiguous. They require a Bankruptcy Court [sic] to seek
4 Bankruptcy Court approval before they commence or pursue an
5 action against the independent board, the CEO, CRO, or their
6 agents. And they clearly and unambiguously set the standard
7 of care for actions prospectively: gross negligence or
8 willful misconduct.

9 The Bankruptcy Court had jurisdiction to enter the
10 governance orders, which, as expressly indicated in the
11 orders, were core proceedings dealing with the administration
12 of the estate. No one challenged this finding of core
13 jurisdiction. And as I will discuss later, the failure to
14 challenge core jurisdiction is waived under applicable Supreme
15 Court and Fifth Circuit precedent.

16 Your Honor, the Court [sic] does not argue that Movants
17 have waived their right to seek adjudication of a lawsuit that
18 passes through the colorability gate by an Article III Court.
19 The issue is not before the Court, but the changes to the
20 order that the Debtor agreed to make clearly -- clearly will
21 provide Mr. Bridges' clients the ability to make that
22 determination.

23 The Debtor is, however, arguing that the Movants have
24 waived their right to contest the core jurisdiction of the
25 Bankruptcy Court to make the determination that the claims are

1 colorable in the first place, and to challenge the exculpation
2 provisions provided to the beneficiaries of those orders.

3 Accordingly, Your Honor, the elements of res judicata are
4 satisfied. Both proceedings involve the same parties. The
5 prior judgment was entered by a court of competent
6 jurisdiction. The prior order was a final judgment on its
7 merits. And they involved the same causes of action.

8 Importantly, the members of the independent board,
9 including Jim Seery, relied on the protections contained in
10 the January 9th and July 16th orders and would not have
11 accepted these appointments if the protections weren't
12 included. And how do we know this? Because each of them,
13 both Mr. Seery and Mr. Dubel, both testified at the
14 confirmation hearing on this very topic.

15 And I would like to put up on the screen an excerpt from
16 Mr. Seery's testimony at confirmation, which is testimony
17 included in the February 2nd, 2021 transcript, which is
18 Exhibit 2 of the Debtor's exhibits.

19 THE COURT: Okay.

20 MR. POMERANTZ: And I would like to just read this,
21 Your Honor.

22 "Q Okay. You mentioned that there were certain
23 provisions of the January 9th order that were important
24 to you and the other independent directors. Do I have
25 that right?"

1 MR. POMERANTZ: A little bit later on, Mr. Seery
2 testifies:

3 "A And then ultimately there'll be another provision
4 in the agreement here, I don't see it off the top of my
5 head, but a gatekeeper provision. And that provision"
6 --

7 "Q Hold on one second, Mr. Seery."

8 MR. POMERANTZ: Please scroll.

9 "Q So, Paragraph 4 and 5, were those -- were those --
10 were those provisions put in there at the insistence of
11 the prospective independent directors?

12 "A Yes.

13 "Q Okay. Can we go to Paragraph 10, please? There
14 you go."

15 Mr. Morris: Is this the other provision that you were
16 referring to?

17 "A This is -- it's become to be known as the
18 gatekeeper provision, but it's a provision that I
19 actually got from other cases -- again, another very
20 litigious case -- that I thought it was appropriate to
21 bring it into this case. And the concept here is that
22 when you are dealing with parties that seem to be
23 willing to engage in decade-long litigation and
24 multiple forums, not only domestically but even
25 throughout the world, it seemed important and prudent

1 to me and a requirement that I set out that somebody
2 would have to come to this Court, the Court with
3 jurisdiction over these matters, and determine whether
4 there was a colorable claim. And that colorable claim
5 would have to show gross negligence and willful
6 misconduct -- i.e., something that would not otherwise
7 be indemnifiable" --

8 MR. POMERANTZ: Hold on one second.

9 "A So, basically, it set an exculpation standard for
10 negligence. It exculpates the directors from
11 negligence, and if somebody wants to bring a cause
12 against the directors, they have to come to this Court
13 first to get a finding that there's a colorable claim
14 for gross negligence or willful misconduct."

15 "Q Would you have accepted the engagement as an
16 independent director without the Paragraphs 4, 5, and
17 10 that we just looked at?

18 "A No, these were very specific requests. The
19 language here has been smithed, to be sure, but I
20 provided the original language for Paragraph 10 and
21 insisted on the guaranty provisions above to ensure
22 that the indemnity would have some support.

23 "Q And ultimately did the Committee and the Debtor
24 agree to provide all the protections afforded by
25 Paragraphs 4, 5, and 10?

1 "A Yes."

2 MR. POMERANTZ: So, Your Honor, these -- this
3 testimony also applied to as well as the CEO.

4 The testimony was echoed by Mr. Dubel, another member of
5 the board. And I'm not going to put his testimony on the
6 screen, but it can be found at Pages 272 to 281 of Exhibit 2,
7 which is the February 2nd transcript.

8 Movants argue, however, that res judicata doesn't apply
9 because the Court didn't have jurisdiction to enter these
10 orders. And they argue that the order stripped the District
11 Court of this jurisdiction. As I previously described, the
12 Debtor is prepared to modify the governance orders to provide
13 that the Court shall retain jurisdiction to -- on claims that
14 pass through the gate only to the extent legally permissible.
15 The modification does not appear to be good enough for the
16 Movants. They continue to argue that the Bankruptcy Court
17 can't even act as the exclusive gatekeeper to determine
18 whether such actions are colorable as a prerequisite for
19 commencing or pursuing an action.

20 The problem Movants run into is the Fifth Circuit's
21 opinion of *Republic v. Shoaf* and various Supreme Court
22 decisions, including *Espinosa*.

23 In *Shoaf*, the Fifth Circuit held that a party cannot
24 subsequently challenge a confirmed plan that clearly and
25 unambiguously released a third party, even if the Bankruptcy

1 Court lacked jurisdiction to approve the release in the first
2 place. Movants' proper recourse was to appeal the governance
3 orders, not to seek to collaterally attack them.

4 In *Shoaf*, the Fifth Circuit held that the confirmed plan
5 was res judicata with respect to a suit by the creditor
6 against the guarantor. And in so ruling, the Fifth Circuit
7 says that the prong of res judicata standard that requires an
8 order, prior order to be made by a court of competent
9 jurisdiction is satisfied regardless of whether the issue was
10 actually litigated. This is because whenever a court enters
11 an order, it does so by implicitly making a finding of its
12 jurisdiction, a determination that can't be attacked. And in
13 fact, in the January 9th and the July 16th orders, it wasn't
14 implicit, the Court's jurisdiction; it was set out that the
15 Court had core jurisdiction.

16 Movants try to brush *Shoaf* aside, arguing that is the only
17 case the Debtor cites to support res judicata argument and is
18 a narrow opinion that has been questioned and distinguished.
19 That's just not correct, Your Honor. Movants ignore that we
20 have cited two United States Supreme Court cases, *Stoll v.*
21 *Gottlieb* and *Chicot County Drainage District*, upon which the
22 Fifth Circuit based its *Shoaf* decision. In each case, the
23 U.S. Supreme Court gave res judicata effect to a Bankruptcy
24 Court order that made a ruling party -- that a ruling party
25 later claimed was beyond the Court's jurisdiction to do so.

1 In *Stoll*, it was a release of guaranty without jurisdiction,
2 like *Shoaf*. In *Chicot*, it was an extinguishment of a bond
3 claim without jurisdiction.

4 Similarly, Your Honor, the U.S. Supreme Court held in
5 *Espinosa* that a party was not entitled to reconsideration of a
6 Bankruptcy Court order under Federal Rule of Civil Procedure
7 60(b)(4) discharging a student loan without making the
8 required statutory finding of undue hardship in an adversary
9 proceeding. And the Supreme Court reasoned in that opinion as
10 follows: A judgment is not void, for example, simply because
11 it may have been erroneous. Similarly, a motion under
12 60(b)(4) is not a substitute for a timely appeal. Instead,
13 60(b)(4) applies only in the rare instance where a judgment is
14 premised either on a certain type of jurisdictional error or a
15 violation of due process that deprives a party of notice or
16 the opportunity to be heard.

17 Federal courts considering Rule 60(b)(4) motions that
18 assert a judgment is void because of a jurisdictional defect
19 generally have reserved it only for the exceptional case in
20 which the court that rendered the judgment lacked even an
21 arguable basis for jurisdiction. This case is not the
22 exceptional -- exceptional circumstance that was referred to
23 by *Espinosa*.

24 In addition, we argue in our brief, and I'll get to in a
25 few moments, that both of the orders are justified under the

1 Barton doctrine.

2 Actually, before I go to that, Your Honor, I think Movants
3 are really trying to distinguish *Espinosa* by arguing that the
4 Court's order exculpating Mr. Seery for negligence liability
5 did not provide people, mom-and-pop investors, with the due
6 process informing them that they would not be able to assert
7 duty claims based upon mere negligence. I think that's the
8 core of Mr. Bridges' argument, that, hey, you entered an
9 order, you gave this exculpation, it was inappropriate, and it
10 couldn't be done.

11 There are several problems with Movants' argument. First,
12 Movants mischaracterize both the facts and the law in
13 connection with the Debtor's relationship with its investors.
14 The Debtor is the registered investment advisor for HCLOF as
15 well as approximately 15 to 18 CLOs. The only investor in
16 HCLOF other than the Debtor is CLO Holdco. The investors in
17 the CLOs are the retail funds advised by the Dondero advisors
18 and the other -- and other institutional investors.
19 Accordingly, the thousands of investors, the mom-and-pop
20 investors whose due process rights have allegedly been
21 trampled by the January 9th and July 16th orders, are not
22 investors in any funds managed by the Debtor.

23 And, of course, I have mentioned, as I've mentioned
24 before, no non -- non-Dondero investor, be it a mom-and-pop
25 investor, another institutional investor, anyone unrelated to

1 Mr. Dondero, has ever appeared in this Court to challenge the
2 Debtor's activities.

3 But more fundamentally, Your Honor, the Debtor does not
4 owe fiduciary duties to investors in any of the funds that the
5 Debtor advises. The fiduciary duty that the Debtor owes is to
6 the funds themselves, not the investors in the funds.

7 And while Movants point to Mr. Seery's prior testimony to
8 support the argument that the Debtor owes a duty to investors,
9 Mr. Seery was not testifying as a lawyer and his testimony
10 just cannot change the law.

11 As to each of the funds that the Debtor manages, HCLOF and
12 the CLOs, they were each provided with actual notice of the
13 January 16th -- the July 16th order and didn't object. And as
14 Your Honor will recall, the Trustees for the CLOs, the party
15 that could potentially have claims for breach of fiduciary
16 duty, they participated in the January 9th hearing. They came
17 to the Court and were concerned about the protocols that the
18 Debtor was agreeing to with the Committee. We revised them.
19 The Trustees didn't object. They didn't object then; they
20 didn't object now. And, in fact, they consented to the
21 assumption of the contracts between the Debtor and the CLOs.

22 So the argument that the orders, by having this
23 exculpation for future conduct, violated due process rights of
24 anyone and is the type -- essentially, the type of order that
25 *Espinosa* would have contemplated could be attacked, is --

1 relies on faulty legal and factual premises. No duty to
2 investors. No private right of action. And both -- and all
3 the funds received due process.

4 In addition, Your Honor, as we argue in our brief and I'll
5 get to in a few moments, both of the orders are justified
6 under the *Barton* doctrine, as Mr. Seery is entitled to
7 protection based upon how courts around the country have
8 interpreted the *Barton* doctrine. As such, Mr. Seery is
9 performing his role both as an agent of the independent board
10 under the January 9th order, as a CEO under the July 16th
11 order, as a quasi-judicial officer. And as Your Honor
12 examined in the *Ondova* opinion which you mentioned, trustees
13 are entitled to qualified immunity for damage to third parties
14 resulting from simple negligence, provided that the trustee is
15 operating within the scope of his duties and is not acting in
16 an *ultra vires* manner.

17 So, exculpating the independent directors, their agents,
18 and the CEO in the January 9th and July 16th orders was a
19 recognition by this Court that they would be entitled to
20 qualified immunity, much in the same way trustees are.

21 No doubt that Movants contend that this was error and that
22 the Court overreached. However, the remedy for that overreach
23 was an appeal, not a reconsideration 16 months later. The
24 Court's orders based upon the determination that in this
25 highly contentious case that these court officers needed to be

1 protected from negligence suits is not the exceptional case
2 where the Court lacked any arguable basis for jurisdiction.
3 Accordingly, this Court must follow *Espinosa*, *Shoaf*, *Stoll*,
4 and *Chicot* and reject the attack on the prior court orders.

5 The only case Movants cite to challenge the Supreme
6 Court's decision -- to challenge the Supreme Court precedent I
7 mentioned and the Fifth Circuit's *Shoaf* decision is the
8 *Applewood* case. *Applewood* is totally consistent with *Shoaf*.
9 *Applewood* also involved a plan that purported to release a
10 guaranty claim that the guarantor argued was res judicata in
11 subsequent litigation regarding the guaranty. The Fifth
12 Circuit held in that case that the plan was not res judicata.
13 It made that ruling because the plan did not contain clear and
14 unambiguous language releasing the guaranty. In that way, the
15 Fifth Circuit distinguished *Shoaf*.

16 *Applewood* and *Shoaf* are consistent. A Bankruptcy Court
17 order will be given res judicata effect, even if the Court
18 didn't have jurisdiction to enter it, if the order was clear
19 and unambiguous. In *Shoaf*, the release was. In *Applewood*, it
20 wasn't.

21 Movants argued on June 8th and argue now that the
22 *Applewood* case really argues -- really deals with prospective
23 exculpation of claims. I went back and read Mr. Bridges'
24 comments carefully of June 8th. He said *Applewood*,
25 exculpation. Well, that's just not correct. *Applewood* is all

1 about requiring specificity of a (garbled) to give it res
2 judicata effect. Claims that existed at that time, were they
3 described clearly and unambiguously? Yes? *Shoaf* applies.
4 No? *Applewood* does -- applies.

5 So how should the Court apply these principles here? The
6 Court approved a procedure for certain claims in the
7 governance orders. The procedure: come to Bankruptcy Court
8 before pursuing a claim against the independent directors and
9 Seery or their agents so that the Court can make a
10 colorability determination. Clear and unambiguous. The
11 governance orders each provide that the Bankruptcy Court had
12 jurisdiction to enter the orders, and the orders were not
13 appealed.

14 Movants attempt to confuse the Court and argue *Applewood*
15 is on point because the January 9th and July 16th orders do
16 not clearly identify specific claims that Movants now have
17 that are being released. And because they're not specific,
18 then basically it's an ambiguous release and *Applewood*
19 applies.

20 The problem with the Movants' argument is that neither the
21 January 9th or July 16th orders released claims that existed
22 at that time. If they did, and if there wasn't an adequate
23 description, I might agree with Mr. Bridges that *Applewood*
24 applied. But there were no claims. It was prospective. It
25 was a standard of care. The Court clearly and unambiguously

1 said what the standard of care would be going forward.

2 Clearly, under *Shoaf* and Supreme Court precedent, they are
3 entitled to res judicata because it's a clear and unambiguous
4 provision. *Applewood* just simply doesn't apply.

5 Mr. Phillips at the last hearing made an impassioned plea
6 to the Court for a narrow interpretation of the exculpation
7 provisions in the January 9th and July 16th orders, and he
8 argued that the Court could not possibly have intended for the
9 exculpation for negligence to apply on a go forward basis. He
10 thus argued to the Court that the Court should construe the
11 exculpation narrowly and only apply it to potential claims of
12 harm caused to the Debtor, as opposed to harm caused to third
13 parties, which he said included thousands of innocent
14 investors.

15 Of course, Mr. Phillips made those arguments unburdened by
16 the actual facts and the prior proceedings which led to the
17 entry of these orders, because, as he was the first to admit,
18 he only became involved in the case a month ago.

19 As the Court recalls, and as reinforced by Mr. Seery's and
20 Mr. Dubel's testimony I just mentioned, the exculpation
21 provisions were included precisely to prevent Mr. Dondero,
22 through any one of the entities he's owned and controlled, the
23 Movants being two of those, from asserting baseless claims
24 against the beneficiaries of those orders, exactly the
25 situation Mr. Seery now finds himself in.

1 And, again, it bears emphasizing: throughout this case,
2 not one of the purported public investors Mr. Phillips
3 lamented would be prevented from holding Mr. Seery responsible
4 for his conduct has ever appeared in this case to object about
5 anything. And none of the directors of the funds, the funds
6 where the Debtor acts as an investment adviser, have ever
7 stepped foot in this court, either.

8 Even if the Court declines to apply *res judicata*, Your
9 Honor, to prevent challenges to the governance orders, the
10 Court has the jurisdiction, had the jurisdiction to include
11 the gatekeeping provisions in those orders. The Bankruptcy
12 Court derives its jurisdiction from 28 U.S.C. Section 157, and
13 bankruptcy jurisdiction is divided into two parts: core
14 matters, which are those arising in or arising under Title 11,
15 and noncore matters, those matters which are related to a
16 Chapter 11 case.

17 Bankruptcy Courts may enter final orders in core
18 proceedings, and with the consent of parties, noncore
19 proceedings. If a party does not consent to a final judgment
20 in the noncore matters or waives its right to consent, then
21 the Bankruptcy Court -- or does not waive its right to
22 consent, then the Bankruptcy Court issues a report and
23 recommendation to the District Court.

24 The seminal Fifth Circuit case on bankruptcy court
25 jurisdiction is the 1987 case of *Wood v. Wood*, 825 F.2d 90.

1 There, the Fifth Circuit held that the Bankruptcy Court has
2 related to jurisdiction over matters if the outcome of that
3 proceeding could conceivably have any effect on the estate
4 being administered in the bankruptcy.

5 More recently, the Fifth Circuit, in the 2005 case, in
6 *Stonebridge Tech's*, elaborated on when a matter has a
7 conceivable effect on the estate such as to confer Bankruptcy
8 Court jurisdiction. There, the Fifth Circuit held that an
9 action is related to bankruptcy if the outcome could alter the
10 debtor's rights, liabilities, options, or freedom of action,
11 either positively or negatively, and which in any way impacts
12 upon the handling and the administration of the bankruptcy
13 estate. It is against this backdrop, Your Honor, that the
14 Court should evaluate its jurisdiction to have entered the
15 orders.

16 So, again, what did the orders do? They established
17 governance over the Chapter 11 debtor with new independent
18 directors being approved. They established the procedures and
19 protocols of how transactions were going to be presented to
20 and approved by the Committee. They vested in the Committee
21 certain related-party claims, and they provided for the
22 procedures parties would have to follow to assert any claims
23 against the independent directors and the CRO and the agents
24 and advisors.

25 Your Honor, it's hard to imagine that there is a more core

1 order than the entry of these orders. At the time the orders
2 were entered, the Court was well aware of the potential for
3 acrimony from Mr. Dondero and his related entities, and
4 included the gatekeeper provisions to prevent the Debtor's
5 estate from being embroiled in frivolous litigation against
6 the board and the CEO.

7 Such protections were clearly within the Court's
8 jurisdiction, both to protect the administration of the estate
9 but also under applicable Fifth Circuit law dealing with
10 vexatious litigants, as set forth in the *Baum* and *Carroll*
11 cases that the Court cited in its confirmation order.

12 Not that it was hard to predict, but the last several
13 months have reinforced how important the gatekeeping
14 provisions in the order are and how important similar
15 provisions in the plan are.

16 The Court heard extensive testimony at the confirmation
17 hearing regarding the havoc continued litigation by Mr.
18 Dondero and his related entities would cause, which
19 predictions have unfortunately been borne out by the
20 unprecedented blizzard of litigation involving Mr. Dondero and
21 his related entities that has consumed the Court over the last
22 several months and caused the estate to incur millions of
23 dollars in fees that could have been used to pay its
24 creditors.

25 And these attacks are continuing. As I mentioned before,

1 in addition to the DAF lawsuit, Sbaiti & Co. filed an action
2 against the Debtor on behalf of PCMG, another related entity,
3 alleging postpetition mismanagement of the Select Fund.

4 And to complete the hat trick, they are the lawyers
5 seeking to sue Acis in the Southern District of New York for
6 allegedly post-confirmation matters.

7 The Court knew then and certainly knows now that the
8 potential for sizable indemnification claims could consume the
9 estate. The Court used that as the potential basis for
10 determining that the orders were within its jurisdiction, just
11 as it used that potential to justify the exculpation
12 provisions in the plan as being consistent with *Pacific*
13 *Lumber*.

14 Movants also ignore the cases -- and we cited in our
15 opposition -- where courts in this district, including Judge
16 Lynn in *Pilgrim's Pride* in 2010 and Judge Houser in the *CHC*
17 *Group* in 2016, approved gatekeeper provisions that provided
18 the Bankruptcy Court with exclusive jurisdiction to adjudicate
19 claims against postpetition fiduciaries.

20 Movants also ignore cases outside this district, including
21 *General Motors* and *Madoff*, which we cited in our brief as
22 examples of cases where Bankruptcy Courts have been used as
23 gatekeepers to determine if claims are colorable or being
24 asserted against the correct entity.

25 And there's another reason, Your Honor, why Movants may

1 now not contest the Court's jurisdiction to have entered those
2 orders. Each of those orders, as I said before, include a
3 finding that the Court had core jurisdiction to enter the
4 orders. No party contested that finding or refused to consent
5 to the core jurisdiction.

6 Under well-established Supreme Court precedent, parties
7 can waive their right to challenge the Bankruptcy Court's
8 jurisdiction, core jurisdiction, by failing to object. In
9 *Wellness v. Sharif* in 2015, the Supreme Court expressly held
10 that Article III was not violated if parties knowingly and
11 voluntarily consented to adjudication of *Stern v. Marshall*-
12 type alter ego claims, and that the consent need not be
13 express, so long as it was knowing and voluntary.

14 And *Wellness* confirmed the pre-*Stern* opinion of the Fifth
15 Circuit in the 1995 *McFarland* case, which held that a person
16 who fails to object to the Bankruptcy Court's assumption of
17 core jurisdiction is deemed to have consented to the entry of
18 a final order by the Bankruptcy Court.

19 Your Honor, I'd now like to turn to the *Barton* doctrine.
20 The Court also has jurisdiction to have entered the orders
21 based upon the *Barton* doctrine. The *Barton* doctrine dates
22 back to an old United States Supreme Court case and provides
23 as a general rule that, before a suit may be brought against a
24 trustee, consent from the appointing court must be obtained.

25 Movants essentially make two arguments why the *Barton*

1 doctrine doesn't apply.

2 First, Movants, without citing any authority, argue that
3 it does not apply to Mr. Seery because he is not a trustee or
4 receiver and was not appointed by the Court. Although the
5 doctrine was originally applied to receivers, it has been
6 extended over time to cover various court-appointed
7 fiduciaries and their agents in bankruptcy cases, including
8 debtors in possession, officers and directors of the debtor,
9 and the general partner of the debtor. And although Mr.
10 Bridges says he couldn't find one case that applied the *Barton*
11 doctrine to a court-retained professional, I will now talk
12 about several such cases.

13 In *Helmer v. Pogue*, a 2012 case cited in our brief, the
14 District Court for the Northern District of Alabama
15 extensively analyzed the *Barton* doctrine jurisprudence from
16 the Eleventh Circuit and beyond and concluded that it applied
17 to debtors in possession. The *Helmer* Court relied in part on
18 a prior 2000 decision of the Eleventh Circuit in *Carter v.*
19 *Rodgers*, which held that the doctrine applies to both court-
20 appointed and court-approved officers of the debtor, which is
21 consistent with the law in other circuits.

22 And subsequently, the Eleventh Circuit again considered --
23 and in that case, the distinction of a court-appointed as a
24 court-retained professional was -- was not persuasive to the
25 Court, and the Court held that a court-retained professional

1 can still have *Barton* protection, notwithstanding that he
2 wasn't appointed, the argument that Mr. Bridges tries to make.

3 And subsequently, --

4 THE COURT: I wonder, was that -- was that Judge
5 Clifton Jessup, by chance? Or maybe Bennett?

6 MR. POMERANTZ: Your Honor, this was -- this was the
7 Eleventh Circuit *Carter v. Rodgers*, so I think Judge Jessup
8 was --

9 THE COURT: Oh, I thought you were still talking
10 about the Alabama case. No?

11 MR. POMERANTZ: Yeah, the Alabama -- well, the
12 Alabama case referred to the Eleventh Circuit case, *Carter v.*
13 *Rodgers*, --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- and the appointment and -- or
16 retention issue was discussed in the *Carter v. Rodgers* case.

17 THE COURT: Okay.

18 MR. POMERANTZ: And subsequently, the Eleventh
19 Circuit again considered the contours of the *Barton* doctrine
20 in *CDC Corp.*, a 2015 case, 2015 U.S. App. LEXIS 9718. In that
21 case, which Your Honor referenced in your *Ondova* opinion,
22 which I will discuss in a few moments, the Eleventh Circuit
23 held that a debtor's general counsel who had been approved by
24 the Court, who was appointed by a chief restructuring officer
25 who was also approved by the Court, was covered by the *Barton*

1 doctrine for acts taken in furtherance of the administration
2 of the estate and the liquidation of the assets.

3 And the Eleventh Circuit last year, in *Tufts v. Hay*, 977
4 F.3d 204, reaffirmed that court-approved counsel who function
5 as the equivalent of court-appointed officers are entitled to
6 protection under *Barton*. While the Court in that case
7 ultimately ruled that counsel could be sued without first
8 going to the Bankruptcy Court, it did so because it determined
9 that the suit between two sets of lawyers would not have any
10 effect on the administration of the estate.

11 So, Your Honor, not only is there authority, there is
12 overwhelming authority that Mr. Seery is entitled to the
13 protections.

14 In *Gordon v. Nick*, a District -- a case from 1998 from the
15 Fourth Circuit, the Court that the *Barton* doctrine applied to
16 a lawsuit against a general partner who was responsible for
17 administering the bankruptcy estate.

18 And as I mentioned, Your Honor, and as Your Honor
19 mentioned, Your Honor had reason to look at the *Barton*
20 doctrine in length and in depth in the 2017 *Ondova* opinion.
21 And in the course of the opinion, Your Honor discussed one of
22 the policy rationales for the doctrine, which you took from
23 the Seventh Circuit's *Linton* opinion, and you said as follows:
24 "Finally, another policy concern underlying the doctrine is a
25 concern for the overall integrity of the bankruptcy process

1 and the threat of trustees being distracted from or
2 intimidated from doing their jobs. For example, losers in the
3 bankruptcy process might turn to other courts to try to become
4 winners there by alleging the trustee did a negligent job."

5 Here, the independent board was approved by the Court as
6 an alternative to the appointment of a Chapter 11 trustee.
7 And it and its agent, including Mr. Seery as the CEO, even
8 before the July 16th order, were provided protections in the
9 form of the gatekeeper order and exculpation.

10 I'm sure the Court has a good recollection of the January
11 9th hearing -- we've talked about it a lot in the proceedings
12 before Your Honor -- where the Debtor and the Committee
13 presented the governance resolution to Your Honor. And as
14 Your Honor will recall, the appointment of the board was a
15 hotly-contested issue among the Debtor and the Committee and
16 was heavily negotiated. And the appointment of the
17 independent board was even contested by the United States
18 Trustee at a hearing on January 20th, 2020.

19 I refer the Court to the transcripts of the hearings on
20 January 9th and January 20th of 2020, which clearly
21 demonstrate that appointing this board and giving it the
22 rights and protections and its agents the rights and
23 protections was not your typical corporate governance issue,
24 but it was essentially the Court's alternative to appointing a
25 trustee. And recognizing that the members of the independent

1 board were essentially officers of the Court, the Court
2 approved the gatekeeper provision, requiring parties first to
3 come and seek the Court's permission before suing them, in
4 order to prevent them from being harassed by frivolous
5 litigation.

6 And the independent board was given the responsibility in
7 the January 9th order to retain a CEO it deemed appropriate,
8 and it did so by retaining Mr. Seery.

9 Recognizing the *Barton* doctrine as it applies to Mr. Seery
10 is consistent with a legion of cases throughout the United
11 States, and Movants' argument that Mr. Seery is not court-
12 appointed is just wrong.

13 Second, Your Honor, Movants cite without any authority,
14 argue that even if the *Barton* doctrine applied there is an
15 exception which would allow it to pursue a claim against Mr.
16 Seery without leave of the Court.

17 The Debtor agrees the 28 U.S.C. § 959 is an exception to
18 the *Barton* doctrine. Section 959(a) provides that trustees,
19 receivers, or managers of any property, including debtors in
20 possession, may be sued without leave of the court appointing
21 them with respect to any of their acts or transactions in
22 carrying on business connected with such property.

23 As the Court also pointed out at the June 8th hearing, and
24 Mr. Bridges alluded to in his argument, the last sentence of
25 959(a) provides that such actions -- clearly referring to

1 actions that may be pursued without leave of the appointing
2 court -- shall be subject to the general equity power of such
3 court, so far as the same may be necessary to the ends of
4 justice.

5 And Mr. Bridges made a plea, saying you can't take away my
6 jury trial right there. You just cannot do that. Well, I
7 have two answers to that, Your Honor. One, they relinquished
8 their jury trial right. We've established that. Okay?

9 The second is allowing Your Honor to act as a gatekeeper
10 has nothing to do with their jury trial right. Allowing Your
11 Honor to act as a gatekeeper allows you to determine whether
12 the action could go forward, and it'll either go forward in
13 Your Honor's court or some other court.

14 And the argument that the exculpation was essentially a
15 violation of 959 is just -- is just -- it just is twisting
16 what happened. You have an exculpation provision. We already
17 went through the authority the Court had to give an
18 exculpation. With respect to these litigants who are before
19 Your Honor -- we're not talking about anyone else who's coming
20 in to try to get relief from the order; we're talking about
21 these litigants -- we've already established that they were
22 here, they're bound by res judicata. So their 959 argument
23 goes away.

24 And as the Court -- and separate and apart from that, the
25 issue at issue in the District Court litigation is -- is not

1 even subject to 959.

2 Mr. Bridges says, well, of course it is because it deals
3 with the administration of the estate. I'd like to refer to
4 what the Court said -- this Court said in its *Ondova* opinion:
5 The exception generally applies to situations in which the
6 trustee is operating a business and some stranger to the
7 bankruptcy process might be harmed, such as a negligence claim
8 in a slip-and-fall case, and is inapplicable to suits based
9 upon actions taken to further the administering or liquidating
10 the bankruptcy estate.

11 And your *Ondova* opinion is consistent with the Third and
12 Eleventh Circuit opinions Your Honor cited in your opinion, as
13 well as numerous other --

14 (Interruption.)

15 MR. POMERANTZ: -- from the -- from around the
16 country, including cases from the First, Second, Sixth,
17 Seventh, and Ninth Circuits. And I'm not going to give all
18 the cites to those cases, but it's not a -- it's not a
19 remarkable proposition that Your Honor relied on in *Ondova*.

20 In addition, several of these cases, including the
21 Eleventh Circuit's *Carter* opinion, have been cited with
22 approval by the Fifth Circuit in *National Business Association*
23 *v. Lightfoot*, a 2008 unpublished opinion for this very point.
24 The *Barton* exception of 959 does not apply to actions taken in
25 the administration of the case and the liquidation of assets

1 in the estate.

2 Suffice it to say that it's clear that the Section 959
3 exception to *Barton* has no applicability in this case.
4 Movants, hardly strangers to the bankruptcy case, want to sue
5 Mr. Seery for acts taken relating to a settlement of very
6 complex and significant claims against the estate. They want
7 to sue a court-appointed fiduciary for doing his job,
8 resolving claims against the estate and his management of the
9 bankruptcy estate. And they want to do this outside of the
10 Bankruptcy Court.

11 Settlement of the HarbourVest claim, which is where this
12 claim arises under -- whether it's a collateral attack now or
13 not, and we say it is, is for another issue -- but it clearly
14 arises in the context of settlement of the HarbourVest claim,
15 is the quintessential act to further the administration and
16 liquidation of the bankruptcy estate, and certainly doesn't
17 fall within the 959 exception.

18 Movants seem to be arguing that 959(a) makes a distinction
19 between claims against Mr. Seery that damaged the Debtor and
20 claims against Mr. Seery that damaged third parties. However,
21 the Movants make up that distinction, and it's not in the
22 statute, it's not in the case law. The focus is not on who
23 the conduct damages, but it's rather on whether the conduct
24 was taken in connection with the administration or the
25 liquidation of the estate.

1 And even if the Debtor is wrong, Your Honor, which it's
2 not, the savings clause allows the Court to determine whether
3 leave to be -- sue will be granted. Given that these claims
4 are asserted by Dondero-related entities, if not controlled
5 entities, no serious argument exists that the equities do not
6 permit this Court to determine if leave to sue is appropriate.

7 Accordingly, Movants' argument that the orders create this
8 tension with 959 is simply an over-dramatization. And in any
9 event, Your Honor, there's a basis independent of *Barton* that
10 supports the jurisdiction to enter the orders, as I mentioned.

11 But even if the orders only relied on *Barton*, there is an
12 easy fix to Movants' concerns: let them come to court and
13 argue that the type of suit they are bringing allegedly falls
14 within the exception of 959.

15 Your Honor, Movants argue that the Bankruptcy Court may
16 not act as a gatekeeper if it would not have jurisdiction to
17 deal with the underlying action. They essentially argue that
18 an Article I judge may not pass on the colorability of a
19 claim, that it should be decided by an Article III judge.
20 This is the same argument, Your Honor, that Your Honor
21 rejected in connection with plan confirmation and which I
22 touched on earlier.

23 And the reason why Your Honor rejected it is because
24 there's no law to support it. In fact, there is Fifth Circuit
25 law that holds to the contrary. And we talked about a little

1 bit the Fifth Circuit case decided is *Villegas v. Schmidt* in
2 2015. And *Villegas* is a simple case. Schmidt was appointed
3 trustee over a debtor and liquidated its estate and the
4 Bankruptcy Court approved his final fees. Four years later,
5 Villegas and the prior debtor sued Schmidt in District Court,
6 the district in which the Bankruptcy Court was pending,
7 arguing that he was negligent in the performance of his
8 duties. The District Court dismissed the case because
9 Villegas failed to obtain Bankruptcy Court approval to bring
10 the suit under the *Barton* doctrine.

11 On appeal, Villegas argued *Barton* didn't apply for two
12 reasons. First, that *Stern v. Marshall* created an exception
13 to the *Barton* doctrine for claims that the Bankruptcy Court
14 would not have the jurisdiction to adjudicate. And second,
15 that *Barton* did not apply if the suit is brought in the
16 District Court, which exercises supervisory authority over the
17 Bankruptcy Court that appointed the trustee. Pretty much the
18 argument that was made by Movants at the contempt hearing.

19 The Fifth Circuit rejected both arguments. It held that
20 the existence of a *Stern* claim does not impact the Bankruptcy
21 Court's authority because *Stern* did not overrule *Barton* and
22 the Supreme Court had cautioned circuit courts against
23 interpreting later cases as impliedly overruling prior cases.

24 More importantly, the Fifth Circuit pointed to a post-
25 *Stern* 2014 case, *Executive Benefits v. Arkison*, 573 U.S. 25

1 (2014), which held that *Stern* does not decide how a Bankruptcy
2 Court or District Courts should proceed when a *Stern* creditor
3 is identified, as support for the argument that *Barton* is
4 still good law, even dealing with a *Stern* claim.

5 Second, the Fifth Circuit, joining every circuit to have
6 addressed the issue, ruled that the District Court and the
7 Bankruptcy Court are distinct from one another and the
8 Bankruptcy Court has the exclusive authority to determine the
9 colorability of *Barton* claims and that the supervisory
10 District Court does not.

11 Movants didn't address *Villegas* in their reply. Briefly
12 tried to distinguish it, unconvincingly, today. The bottom
13 line is *Villegas* is directly applicable. Your Honor cited it
14 in the *Ondova* opinion for precisely the proposition that
15 *Barton* applies whether or not the Court has authority to
16 adjudicate the claim.

17 Accordingly, Your Honor, it was within the Court's
18 jurisdiction to require a party to seek approval of Your Honor
19 on the colorability of a claim before an action may be
20 commenced or pursued against the protected parties, even if
21 Your Honor wouldn't have authority to adjudicate the claim at
22 the end of the day.

23 In fact, some courts have even addressed the proper
24 procedure for doing so, requiring the putative plaintiff to
25 not only seek leave of Bankruptcy Court but also to provide a

1 draft complaint and a basis for the Court to determine if the
2 claim is colorable.

3 Movants have done neither, and they should not be
4 permitted to modify the final orders of the Court as a
5 workaround.

6 Your Honor, that concludes my presentation. I'm happy to
7 answer any questions Your Honor may have.

8 THE COURT: All right. Not at this time. All right.
9 I'm going to figure out, do we need a break or not, depending
10 on what Mr. Bridges tells me. I assume we're just doing this
11 on argument today. I think that's what I heard. No witnesses
12 or exhibits.

13 MR. BRIDGES: That is correct, Your Honor.

14 THE COURT: Okay. Mr. Bridges, how long do you
15 expect your rebuttal to take so I can figure out does the
16 Court need a break?

17 MR. BRIDGES: Fifteen minutes plus whatever it takes
18 to submit agreed-to exhibits.

19 THE COURT: Okay. Let's take a five-minute bathroom
20 break. We'll come back. It's -- what time is it? It's 1:11
21 Central time. We'll come back in five minutes.

22 THE CLERK: All rise.

23 (A recess ensued from 1:11 p.m. until 1:17 p.m.)

24 THE CLERK: All rise.

25 THE COURT: All right. Please be seated. We're

1 going back on the record in the Highland matters.

2 Mr. Bridges, time for your rebuttal. I want to ask you a
3 question right off the bat. Mr. Pomerantz pointed out
4 something that was on my list that I forgot to ask you when
5 you made your initial presentation. What is the authority
6 you're relying on? You did not cite a statute or a rule *per*
7 *se*, but I guess we can probably all agree that Bankruptcy Rule
8 9024 and Federal Rule 60 is the authority that would govern
9 your motion, correct?

10 MR. BRIDGES: I don't agree, Your Honor. I don't
11 believe this is a final order that we're contesting here. And
12 I think that's demonstrated by the Court's final confirmation
13 -- plan -- plan confirmation order that seeks to modify this
14 order or will modify this order upon being -- being effective.
15 So I don't think so.

16 In the alternative, if we are challenging a final order,
17 then I think you're right as to the rules that would be
18 controlling.

19 THE COURT: All right. Well, let me back up. Why
20 exactly do you say this would be an interlocutory order as
21 opposed to a final order?

22 MR. BRIDGES: Because of its nature, Your Honor.
23 While the appointment in the order or the approval of the
24 appointment in the order might, as a separate component of the
25 order, have -- have finality, the provisions -- the provisions

1 in it relating to gatekeeping and exculpation are, we think,
2 by their very nature, quite obviously interlocutory and not
3 permanent. They don't seem to indicate an intention by any of
4 the parties that, 30 years from now, if Mr. Seery is still CEO
5 at Highland, long after the bankruptcy case has ended, that
6 nonetheless parties would be prohibited from bringing claims,
7 strangers to this action would be prohibited from bringing
8 claims related to his CEO role.

9 I think the nature of it demonstrates that, the
10 modifications to it, and even the inclusion of it in the final
11 plan confirmation, as well as -- can't read that.

12 THE COURT: Can you give me some authority? Because
13 as we know, there's a lot of authority out there in the
14 bankruptcy universe on what discrete orders are interlocutory
15 in nature that a bankruptcy judge might routinely enter and
16 which ones are final. You know, it would just probably, if I
17 flipped open *Collier's*, I could -- you know, it would be mind-
18 numbing.

19 So what authority can you rely on? I mean, is there any
20 authority that says an employment order is not a final order?
21 That would be shocking to me if you have cases to that effect,
22 but, I mean, of course, sometimes we do interim on short
23 notice and then final. But this would be shocking to me if
24 there is case authority to support the argument this is not a
25 final order. But I learn something new every day, so maybe I

1 would be shocked and there is.

2 MR. BRIDGES: Your Honor, I'd point you to *In re*
3 *Smyth*, 207 F.3d 758, and *In re Royal Manor*, 525 B.K. 338
4 [sic], for the proposition that retaining a bankruptcy
5 professional is an interlocutory order.

6 THE COURT: Okay. Stop for a moment. The *Smyth*
7 case. Which court is that?

8 MR. BRIDGES: Fifth Circuit.

9 THE COURT: Okay. So tell me the facts. I'm
10 surprised I don't know about this case. But, again, I don't
11 know every case. So, it held that an employment order is an
12 interlocutory order?

13 MR. BRIDGES: Appointing counsel. A professional in
14 the bankruptcy context, Your Honor.

15 THE COURT: Counsel for a debtor-in-possession? An
16 order approving counsel was an interlocutory order?

17 MR. BRIDGES: Yes, or the Trustee's counsel.

18 THE COURT: Or the Trustee's counsel? Okay. What
19 were the circumstances? Was this on an expedited basis and
20 there wasn't a follow-up final order, or what?

21 MR. BRIDGES: Your Honor, I don't have -- I don't
22 have that at the tip of my memory. I'm sorry.

23 THE COURT: Okay. And the other one, 525 B.R. 338,
24 what court was that?

25 MR. BRIDGES: It's a Bankruptcy Court within the

1 Sixth Circuit. I'm not certain which district.

2 THE COURT: All right. Well, maybe one of you two
3 over there can look them up and give me the context, because
4 that is surprising authority. Or other lawyers on the WebEx
5 maybe can do some quickie research.

6 Okay. We'll come back to that. But assuming that this
7 was a final order, which I have just been presuming it was,
8 Rule 60 is the authority you're going under? 9024 and Rule
9 60, correct?

10 MR. BRIDGES: Your Honor, we have not invoked those
11 rules. Alternatively, I think you're right that they would
12 control if we are wrong about the interlocutory nature of the
13 order.

14 THE COURT: Well, you have to be going under certain
15 -- some kind of authority when you file a motion. So I'm --

16 MR. BRIDGES: As an alternative --

17 THE COURT: I'm approaching this exactly, I assure
18 you, as the District Court or a Court of Appeals would. You
19 know, you start out, what is the legal authority that is being
20 invoked here?

21 MR. BRIDGES: Well, --

22 THE COURT: So I just assume Rule 60. I can't, you
23 know, come up with anything else that would be the authority.

24 MR. BRIDGES: Yes, Your Honor. You also have
25 inherent power to modify orders that are in violation of the

1 law. And we pointed you to --

2 THE COURT: Now, is that right? Is that really
3 right? Why do we have Rule 60 if I can just willy-nilly, oh,
4 I feel like I got that wrong two years ago? I can't do that,
5 can I? Rule 60 is the template for when a court can do that.
6 Parties are entitled to rely on orders of courts. And that's
7 why we have Rule 60, right? So, --

8 MR. BRIDGES: Your Honor, I think -- I think that
9 we're miscommunicating. I'm trying not to rely on Rule 60 in
10 the first instance because in the first instance we view this
11 as not a final order. So, in the first instance, --

12 THE COURT: I got that. And I've got my law clerks
13 looking up your cases to see if they convince me. But I'm
14 asking you to go to layer two. Assuming I don't agree with
15 you these are final orders, what is your authority for the
16 relief you're seeking?

17 MR. BRIDGES: Yes, Your Honor. Rule 60 would apply
18 in the alternative.

19 THE COURT: All right.

20 MR. BRIDGES: That's correct.

21 THE COURT: So, which provision? Which provision of
22 Rule 60? (b) what?

23 MR. BRIDGES: Your Honor, I'm not prepared to concede
24 any of them. I don't have the rule in front of me.

25 THE COURT: You're not prepared to concede what?

1 MR. BRIDGES: Any of the provisions of Rule 60. Just
2 (b)(1), (b)(2), especially, but I'm -- I'm -- Rule 60 is our
3 basis, as is the particulars (b)(1), (2), (6) --

4 (Garbled audio.)

5 THE COURT: Okay. You're breaking up. Can you
6 restate?

7 MR. BRIDGES: (b)(1), (2), and (6), as -- as well as
8 any other provision, Your Honor, of Rule 60.

9 THE COURT: Okay. Well, so (1), mistake,
10 inadvertence, surprise, excusable neglect. Which one of
11 those?

12 MR. BRIDGES: All of the above, Your Honor.

13 THE COURT: Surprise? Who's surprised?

14 MR. BRIDGES: Your Honor, I think every potential
15 litigant who discovers that your order purports to bar
16 prospective unaccrued claims at the time the order issued
17 would be surprised.

18 Frankly, I think Mr. Seery would be surprised, given his
19 testimony that he owes fiduciary duty -- duties that he must
20 abide by and that he appears to have, as I continue to
21 represent to clients, to advisees, and to the SEC, that those
22 duties are owing.

23 THE COURT: Okay. I'm giving you one more chance
24 here to make clear on the record what provision of Rule 60(b)
25 are you relying on, okay? I need to know. It's not in your

1 pleading.

2 MR. BRIDGES: Your Honor, --

3 THE COURT: So tell me specifically. I can only --

4 MR. BRIDGES: -- (b)(1) --

5 THE COURT: -- come up with a result here if I know
6 exactly what's being presented.

7 MR. BRIDGES: Your Honor, (b)(1), (b)(2), and (b)(6)

8 --

9 THE COURT: Which, okay, there are multiple parts to
10 (1). You're saying somebody's surprised by the ruling. I
11 don't know who. Really, all that matters is your client, the
12 Movants. You're saying, even though they participated, --

13 MR. BRIDGES: Yes, Your Honor.

14 THE COURT: -- got notice, they're somehow surprised?
15 Why are they surprised?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Do you have evidence of their surprise?

18 MR. BRIDGES: Your Honor, our brief shows the
19 intentions of all involved were not the interpretation of that
20 order being advanced at this -- at this point in time. And
21 so, yes, I believe that is evidence. The transcripts of the
22 hearings I believe evidence that as well, that the
23 understanding of everyone involved was not that future --
24 unspecified future claims that had not accrued yet would be
25 released under (b)(1). Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BRIDGES: Under (b)(2), --

3 THE COURT: I don't have any evidence of that. All I
4 have is the clear wording of the order. Okay. Let me just --
5 just let me go through this.

6 Assuming Rule 60 (1) through (6) are what you're arguing
7 here, what about Rule 60(c): a motion under Rule 60(b) must
8 be made within a reasonable time? We're now 11 months --

9 MR. BRIDGES: Your Honor, --

10 THE COURT: We're now 11 months past the July 2020
11 order. What is your authority for this being a reasonable
12 time?

13 MR. BRIDGES: Yes, Your Honor. If I may back up one
14 step before answering your question. Under (b)(2), we're
15 relying on newly-discovered evidence that was discovered in
16 late March and caused both the filing of this motion and the
17 filing of the District Court action.

18 Under (b)(4), we believe that the order is --

19 THE COURT: Let me stop. Let me stop. What is my
20 evidence that you're putting in the record that's newly
21 discovered?

22 MR. BRIDGES: The evidence is detailed in the
23 complaint that is in the record. You know, --

24 THE COURT: That's not evidence.

25 MR. BRIDGES: -- honestly, Your Honor, --

1 THE COURT: That is not evidence. Okay? A lawyer-
2 drafted complaint in another court is not evidence. Okay?

3 MR. BRIDGES: Your Honor, I think, to be technical,
4 that there is not a record yet, that we have evidence yet to
5 be admitted on our exhibit list. I believe in this
6 circumstance -- I understand that, in general, allegations in
7 a pleading are not evidence. In this instance, when we're
8 talking about whether or not new facts led to the filing of a
9 lawsuit, I do believe that the allegations in the lawsuit are
10 evidence of those new facts.

11 THE COURT: All right. Go on.

12 MR. BRIDGES: Under (b)(4), we believe the order is,
13 in part, void. It is void because of the jurisdictional and
14 other defects noted in our argument.

15 And also, under (b)(6) (garbled) ground for relief that
16 we're appealing to the equitable powers of this Court to
17 correct errors and manifest injustice towards not just the
18 litigants here but to correct the order of the Court to make
19 it comply with -- with the law, with the statutes promulgated
20 by Congress and to respect the jurisdiction of the District
21 Court.

22 THE COURT: All right. Do you agree with Mr.
23 Pomerantz that the case law standard for Rule 60(b)(4) is
24 exceptional circumstances? It's only applied so that a
25 judgment is voided in exceptional circumstances. Do you

1 disagree with that case authority?

2 MR. BRIDGES: I would -- I would agree, in part, that
3 unusual circumstances is not the ordinary case. I'm not
4 entirely sure what you mean by exceptional, but I think we're
5 on the same page.

6 THE COURT: Okay. It's not what I mean. That's just
7 the case law standard. And I'm asking, do you agree with Mr.
8 Pomerantz that that is the standard set forth in case law when
9 applying 60(b)(4)? There have to be some sort of exceptional
10 circumstances where there's just basically no chance the Court
11 had authority to do what it did.

12 MR. BRIDGES: Out of the ordinary would be the phrase
13 I would use, Your Honor.

14 THE COURT: Okay. So I guess then I'll go from
15 there. Is it your argument that gatekeeping provisions in the
16 bankruptcy world are out of the ordinary?

17 MR. BRIDGES: The exculpation of Mr. Seery for
18 liability falling short of gross negligence or intentional
19 wrongdoing in connection with his continuing to conduct the
20 business of the Debtor as an investment advisor subject to the
21 Advisers Act, yes, I would say that is out of the ordinary,
22 that it is extraordinary, that it is --

23 THE COURT: Okay. What is your authority or evidence
24 on that? Because this Court approves exculpation provisions
25 regularly in connection with employment orders, and pretty

1 much every judge I know does. In fact, I'm wondering why this
2 isn't just a term of compensation. You know, he's going to do
3 x, y, z in the case. His compensation is going to be a, b, c,
4 d, e. And by the way, we're going to set a standard of
5 liability for his performance as CEO or investment banker,
6 financial advisor, whatever, so that no one can sue him
7 regarding his performance of his job duties unless it rises to
8 the level of gross negligence, willful misconduct.

9 It's a term of employment that, from my vantage point,
10 seems to be employed all the time. So it would be anything
11 but exceptional circumstances. Do you have authority or
12 evidence --

13 MR. BRIDGES: Your Honor, frankly, --

14 THE COURT: -- to the contrary?

15 MR. BRIDGES: Your Honor, frankly, I'm astonished at
16 your view of that situation, that it would merely be a term of
17 his employment, that vitiates the entire fiduciary duty
18 standard created by the Advisers Act that tells him, with
19 hundreds of millions of dollars of assets under management for
20 people he's advising as a registered investment advisor,
21 people he's advising who believe that he has a fiduciary duty
22 to them and that it's enforceable, that the SEC, who monitors,
23 believes he has an enforceable fiduciary duty to those people,
24 and that he's testified that he has fiduciary duties to those
25 people, and that Your Honor is saying no, just as a regular

1 term of employment we have undone the Advisers Act's
2 imposition of an unwaivable fiduciary duty.

3 Your Honor, the order is void to the extent that it
4 attempts to do so.

5 This is not an ordinary employment agreement, Your Honor.
6 This is an attempt to exculpate someone from the key thing
7 that our entire investment system depends upon, regulation by
8 the SEC and the requirement in investment advisors to act as
9 fiduciaries when they manage the money of another.

10 It would be the equivalent of telling lawyers who are
11 appointed in a bankruptcy proceeding that they don't have any
12 duties to their client, or at least not fiduciary duties.
13 That the lawyers merely owe a duty not to be grossly negligent
14 to their clients. That's not an ordinary term of employment,
15 Your Honor.

16 THE COURT: All right. So I guess we're back to my
17 question, was this brought within a reasonable time under Rule
18 60(c)?

19 MR. BRIDGES: It was brought very quickly after the
20 new evidence was discovered at the end of March, Your Honor,
21 yes.

22 THE COURT: Okay. Well, I guess I'll just ask you
23 one more question before you continue on with your rebuttal
24 argument. I mean, again, I want your best argument of why
25 *Villegas* doesn't absolutely permit the gatekeeping provisions

1 that you're challenging. And many cases were cited by Mr.
2 Pomerantz in his brief where courts have extended the *Barton*
3 doctrine to persons other than trustees. And so what is your
4 best rebuttal to that?

5 MR. BRIDGES: Your Honor, we've already given it.
6 I'm afraid --

7 THE COURT: Okay. If you don't want to say more, --

8 MR. BRIDGES: -- what I have is not --

9 THE COURT: -- I'm not going to make you say more.

10 MR. BRIDGES: I --

11 THE COURT: I'm just telling you what's on my brain.

12 MR. BRIDGES: I do. I want to -- I am apologizing in
13 advance for repeating, but yes, *Villegas, Villegas*, however
14 that case is pronounced, says that *Stern* is not an exception
15 to the *Barton* doctrine.

16 THE COURT: Uh-huh.

17 MR. BRIDGES: 959(a) is an exception to the *Barton*
18 doctrine. You are not operating under the *Barton* doctrine
19 here. Even counsel's brief, the Debtor's brief, doesn't say
20 *Barton* applies. It says it's consistent with *Barton*.

21 Your Honor, in our previous hearing, you directed me to
22 the second sentence of 959(a) because you believe it's what
23 empowers you to do the gatekeeping. It limits the gatekeeping
24 that you can do by protecting jury rights, the right to trial,
25 says you cannot discharge, undo, deprive a litigant of their

1 right to a trial, a jury trial.

2 THE COURT: Well, you mentioned it again, jury trial
3 rights. Do you have any argument --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- of why that hasn't flown out the
6 window?

7 MR. BRIDGES: Yes, Your Honor. I am told that
8 Section 14(f) that counsel for the Debtor referred to is not a
9 waiver of jury rights at all. It is an arbitration agreement.
10 Your Honor is probably familiar how arbitration agreements
11 work, is that they need not be elected. They need not be
12 invoked by the parties. When they are, they create a
13 situation where arbitration may be required. But a waiver of
14 a jury right outside of arbitration is not part of this
15 arbitration clause, or of any. The issue is not briefed or in
16 evidence before the Court. We're relying on representations
17 of counsel as to what that provision contains. That Mr. Seery
18 wasn't even a party to that agreement, the advisory agreement,
19 with the Charitable DAF. The arbitration agreement is subject
20 to defenses that are not at issue here before the Court. That
21 Movants' rights, their contractual rights to invoke the
22 arbitration clause, also appear to be terminated by the
23 orders' assertion of sole jurisdiction in this matter.

24 Your Honor, yes, our jury rights survive Section 14(f) in
25 the advisory agreement with the DAF for all of those potential

1 reasons.

2 On top of that, it doesn't go to all of our causes of
3 action. It goes to the contract cause of action. And to the
4 extent they can argue that the other claims are subject to
5 arbitration, that also is a defense and -- defensible and
6 complex issue requiring the application of the Federal
7 Arbitration Act, requiring consideration of the Federal
8 Arbitration Act, which this Court doesn't have jurisdiction to
9 do under 157(d).

10 THE COURT: What? Repeat that.

11 MR. BRIDGES: Yes. This Court does not have
12 jurisdiction to determine whether or not arbitration --
13 arbitration is enforceable due to the mandatory withdrawal of
14 the reference provisions of 157(d).

15 THE COURT: That's just not consistent with Fifth
16 Circuit authority. *National Gypsum*. What are some of these
17 other arbitration cases? I've written an article on it. I
18 can't remember them. That's just not right. Bankruptcy
19 courts look at arbitration clauses all the time. Motions to
20 compel arbitration.

21 MR. BRIDGES: Your Honor, under 157(d), in the
22 circumstances of this case, if the Court is going to take into
23 consideration an arbitration clause under the Federal
24 Arbitration Act, when that clause is not in evidence and is
25 not before the Court, then Movants respectfully move to

1 withdraw the reference of your consideration of that issue and
2 of any proceeding and ask that you would issue only a report
3 and recommendation rather than an order on that issue.

4 THE COURT: Okay. I regret that we even got off on
5 this trail. I'm sorry. So just proceed with your rebuttal
6 argument as you had envisioned it, Mr. Bridges.

7 MR. BRIDGES: Thank you, Your Honor.

8 Debtor's counsel says there's no private right of action
9 under the Advisers Act. That is both inaccurate and
10 misleading. The Advisory Act creates, imposes fiduciary
11 duties that state law provides the cause of action for. It is
12 a state law breach of fiduciary duty claim regarding --
13 regarding fiduciary duties imposed as a matter of law by the
14 Investment Advisers Act that is Count One in the District
15 Court action.

16 Furthermore, that Act does create a private right of
17 action for rescission. That would be rescission of the
18 advisory agreement with the Charitable DAF, not rescission of
19 the HarbourVest settlement.

20 Second, Your Honor, the notion that this Court has related
21 to jurisdiction is irrelevant and beside the point. I would
22 like to note for the record that the District Court civil
23 cover sheet that omitted to state that this was a related
24 action has been corrected, has been amended, and that that has
25 taken place.

1 Counsel for the Debtor also appears to agree with us that
2 the order ought to be modified for having asserted exclusive
3 jurisdiction over colorable claims to the extent it's not
4 legally permissible to do. And in trying to invoke the
5 discussions between us as to how the orders might be fixed,
6 what counsel does is tries to cabin the legally-permissible
7 caveat to just the second half of the paragraph at issue. It
8 is both -- both portions, the gatekeeping and the subsequent
9 hearing of the claims, that should be limited to the extent it
10 would be impermissible legally for this Court to make those
11 decisions.

12 On top of that, Your Honor, merely stating "to the extent
13 legally permissible" would result in a considerable amount of
14 ambiguity in the order that would lead it, I fear, to be
15 unenforceable as a matter of law.

16 Next, Your Honor, when Debtor's counsel talks about the
17 authority in this case, it feels like we're ships passing in
18 the night. He says that we're wrong in asserting that no case
19 we can find involves both the *Barton* doctrine and the
20 application of the business judgment rule where the Court is
21 asked to defer, and he mentions cases that apply the *Barton*
22 doctrine to an approval rather than an appointment. The Court
23 is asked to --

24 (Garbled audio.)

25 THE COURT: I lost you for a moment. Could you

1 repeat the last 30 seconds?

2 MR. BRIDGES: Thank you, Your Honor. Yes. He points
3 -- opposing counsel points us to case law where the *Barton*
4 doctrine has been applied despite the Bankruptcy Court having
5 merely approved rather than appointed the trustee or the, I'm
6 sorry, the professional. But in doing so, he doesn't
7 reference any case that has done so in the context of business
8 judgment rule deference. It's like we're ships passing in the
9 night.

10 What we're saying isn't that a mere approval can never
11 rise to the level of the *Barton* doctrine. What we're saying
12 is that, in combination with the business judgment rule
13 deference, the two cannot go together. There's no authority
14 for saying that they do.

15 We -- I further feel like we're ships passing in the night
16 when he talks about *Shoaf*. Counsel says that in *Shoaf* there
17 was a confirmed final plan and it specifically identified the
18 released guaranty. And yeah, that distinguishes it from this
19 case, just as it distinguished -- just as the *Applewood Chair*
20 case distinguished it when there's not that specific
21 identification. And here, we don't even have a final plan
22 confirmation at the time these orders are being issued.
23 Without that express -- express notion of what the claims are
24 being discharged, *Shoaf* doesn't apply.

25 There, there was a guaranty to a party on a specific

1 indebtedness that was listed, identified with specificity, and
2 disappeared as a result of the judgment, as a result of the
3 judgment in the underlying case. Here, we're talking about
4 any potential claim that might arise in the future. As of the
5 July order's issuance, it didn't apply on its -- either it
6 didn't apply to future claims that had not yet accrued or else
7 in violation of *Applewood Chair*, it was releasing claims
8 without identifying them.

9 Who does Seery owe a fiduciary duty to? Is it, as
10 Debtor's counsel says, only to the funds and not to the
11 investors, or does he also owe those duties to the investors
12 as well? Your Honor, that is going to be a hotly-contested
13 issue in this litigation, and it involves -- it requires
14 consideration of the Advisers Act and the multitude of
15 accompanying regulations. To just state that his fiduciary
16 duties are limited in a way that couldn't affect anyone that
17 is -- whose claims are precluded by the July order is both
18 wrong on the law and is invoking something that will be a
19 hotly-contested issue that falls under 157(d), where, again,
20 this Court doesn't have the jurisdiction to decide that, other
21 than in a report and recommendation.

22 The order is legally infirm because it's issued without
23 jurisdiction for doing that as well.

24 Finally, Your Honor, I think (garbled) wrong direction
25 with a statement that suggests that Mr. Seery is an agent of

1 the independent directors under the January order. He is, in
2 fact, not an independent agent -- not an agent of any of the
3 independent directors, but, at most, of the company that is
4 controlled by the board, not -- not of individual directors
5 who could confer on him -- who could confer on him any
6 immunity that they have obtained from the January order just
7 by having appointed him.

8 The proposed order from the other side failed to address
9 either the ambiguity in the order or its attempt to exculpate
10 Mr. Seery from the liability, including liability for which
11 there is a jury trial right, and it is not a fix to the
12 problem for that reason.

13 In order to make the order enforceable and to fix its
14 infirmities, the Court would have to do significantly more.
15 It would have to both apply the caveat from the final
16 confirmation plan order, rope that caveat to the first part of
17 the relevant paragraph, as well as the second part, and it
18 would have to provide directive clarity to be enforceable
19 rather than too vague.

20 Your Honor, I think that's all I have.

21 THE COURT: Okay. Just FYI, my law clerk pulled the
22 *Smyth* case from 21 years ago from the Fifth Circuit. And
23 while it more prominently deals with the issue of whether
24 trustees -- in this case, it was a Chapter 11 trustee -- could
25 be subjected to personal liability for damages to the

1 bankruptcy estate --

2 (Echoing.)

3 THE COURT: Someone, put your phone on mute. I don't
4 know who that is.

5 It dealt with, you know, the standard of liability, that
6 the trustee could not be sued for matters not to the level of
7 gross negligence.

8 But it does say, in the very last paragraph, to my shock
9 and amazement, that -- it's just one sentence in a 10-page
10 opinion -- orders appointing counsel -- and it was talking
11 about the trustee's lawyer he hired to handle appeals to the
12 Fifth Circuit -- orders appointing counsel under the
13 Bankruptcy Code are interlocutory and are not generally
14 considered final and appealable. And it cites one case from
15 1993, the Middle District of Florida. Live and learn. There
16 is one sentence in that opinion that says that. But I don't
17 know that it's hugely impactful here, but I did not know about
18 that opinion and I'm rather surprised.

19 All right. You were going to walk me through evidence,
20 you said?

21 MR. BRIDGES: Well, do I -- Your Honor, do you want
22 to do that first before I submit --

23 THE COURT: Yes, please.

24 MR. BRIDGES: -- my rebuttal argument?

25 THE COURT: Please.

1 MR. BRIDGES: Okay.

2 THE COURT: Uh-huh.

3 MR. BRIDGES: Your Honor, we would submit and offer
4 Exhibits 1 through 44, with the exception of those that have
5 been withdrawn, that are 2, 13 --

6 THE COURT: Okay. Slow down. Slow down. I need to
7 get to the docket entry number we're talking about. Are we
8 talking -- are your -- the Debtor's exhibits are at 2412. But
9 Nate, I misplaced my notes. Where are Charitable DAF and
10 Holdco's?

11 THE CLERK: I have 2411.

12 THE COURT: 2411? Is that it?

13 MR. BRIDGES: 2420, Your Honor.

14 THE COURT: 2420? Okay. Give me a minute. (Pause.)
15 2420?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Okay, I'm there. And it's which
18 exhibits?

19 MR. BRIDGES: It's Exhibits 1 through 44, Your
20 Honor, with four exceptions. We have agreed to withdraw
21 Exhibit 2, 13, 14, and 29.

22 THE COURT: All right.

23 MR. BRIDGES: Also, Your Honor, we'd like to submit
24 Debtor's Exhibit 1, which is under Exhibit 49 on our list,
25 would be anything offered by the other side. But we'd like

1 to make sure that Debtor's Exhibit 1 gets in the record as
2 well.

3 THE COURT: Let me back up. When I pull up the
4 docket entry you just told me, I have Exhibits 44, 45, and 46
5 only. Am I misreading this?

6 MR. BRIDGES: I have a chart showing Exhibits 1
7 through 49 titled Docket 2420 filed 6/7/21.

8 THE COURT: Okay. The docket entry number you told
9 me, 2420, it only has three exhibits: 44, 45, and 46. So,
10 first off, I understand -- are you offering 45 and 46 or not?

11 MR. BRIDGES: No, Your Honor.

12 THE COURT: Okay. So you said you were offering 1
13 through 44 minus certain ones. 44 is here.

14 MR. BRIDGES: Yes.

15 THE COURT: But I've got to go back to a different
16 docket number.

17 THE CLERK: It's actually 2411.

18 THE COURT: It's at 2411. That has all the others?

19 THE CLERK: Yes.

20 THE COURT: Okay.

21 So, Mr. Pomerantz, do you have any objection to Exhibits
22 1 through 44, which he's excepted out 2, 13, 14, and 29, and
23 then he's added Debtor's Exhibit 1? Any objection?

24 MR. POMERANTZ: I don't believe so. I just would
25 confirm with John Morris, who has been focused on the

1 exhibits, just to confirm.

2 THE COURT: Mr. Morris?

3 MR. MORRIS: No objection, Your Honor. It's fine.

4 THE COURT: Okay. They're admitted.

5 (Movants' Exhibits 1, 3 through 12, 15 through 28, and 30
6 through 44 are received into evidence. Debtor's Exhibit 1 is
7 received into evidence.)

8 THE COURT: So, any --

9 MR. BRIDGES: Thank you, Your Honor.

10 THE COURT: Anything you wanted to call to my
11 attention about these?

12 MR. BRIDGES: Your Honor, the things that we
13 mentioned in the argument, for sure, but especially that the
14 word "trustee" is not used in the January hearing's
15 transcript, nor is it under discussion in that transcript
16 that it would be a trustee-like role being played by the
17 Strand directors, as well as the transcript of the July
18 hearing on the order at issue here, Your Honor, where you are
19 asked to defer both in that transcript and in the motion, the
20 motion that was at issue in that hearing, you are asked to
21 defer to the business judgment of the company.

22 And finally, Your Honor, I'd ask you to look at the
23 allegations in the District Court complaint.

24 THE COURT: All right.

25 Mr. Pomerantz or Morris, let's see what exhibits you're

1 wanting the Court to consider. Your exhibits, it looks like,
2 are at Docket Entry 2412.

3 MR. MORRIS: As subsequently amended at 2423.

4 THE COURT: Oh. All right. So which ones are you
5 offering?

6 MR. MORRIS: We're offering all of the exhibits on
7 2423, which is 1 through 17.

8 (Echoing.)

9 THE COURT: Whoops. We got some distortion there.
10 Say again?

11 MR. MORRIS: Yeah. All of the exhibits that are on
12 2423, which are Exhibits 1 through 17. But I want to make
13 sure that, as I did earlier, that that has the exhibits that
14 we're relying on. Does that --

15 (Pause.)

16 THE COURT: Okay. Let me make sure I know what's
17 going on here. You're double-checking your exhibits, Mr.
18 Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 MR. MORRIS: Your Honor, we start with Docket No.
23 2419, --

24 THE COURT: Okay.

25 MR. MORRIS: -- which was the amended exhibit list.

1 And that actually had Exhibits 1 through 17. And then that
2 was amended at Docket 2423. So, the exhibits on both of
3 those lists.

4 THE COURT: Well, they're one and the same, it looks
5 like, right?

6 MR. MORRIS: Yes.

7 THE COURT: Okay. So you're offering those?

8 MR. MORRIS: I think -- yeah.

9 THE COURT: Any objection?

10 MR. BRIDGES: No objection.

11 THE COURT: All right. They're admitted.

12 (Debtor's Exhibits 1 through 17 are received into
13 evidence.)

14 MR. POMERANTZ: Your Honor, if I may take a few
15 moments to respond to Mr. Bridges' reply?

16 THE COURT: All right. Is he still within his hour
17 and a half?

18 THE CLERK: At an hour and one minute.

19 THE COURT: Okay. All right. You have a little
20 time left, so go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 So look, I -- it sort of was really not fair to us. Mr.
23 Bridges was really making things up on the fly. He was
24 changing the theories of his case and responding to Your
25 Honor. But I'm going to do my best to respond to the

1 arguments made, many of which I sort of anticipated.

2 I'll first start with the issue that Your Honor raised,
3 which was whether this is under Rule 60 or not. Mr. Bridges
4 identified a couple of cases, said that the order was
5 interlocutory, said that somehow the orders have anything to
6 do with a plan confirmation order. They do not. Your Honor
7 didn't hear that argument at the plan confirmation. The
8 January 9th and July 16th orders are old and cold. There's
9 an exculpation provision in the plan. There's a gatekeeper
10 in the plan. The provisions do not overlap entirely. The
11 gatekeeper applies prospectively. The exculpation provision
12 includes additional parties.

13 So the arguments that basically the plan had anything to
14 do -- and the fact that the plan is not a final order -- has
15 anything to do with the January 9th and July 16th orders is
16 just wrong. It's just wrong.

17 More fundamentally, Your Honor, as Your Honor pointed
18 out, the *Smyth* case is a professional employment order. And
19 ironically, if you abide by the *Smyth* case, that order is
20 never appealable because it's interlocutory.

21 But more fundamentally, Your Honor, that's dealing with
22 327 professionals. And again, there's not much analysis in
23 the *Smyth* case, but we're not dealing with a 327
24 professional. We're dealing with orders that were approved
25 under 363.

1 So the premise of the argument that Rule 60(b) -- 60
2 doesn't apply and they have other arguments just doesn't make
3 any sense.

4 Okay. So now that gets us to Rule 60. And Your Honor,
5 Your Honor hit the nail on the head. They haven't presented
6 any evidence. Allegations in a complaint aren't evidence.
7 They can't stand up there and say surprise evidence. They
8 had the opportunity -- and this hearing's been continued a
9 few weeks -- they had the opportunity to bring it up, and
10 it's -- they had the opportunity to claim that there was
11 surprise, but they just didn't. Okay?

12 So to go on to the Rule 60 arguments. Surprise.
13 Surprise and reasonable delay are really -- go hand in hand
14 with Mr. Bridges' argument. He says, well, we didn't find
15 out that -- months after the order was entered that he
16 violated a duty to us, so we are surprised by that, and it's
17 a reasonable time. Well, Your Honor, the order provided for
18 an exculpation. CLO Holdco and DAF knew that it applied to
19 an exculpation. They were bound. They knew based upon that
20 order that they would not be able to bring claims for normal
21 negligence. There is no surprise.

22 If you take Mr. Bridges' argument to its conclusion, he
23 could wait until the end of the statute of limitations after
24 an order and have come in four years from now and say, Your
25 Honor, we just found out facts so we should go back four

1 years before. That, Your Honor, that's not how the surprise
2 works. That's not how the reasonable time works.

3 Mr. Bridges did not contest that they're bound by res
4 judicata. He did not contest that the exculpation itself was
5 clear and unambiguous. Of course he argued Your Honor
6 couldn't enter an order saying there was exculpation, again,
7 with no authority. And he seemed surprised, as I suspect he
8 should, since he's not a bankruptcy lawyer, that retention
9 orders, whether it's investment bankers, financial advisors,
10 include exculpations all the time. So there's no grounds
11 under surprise.

12 There's no grounds -- the motions are late under 60(c).

13 And they're not void. I went through a painstaking
14 analysis, Your Honor, and I described in detail what the
15 *Espinosa* case held, and the exceptional circumstances which
16 Mr. Bridges tried to get away from as much as he could.
17 Maybe he can try to get away from language in a district
18 Court opinion, in a Bankruptcy Court opinion, in a Circuit
19 Court opinion. You can't get away from language in a Supreme
20 Court opinion. The Supreme Court opinion said exceptional
21 circumstances, where there was arguably no basis for
22 jurisdiction for what the Court did. They have not even come
23 close to convincing Your Honor that there was absolutely no
24 basis.

25 Now, they disagree. We granted, we think it's a good-

1 faith disagreement, but they haven't come close to
2 establishing the *Espinosa* standard, so their motion under 60
3 does not -- it fails.

4 And I don't think -- look, these are good lawyers. Mr.
5 Bridges and Mr. Sbaiti are good lawyers. They didn't just
6 inadvertently not mention Rule 60. They never mentioned it
7 because they knew they had no claim under Rule 60.

8 Your Honor, Mr. Bridges has made comments about the
9 fiduciary duty of Mr. Seery, about what the Investor's Act
10 provides. He's just wrong on the law. Now, Your Honor
11 doesn't have to decide that. Whichever court adjudicates the
12 DAF lawsuit will have to decide it. But there is no private
13 cause of action for damages. There are no fiduciary duties to
14 the investors.

15 And what Mr. Bridges doesn't even mention, in that the
16 investment agreement that's so prominent in his complaint,
17 they waived claims other than willful misconduct and gross
18 negligence against Highland. They waived those claims. So
19 for Mr. Bridges to come in here and argue that there's some
20 surprise, when he hasn't even bothered to look at the document
21 that's underlying the contractual relationship between the DAF
22 and the Debtor, is -- you know, I'll just say it's
23 inadvertence.

24 Your Honor, Mr. Bridges tried to argue that Mr. Seery is
25 not a beneficiary of the January 9th order. He's not an

1 agent. Well, again, Your Honor, Mr. Bridges wasn't there.
2 Your Honor and we were. On January 9th, an independent board
3 was picked, and at the time Mr. Dondero ceased to become the
4 CEO. So you have three gentlemen coming in -- Mr. Seery, Mr.
5 Dubel, and Mr. Nelms -- coming in to run Highland, in a very
6 chaotic time. They had to act through their agents. There
7 was no expectation that this board was going to actually run
8 the day-to-day operations of the Debtor. Of course not. They
9 needed someone to run. And they picked Mr. Seery. And the
10 argument that well, he's an agent of the company, he's not an
11 agent of the board, that just doesn't make sense. The
12 independent board had to act. The directors had to act. And
13 the directors, how do they deal with that? They acted through
14 Mr. Seery. So he is most certainly governed by the January
15 9th order.

16 Your Honor, I want to talk about the jury trial right.
17 Mr. Bridges said that Paragraph 14 is an arbitration clause
18 and not a jury trial waiver. Now, again, I will forgive Mr.
19 Bridges because I assume he didn't read the provision, okay,
20 and he -- somebody told him that, and that person just got it
21 wrong. But what I would like to do is read for Your Honor
22 Paragraph 14(f). It doesn't have to do with arbitration.
23 It's a waiver of jury trial. 14(f), Jurisdiction Venue,
24 Waiver of Jury Trial. The parties hereby agree that any
25 action, claim, litigation, or proceeding of any kind

1 whatsoever against any other party in any way arising from or
2 relating to this agreement and all contemplated transactions,
3 including claims sounding in contract, equity, tort, fraud,
4 statute defined as a dispute shall be submitted exclusively to
5 the U.S. District Court for the Northern District of Texas, or
6 if such court does not have subject matter jurisdiction, the
7 courts of the State of Texas, City of Dallas County, and any
8 appellate court thereof, defined as the enforcement court.

9 Each party ethically and unconditionally submits to the
10 exclusive personal and subject matter jurisdiction of the
11 enforcement court for any dispute and agrees to bring any
12 dispute only in the enforcement court. Each party further
13 agrees it shall not commence any dispute in any forum,
14 including administrative, arbitration, or litigation, other
15 than the enforcement court. Each party agrees that a final
16 judgment in any such action, litigation, or proceeding is
17 conclusive and may be enforced through other jurisdictions by
18 suit on the judgment or in any manner provided by law.

19 And then the kick, Your Honor, all caps, as jury trial
20 waiver always are: Each party irrevocably and unconditionally
21 waives to the fullest extent permitted by law any right it may
22 have to a trial by jury in any legal action, proceeding, cause
23 of action, or counterclaim arising out of or relating to this
24 agreement, including any exhibits, schedules, and appendices
25 attached to this agreement or the transactions contemplated

1 hereby. Each party certifies and acknowledges that no
2 representative of the owner of the other party has represented
3 expressly or otherwise that the other party won't seek to
4 enforce the foregoing waiver in the event of a legal action.
5 It has considered the implications of this waiver, it makes
6 this waiver knowingly and voluntarily, and it has been induced
7 to enter into this agreement by, among other things, the
8 mutual waivers and certifications in this section.

9 Your Honor, I will forgive Mr. Bridges. I assume he just
10 did not read that. But to represent to the Court that that
11 language does not contain a jury trial waiver is -- is just
12 wrong.

13 THE COURT: All right. I'm going to stop right
14 there. And you were reading from the Second Amended and
15 Restated Shared Services Agreement between Highland --

16 MR. POMERANTZ: Not shared services. I'm reading
17 from the Second Amended and Restated Investment Advisory
18 Agreement --

19 THE COURT: Investment --

20 MR. POMERANTZ: -- between the Charitable DAF, the
21 Charitable DAF GP, and Highland Capital Management. The
22 agreement whereby the Debtor was the investment advisor to the
23 Charitable DAF Fund and the Charitable DAF GP.

24 THE COURT: All right. Well, Mr. Bridges, I'm going
25 to bounce quickly back to you. This is your chance to defend

1 your honor.

2 MR. BRIDGES: Yeah, we're -- we're looking at a
3 different agreement, where -- where literally the words that
4 were read to you are not in the agreement in front of us and
5 it is news to me. So, Your Honor, this is a problem --

6 THE COURT: What is the agreement you're looking at?

7 MR. BRIDGES: It is the Amended -- I assume that
8 means First Amended -- Restated Advisory Agreement.

9 MR. POMERANTZ: Your Honor, we are happy to file this
10 agreement with the Court so the Court has the benefit of it in
11 connection with Your Honor's ruling.

12 THE COURT: Okay. I would like you to do that. Uh-
13 huh.

14 MR. BRIDGES: I'd like -- I'd like to request -- I'll
15 withdraw that.

16 THE COURT: Okay. Go on, Mr. Pomerantz.

17 MR. POMERANTZ: Mr. Bridges, if you could put us on
18 mute. If you could put us on mute, Mr. Bridges, so I don't
19 hear your feedback. Thank you.

20 Mr. Bridges also complains about the language "to the
21 extent permissible by law." As Your Honor knows and as has
22 been my practice over 30 years, that language is probably in
23 every plan where there's a retention of jurisdiction: to the
24 extent permissible by law. And Mr. Bridges says that this
25 will create ambiguity in the order that couldn't be enforced.

1 There's no basis for that. Our including the language "to the
2 extent permissible by law" in the orders, as we are prepared
3 to do, is consistent with the plan confirmation order where we
4 addressed that issue. And we addressed that issue because we
5 didn't want to put Your Honor in a position where thereby Your
6 Honor may have an action before Your Honor that passes the
7 colorability gate that Your Honor may not be able to assert
8 jurisdiction. And since jurisdiction can't be waived in that
9 regard, we will agree to amend that.

10 There's nothing ambiguous about that, and there's no
11 reason, though, that clause has to modify the Court's ability
12 to act as a gatekeeper, because, as we've argued *ad nauseam*,
13 gatekeeper provisions where the Court has that ability is not
14 only part of general bankruptcy jurisprudence but also part of
15 the Bankruptcy Code.

16 Counsel says that *Barton* doesn't apply because the
17 business judgment of Your Honor was used in retaining Mr.
18 Seery as opposed to in some other capacity. There's no basis
19 for that, Your Honor. A court-appointed -- a court-approved
20 CEO, CRO, professional, they are all entitled to protection
21 under the *Barton* act. And the argument -- and again, this is
22 separate and apart from whether he's entitled to protection
23 under the January 9th order. But the argument that because it
24 was the business judgment -- again, business judgment in doing
25 something that Your Honor expressly contemplated under the

1 January 9th corporate governance order -- there's just no law
2 to support that. And I guess he's trying to get around the
3 plethora of cases that deal with the situation where *Barton*
4 has been extended.

5 Your Honor, Mr. Bridges, again, in arguing that we're
6 ships passing in the night on *Shoaf* and *Applewood* and
7 *Espinosa*, no, we're not ships passing in the night. We have a
8 difference in agreement on what these cases stand for. These
9 cases stand for the proposition that a clear and unambiguous
10 provision, plain and simple, if it's clear and unambiguous, it
11 will be given res judicata effect. The release in *Shoaf*,
12 clear and unambiguous. The release in *Applewood*, not. The
13 issue here is the exculpation language. That was clear and
14 unambiguous. It applied prospectively. The argument makes no
15 sense that we didn't identify -- we didn't identify claims
16 that might arise in the future, so therefore an exculpation
17 clause doesn't apply? That doesn't make any sense.

18 Your Honor clearly exculpated parties. Mr. Dondero knew
19 it. CLO Holdco knew it. The DAF knew it. So the issue Your
20 Honor has to decide is whether that exculpation was a clear
21 and unambiguous provision such that it should be entitled to
22 res judicata effect. And we submit that the answer is
23 unequivocally yes.

24 That's all I have, Your Honor.

25 THE COURT: All right. Well, --

1 MR. MORRIS: Your Honor? I apologize.

2 THE COURT: Okay.

3 MR. MORRIS: This is John Morris.

4 THE COURT: Yes?

5 MR. MORRIS: I just want to, with respect to the
6 exhibits, I know there was no objection, but I had cited to
7 Docket Nos. 2419 and 2423. The original exhibit list is at
8 Docket No. 2412. So it's the three of those lists together.
9 2412, as amended by 2419, as amended by 2423. Thank you very
10 much.

11 THE COURT: All right. Thank you. All right.

12 MR. BRIDGES: Your Honor, I still have no objection
13 to that, but may I have the last word on my motion?

14 THE COURT: Is there time left?

15 THE CLERK: Yes.

16 THE COURT: Okay. Go ahead.

17 MR. BRIDGES: I just need a minute, Your Honor. They
18 agreed to change the order. They proposed it to us. They
19 proposed it in a proposed order to you. They can't also say
20 that it cannot be changed.

21 Secondly, Your Honor, in *Milic v. McCarthy*, 469 F.Supp.3d
22 580, the Eastern District of Virginia points out that the
23 Fourth Circuit treats appointment of estate professionals as
24 interlocutory orders as well.

25 That's all. Thank you, Your Honor.

1 THE COURT: All right. Here's what we're going to
2 do. We've been going a very long time. I'm going to take a
3 break to look through these exhibits, see if there's anything
4 in there that I haven't looked at before and that might affect
5 the decision here. So we will come back at 3:00 o'clock
6 Central Time -- it's 2:22 right now -- and I will give you my
7 bench ruling on this. All right.

8 So, Mike, they can all stay on the line, right?

9 Okay. You can stay on, and we'll be back at 3:00 o'clock.

10 THE CLERK: All rise.

11 (A recess ensued from 2:22 p.m. to 3:04 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated. All right.
14 Everyone presented and accounted for. We're going back on the
15 record.

16 MR. POMERANTZ: Your Honor, before you start, this is
17 Jeff Pomerantz. We had sent to your clerk, and hopefully it
18 got to you, a copy of the Second Amended and Restated
19 Investment Advisory Agreement. We also copied Mr. Sbaiti with
20 it as well. And we would also like to move that into
21 evidence, just so that it's part of the Court's record.

22 THE COURT: All right.

23 MR. BRIDGES: We would object to that, Your Honor.
24 We haven't had an opportunity to even verify its authenticity
25 yet.

1 THE COURT: All right. Well, I'll tell you what.
2 I'm going to address this in my ruling. So it's not going to
3 be part of the record for this decision, and yet -- well, I'll
4 get to it.

5 All right. So we're back on the record in Case Number 19-
6 34054, Highland Capital. The Court has deliberated, after
7 hearing a lot of argument and allowing in a lot of documentary
8 evidence, and the Court concludes that the motion of CLO
9 Holdco, Ltd. and The Charitable DAF to modify the retention
10 order of James Seery, which was entered almost a year ago, on
11 July 16th, 2020, should be denied.

12 This is the Court's oral bench ruling, but the Court
13 reserves discretion to supplement or amend in a more fulsome
14 written order what I'm going to announce right now, pursuant
15 to Rule 7052.

16 First, what is the Movants' authority to request the
17 modification of a bankruptcy court order that has been in
18 place for so many months, which was issued after reasonable
19 notice to the Movants, and after a hearing, which was not
20 objected to by the Movants, or appealed, when the Movants were
21 represented by sophisticated counsel, I might add, and which
22 order was relied upon by parties in this case, most notably
23 Mr. Seery and the Debtor, and in fact was entered after
24 significant negotiations involving a sophisticated court-
25 appointed Unsecured Creditors' Committee with sophisticated

1 professionals and sophisticated members, and after negotiation
2 with an independent board of directors, court-appointed, one
3 of whose members is a retired bankruptcy judge? What is the
4 Movants' authority?

5 Movants fumbled a little on that question, in that the
6 exact authority wasn't set forth in the motion. But Movants'
7 primary argument is that Movants think the Seery retention
8 order was an interlocutory order and that the Court simply has
9 the inherent authority to modify it as an interlocutory order.

10 The Court disagrees with this analysis. I do not think
11 the Fifth Circuit's *Smyth* case dictates that the Seery
12 retention order is still interlocutory. The Seery retention
13 order was an order entered pursuant to Section 363 of the
14 Bankruptcy Code, not a Section 327 professionals to a debtor-
15 in-possession, professionals to a trustee employment order
16 such as the one involved in the *Smyth* case.

17 But even if the Seery retention order is interlocutory --
18 the Court feels strongly that it's not, but even if it is --
19 the Court believes it would be an abuse of this Court's
20 inherent discretion or authority to modify that order almost a
21 year after the fact and under the circumstances of this case.

22 Now, assuming Rule 60(b) applies to the Movants' request,
23 the Court determines that the Movants have not made their
24 motion anywhere close to within a reasonable time, as Rule
25 60(c) requires, nor do I think the Movants have demonstrated

1 any exceptional circumstances to declare the order or any of
2 its provisions void. The Movants have put on no evidence that
3 constitutes surprise or constitutes newly-disputed evidence.
4 So why are there no exceptional circumstances here such that
5 the Court might find, you know, a void order or void
6 provisions of an order?

7 First, this Court concludes that there's no credible
8 argument that the Court overreached its jurisdiction with the
9 gatekeeping provisions in the order. Gatekeeping provisions
10 are not only very common in the bankruptcy world -- in
11 retention orders and in plan confirmation orders, for example
12 -- but they are wholly consistent with the *Barton* case, the
13 U.S. Supreme Court's *Barton's* case, and its progeny that has
14 become known collectively as the *Barton* doctrine. Gatekeeping
15 provisions are wholly consistent with 28 U.S.C. Section
16 959(a)'s complete language.

17 The Fifth Circuit has blessed gatekeeping provisions in
18 all sorts of contexts. It has blessed them in the situation
19 of when *Stern* claims are involved in the *Villegas* case. It
20 even blessed Bankruptcy Courts' gatekeeping functions a long
21 time ago, in 1988, in a case that I don't think anyone
22 mentioned in the briefing, but as I've said, my brain
23 sometimes goes down trails, and I'm thinking of the *Louisiana*
24 *World Exposition* case in 1988, when the Fifth Circuit blessed
25 there a procedure where an unsecured creditors' committee can

1 bring causes of action against persons, such as officers and
2 directors or other third parties, if they first come to the
3 Bankruptcy Court and show a colorable claim. They have to
4 come to the Bankruptcy Court, show they have a colorable claim
5 and they're the ones that should be able to pursue them. Not
6 exactly on point, but it's just one of many cases that one
7 could cite that certainly approve gatekeeper functions of
8 various sorts of Bankruptcy Courts.

9 It doesn't matter which court might ultimately adjudicate
10 the claims; the Bankruptcy Court can be the gatekeeper.

11 And the Court agrees with the many cases cited from
12 outside this circuit, such as the case in Alabama, in the
13 Eleventh Circuit, and there was another circuit-level case, at
14 least one other, that have held that the *Barton* doctrine
15 should be extended to other types of case fiduciaries, such as
16 debtor-in-possession management, among others.

17 Finally, as I pointed out in my confirmation ruling in
18 this case, gatekeeping provisions are commonplace for all
19 types of courts, not just Bankruptcy Courts, when vexatious
20 litigants are involved. I have commented before that we seem
21 to have vexatious litigation behavior with regard to Mr.
22 Dondero and his many controlled entities.

23 Now, as far as the Movants' argument that there was not
24 just improper gatekeeping provisions but actually an improper
25 discharge in the Seery retention order of negligence claims or

1 other claims that don't rise to the level of gross negligence
2 or willful misconduct, again, I reiterate there's nothing
3 exceptional in the bankruptcy world about exculpation
4 provisions like this. They absolutely are a term of
5 employment very often. Just like compensation, they're
6 frequently requested, negotiated, and approved. They are
7 normal in the corporate governance world, generally. They are
8 normal in corporate contracts between sophisticated parties.
9 And most importantly of all, even if this Court overreached
10 with the exculpation provisions in the Seery retention order,
11 even if it did, res judicata bars the attack of these
12 provisions at this late stage, under cases such as *Shoaf*,
13 *Republic Supply v. Shoaf* from the Fifth Circuit, the *Espinosa*
14 case from the U.S. Supreme Court, and even *Applewood*, since
15 the Court finds the language in this order was clear,
16 specific, and unambiguous with regard to the gatekeeping
17 provisions and the exculpation provisions.

18 Last, and this is the part where I said I'm going to get
19 to this agreement that has been submitted, the Second Amended
20 and Restated Investment Advisor Agreement or whatever the
21 title is. I am more than a little disturbed that so much of
22 the theme of the Movants' pleadings and arguments, and I think
23 even representations to the District Court, have been they
24 have these sacred jury trial rights, these inviolate jury
25 trial rights, and an Article I Court like this Court should

1 have no business through a gatekeeping provision impinging on
2 the possible pursuit of an action where there's a jury trial
3 right.

4 I was surprised initially when I thought about this. I
5 thought, wow, I've seen so many agreements over the months. I
6 can't say every one of them waived the jury trial right, but I
7 just remembered seeing that a lot, and seeing arbitration
8 provisions, and so that's why I asked. It just was lingering
9 in my brain. So I'm going to look at what is submitted. I'm
10 not relying on that as part of my ruling. As you just heard,
11 I had a multi-part ruling, and whether there's a jury trial
12 right or not is irrelevant to how I'm choosing to rule on this
13 motion. But I do want to see the agreement, and then I want
14 Movants within 10 days to respond with a post-hearing trial
15 brief either saying you agree that this is the controlling
16 document or you don't agree and explain the oversight, okay?
17 Because it feels like a gross omission here to have such a
18 strong theme in your argument -- we have a jury trial right,
19 we have a jury trial right, by God, the gatekeeping
20 provisions, among other things, impinge on our sacred pursuit
21 of our jury trial right -- and then maybe it was very
22 conspicuous in the controlling agreement that you'd waived
23 that, the Movants had waived that.

24 So, anyway, I'm requiring some post-hearing briefing, if
25 you will, on whether omissions, misrepresentations were made

1 to the Court.

2 Anyway, so I reserve the right to supplement or amend this
3 ruling with a more fulsome written order. I am asking Mr.
4 Pomerantz to upload a form of order that is consistent with
5 this ruling, and --

6 MR. POMERANTZ: Your Honor, we will do so. I do have
7 one thing to bring to the Court's attention, unrelated to the
8 motion, before Your Honor leaves the bench.

9 THE COURT: All right. So just a couple of follow-up
10 things. Have you -- I'm not clear I heard what you said about
11 this agreement. Did you email it to my courtroom deputy or
12 did you file it on the docket?

13 MR. POMERANTZ: We emailed it to your courtroom
14 deputy. We're happy to file it on the docket. And we also
15 provided a copy to Mr. Sbaiti.

16 I would note for the Court that it's signed both by The
17 Charitable DAFs by Grant Scott, just for what it's worth.

18 THE COURT: Okay. All right. Well, I'm trying to
19 think what I want -- I do want you to file it on the docket,
20 and I'm trying to think of what you label it. Just call it
21 Post-Hearing Submission or something and link it to the motion
22 that we adjudicated here today. And then, again, you've got
23 10 days, Mr. Bridges, to say whatever you want to say about
24 that agreement.

25 I guess the last thing I wanted to say is we sure devoted

1 a lot of time to this motion today. We have -- this is a
2 recurring pattern, I guess you can say. We have a lot of
3 things that we devote a lot of time to in this case that I get
4 surprised, but it is what it is. You file a motion. I'm
5 going to give it all the attention Movants and Respondents
6 think it warrants. I'm going to develop a full record,
7 because, you know, there's a recurring pattern of appeals
8 right now, 11 or 12 appeals, I think, not to mention motions
9 to withdraw the reference. If we're going to have higher
10 courts involved in the administration of this case, I'm going
11 to make a very thorough record so nobody is confused about
12 what we did, what I considered, what my reasoning was.

13 So I kind of think it's unfortunate for us to have to
14 spend case resources and so much time and fees on things like
15 this, but I'm going to make sure a Court of Appeals is not
16 ever confused about what happened and what we did. So that's
17 just the way it's going to be. And I feel like we have no
18 choice, given, again, the pattern of appeals.

19 All right. So, with that, Mr. Pomerantz, you had one
20 other case matter, you said?

21 MR. POMERANTZ: Yes. But before I get to that, Your
22 Honor, I assume that, in response to the Movants' submission
23 on the agreement, that we would have right at four or seven
24 days to respond if we deem it's appropriate?

25 THE COURT: I think that's reasonable. That's

1 reasonable.

2 MR. POMERANTZ: Okay. Thank you, Your Honor.

3 THE COURT: So let me think of how I want to do this.
4 I'll just do a short scheduling order of sorts that just, it
5 says in one or two paragraphs, at the hearing on this motion,
6 the Court raised questions about the jury trial rights and the
7 Debtor has now submitted the controlling agreements, I'm
8 giving the Movants 10 days to respond to whether this is
9 indeed a controlling agreement, and why, if it is, the Movants
10 have heretofore taken the position they have jury trial
11 rights. And then I will give you seven days thereafter to
12 reply, and then the Court will set a further status conference
13 if it determines it's necessary. Okay?

14 So, Nate, we'll do a short little order to that effect.
15 Okay?

16 MR. POMERANTZ: Thank you, Your Honor.

17 I -- again, before I raise the other issue, I want to pick
18 up on a comment Your Honor just made towards the end. I know
19 the Court has been frustrated with the time and effort we've
20 been spending. The Debtor and the creditors have been
21 extremely frustrated, because in addition to the time and
22 effort everyone's spending, we're spending millions of
23 dollars, millions of dollars on litigation that --

24 THE COURT: It's one of the reasons you needed an
25 exit loan, right?

1 MR. POMERANTZ: Right. No, exactly. That's
2 frivolous, that we think is made in bad faith.

3 And Your Honor, and everyone else who's hearing this on
4 behalf of Mr. Dondero, should understand we're looking into
5 what appropriate authority Your Honor would have to shift some
6 of the costs. Your Honor did that in the contempt motion.
7 Your Honor can surely do that in connection with the notes
8 litigation. But all this other stuff that is requiring us to
9 spend hundreds and hundreds of hours and spend millions of
10 dollars, we are clearly looking into whether it would be
11 appropriate and what authority there is. I just wanted to let
12 Your Honor know that.

13 And in connection with that, the last point, Your Honor, I
14 can't actually even believe I'm saying this, but there was
15 another lawsuit filed -- we just found out in the break -- on
16 Wednesday night by the Sbaiti firm on behalf of Dugaboy in the
17 District Court.

18 Now, to make matters worse, Your Honor, the litigation
19 relates to alleged improper management by the Debtor of Multi-
20 Strat. If Your Honor will recall, at many times I've told
21 this Court what Dugaboy's claims they filed in this case.
22 Dugaboy has a claim that is filed in this case for
23 mismanagement postpetition of Multi-Strat. Now the Sbaiti
24 firm, in addition to representing CLO Holdco, in addition to
25 representing the DAF, and whatever the Plaintiffs' lawyers are

1 in that other District Court, PCMG, and in connection with the
2 Acis matter, they've decided they haven't had enough. They've
3 now filed another motion that -- you know, why they filed it
4 in District Court and there's a proof of claim on the same
5 issues, I don't know. But I thought Your Honor should know.
6 I'm not asking Your Honor to do anything about it. But we
7 will act aggressively, strongly, and promptly.

8 Thank you, Your Honor.

9 THE COURT: All right. Well, you've reminded me of
10 what came out earlier today about the entity -- I left my
11 notepad in my chambers -- PMC or PMG or something.

12 Mr. Bridges, we're not going to have a hearing right now
13 on me doing anything, but what are you thinking? What are you
14 doing?

15 MR. BRIDGES: Your Honor, I'm not trying to duck your
16 question. I literally have no involvement with any other
17 claim, and we would have to ask Mr. Sbaiti to answer your
18 questions.

19 THE COURT: All right. Is he there?

20 MR. BRIDGES: He is.

21 THE COURT: I'll listen.

22 MR. BRIDGES: I'll switch seats and give him this
23 chair.

24 MR. SBAITI: Sorry, Your Honor. We had two computers
25 going and weren't able to use the sound on one, so we ended up

1 turning that off.

2 Your Honor, I'm not sure what the question is about when
3 you say what are we thinking. We have a client that's asked
4 us to file something, and when we're advised by bankruptcy
5 counsel that it's not prohibited for us to do so, and don't
6 know why we're precluded from doing so, and when the time
7 comes I'm sure we'll be able to explain to Your Honor --
8 someone will be able to explain to Your Honor why what we're
9 doing, despite Mr. Pomerantz's exacerbation, or excuse me,
10 exasperation, why that wasn't improper. It's our belief that
11 it wasn't improper or a violation of the Court's rule.

12 THE COURT: Just give me a quick shorthand *Readers'*
13 *Digest* of why you don't think it's improper.

14 MR. SBAITI: Sure. My understanding is, Your Honor,
15 there's not a rule that says we can't file it against the
16 Debtor for postpetition actions. So that, that's as -- that's
17 as much as I understand. And I'm going to -- I'm not trying
18 to duck it, either. And if I'm wrong about that and someone
19 wants to correct me on our side offline and if we have to
20 explain to the Court why that's so or what rule has been
21 violated, I'm sure we'll be able to put together something for
22 that. But that's what I've been advised.

23 THE COURT: Have you done thorough --

24 MR. POMERANTZ: Your Honor, I think what --

25 MR. SBAITI: (garbled), Your Honor.

1 THE COURT: Have you done thorough research yourself?
2 Your Rule 11 signature is on the line, not some bankruptcy
3 counsel you talked to. Have you done the research yourself?

4 MR. SBAITI: Well, Your Honor, I've relied on the
5 research and advice of people who are experts, and I believe
6 my Rule 11 obligations also allow me to do that, so yes.

7 MR. POMERANTZ: Your Honor, I think we're entitled to
8 know if it's Mr. Draper's firm who has been representing
9 Dugaboy. He's the bankruptcy counsel. I don't think it's an
10 attorney-client privilege issue. If Mr. Sbaiti is going to be
11 here and sort of say, hey, bankruptcy counsel said it was
12 okay, I think we would like to know and I'm sure Your Honor
13 would like to know who is that bankruptcy counsel.

14 THE COURT: Yes. Fair enough. Mr. Sbaiti?

15 MR. SBAITI: Your Honor, in consultation with Mr.
16 Draper and with consultation with other counsel that we've
17 spoken to, that has been our understanding.

18 THE COURT: Who's the other counsel?

19 MR. SBAITI: Well, we've talked to Mr. Rukavina about
20 some of these things for the PCMG and the Acis case. We've
21 talked to the people who, when they tell us you can't do this
22 because they're bankruptcy counsel for our client, then we
23 don't do something. So, and I'm not trying to throw anybody
24 under the bus, but my understanding of what goes on in
25 Bankruptcy Court is incredibly limited, so, you know, and if

1 it's a mistake then I'll own it, if I have a mistaken
2 understanding, but I also wasn't anticipating having to make a
3 presentation about this right here right now, so --

4 THE COURT: Well, you're filing lawsuits that involve
5 this bankruptcy case during the hearing, so --

6 MR. SBAITI: Oh, we didn't file it during the
7 hearing, Your Honor. It was filed last night, I believe.

8 THE COURT: Okay. Well, I assume that you're going
9 to go back and hit the books, hit the computer, and be
10 prepared to defend your actions, because your bankruptcy
11 experts, they may think they know a lot, but the judge is not
12 very happy about what she's hearing.

13 MR. POMERANTZ: Your Honor, if I may ask when Your
14 Honor intends to issue the contempt ruling in connection with
15 the June 8th hearing? I strongly believe -- and, obviously,
16 this has nothing to do with the contempt hearing; this
17 happened after -- but I strongly believe that sending a
18 message that Your Honor is inclined to hold counsel in
19 contempt, which obviously is one of the violators we said
20 should be held in contempt, it may be important to do that
21 sooner rather than later so that people know that Your Honor
22 is serious.

23 THE COURT: All right. Well, I understand and
24 respect that request. And let me tell you all, I had a seven-
25 day -- okay. You all were here on that motion June 8th. I

1 had a seven-day, all-day, every-day, 9:00 to 5:00, 45-minute
2 lunch break, in-person hearing with a dozen or so live
3 witnesses that I just finished Tuesday at 5:00 o'clock. So
4 you all were here on the 8th, and then -- what day was that --
5 what was -- Tuesday, I finished. Tuesday was the 22nd. So I
6 started on the 14th, okay? So you all were here on the 8th
7 and I had a live jury trial -- I mean, not jury trial, a live
8 bench trial -- live human beings in the courtroom, beginning
9 June 14th. So you're here the 8th. June 14th through 22nd, I
10 did my trial. And here we are on the 25th. And guess what, I
11 have another live human-being bench trial next week, Monday
12 through Friday.

13 So we've been working in other things like this in between
14 those two. So I'm telling you that not to whine, I'm just
15 telling you that, that's the only reason I didn't get out a
16 quick ruling on this, okay?

17 MR. POMERANTZ: And Your Honor, I was not at all
18 making that comment to imply anything about the Court.

19 THE COURT: Well, --

20 MR. POMERANTZ: The time and effort that you have
21 given to this case is extraordinary, --

22 THE COURT: Okay.

23 MR. POMERANTZ: -- so please don't misunderstand my
24 comment.

25 THE COURT: Okay. And I didn't mean to express

1 annoyance or anything like that. I guess what I'm trying to
2 do is I don't want anyone to mistake the delay in ruling on
3 the contempt motion to mean I'm just not that -- you know, I'm
4 not prioritizing it, other things are more serious to me or
5 important to me, or I'm going to take two months to get to it.
6 It's literally been I've been in trial almost all day long
7 every day since you were here. But trust me, I'm about as
8 upset as upset can be about what I heard on June 8th, and I'm
9 going to get to that ruling, and I know what I'm going to do.
10 And, well, like I said, it's just a matter of figuring out
11 dollars and whom, okay? There's going to be contempt. I just
12 haven't put it on paper because I've been in court all day and
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20 CERTIFICATE

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

23 **/s/ Kathy Rehling**

06/29/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLEE RECORD
VOLUME 23**

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

_____))
In re:) Chapter 11
_____))
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
_____))
Debtor.)
_____))

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APPELLEE’S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Charitable DAF Fund, L.P. and CLO Holdco Ltd

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

(“Appellants”) from the *Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed By Charitable DAF Fund L.P. and CLO Holdco, Ltd.* [Docket No. 2506] entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021 in the above-styled bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

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

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/07/2020	321	Witness and Exhibit List for January 9, 2020 Hearing
01/09/2020	335	Court Admitted Exhibits: Date of Hearing January 9, 2020
07/10/2020	822	Debtor’s Witness and Exhibit List with Respect to (A) the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Developmental Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services <i>Nunc Pro Tunc</i> to March 15
07/16/2020	836	Court Admitted Exhibits: Date of Hearing July 14, 2020
07/17/2020	864	Transcript Regarding Hearing Held on July 14, 2020 re: Applications to Employ
07/20/20	881	Certificate of Service of Vincent Trang re: Documents Served on July 16, 2020
12/11/2020	1543	Transcript Regarding Hearing Held on January 9, 2020 re: Motion to Compromise Controversy
06/10/2021	2440	Transcript Regarding Hearing Held June 8, 2021 re: 1) Show Cause Hearing; 2) Motion to Modify Order; and 3) Motion to Extend Time

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

Vol. 23
005004

005008

005011

005145

005156

Vol. 24

005247

Dated: July 30, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (admitted *pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (admitted *pro hac vice*)
Maxim B. Litvak (SBN: 24002482)
Gregory V. Demo (NY Bar 5371992) (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

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

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

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

WITNESS AND EXHIBIT LIST FOR JANUARY 9, 2020 HEARING

Highland Capital Management, L.P. (the “Debtor”) submits the following *Witness and Exhibit List* for the hearing set for 9:30 a.m. on January 9, 2020 before the Court in the above-styled bankruptcy case (the “Bankruptcy Case”).

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

A. Witnesses:

1. Bradley D. Sharp (by declaration);
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

B. Exhibits:

No.	Exhibit	Offered	Admitted
1	Term Sheet		
2	Curriculum Vitae for Independent Directors		
3	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
4	All exhibits necessary for impeachment and/or rebuttal purposes		
5	All exhibits identified by or offered by any other party at the hearing		

Dated: January 7, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
(admitted *pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084)
(admitted *pro hac vice*)
Maxim B. Litvak (SBN: 24002482)
Gregory V. Demo (NY Bar 5371992)
(admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

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

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2020, a true and correct copy of the foregoing *Witness and Exhibit List* was served via the Court's CM/ECF system upon all parties registered to receive electronic notice in the Bankruptcy Case.

/s/ Zachery Z. Annable

Zachery Z. Annable

Highland Capital Management, L.P. (the “Debtor”) respectfully submits the following *Witness and Exhibit List* in advance of the hearing set for 1:30 p.m. (Central Time) on July 14, 2020 before the Court in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James P. Seery, Jr.
2. Bradley Sharp;
3. John S. Dubel;
4. Any witness identified by or called by any other party; and
5. Any witness necessary for rebuttal.

B. Exhibits:

No.	Exhibit	Offered	Admitted
1.	Highland Capital Management, L.P. Preliminary Term Sheet and related Exhibits (Docket No. 354-1)		
2.	Minutes of the Meeting of the Independent Directors of Strand Advisors, Ltd. Held on January 9, 2020 - January 10, 2020		
3.	April 5, 2020 Email from John Dubel re CEO Terms		
4.	Minutes of the Meeting of the Compensation Committee of Strand Advisors, Ltd. held on April 8, 2020		
5.	Minutes of the Meeting of the Independent Directors of Strand Advisors, Ltd. held on April 22, 2020		
6.	Minutes of the Meeting of the Independent Directors of Strand Advisors, Ltd. held on April 29, 2020		
7.	Minutes of the Meeting of the Independent Directors of Strand Advisors, Inc. held on May 22, 2020 (inclusive of May 26, 2020)		
8.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
9.	All exhibits necessary for impeachment and/or rebuttal purposes		

No.	Exhibit	Offered	Admitted
10.	All exhibits identified by or offered by any other party at the hearing		

Dated: July 10, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)

(admitted pro hac vice)

Ira D. Kharasch (CA Bar No. 109084)

(admitted pro hac vice)

John A. Morris (NY Bar No. 2405397)

(admitted pro hac vice)

Gregory V. Demo (NY Bar 5371992)

(admitted pro hac vice)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

E-mail: jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

jmorris@pszjlaw.com

gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

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

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

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In Re:) **Case No. 19-34054-sgj11**
)
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) July 14, 2020
) 1:30 p.m. Docket
Debtor.)
) APPLICATIONS TO EMPLOY JAMES
) P. SEERY AND DEVELOPMENT
) SPECIALISTS, INC. (774, 775)
)

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

WEBEX/TELEPHONIC APPEARANCES:

For the Debtors: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067
(310) 277-6910

For the Debtors: John A. Morris
Greg Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtors: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtors: Zachery Z. Annable
Melissa S. Hayward
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP
4 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

5 For the Official Committee: Paige Holden Montgomery
6 of Unsecured Creditors: SIDLEY AUSTIN, LLP
2021 McKinney Avenue, Suite 2000
7 Dallas, TX 75201
(214) 969-3500

8 For Acis Capital Rakhee V. Patel
9 Management GP, LLC: WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
10 Dallas, TX 75201
(214) 745-5250

11 For Acis Capital Brian Patrick Shaw
12 Management GP, LLC: ROGGE DUNN GROUP, P.C.
500 N. Akard Street, Suite 1900
13 Dallas, TX 75201
(214) 239-2707

14 For Redeemer Committee of Mark A. Platt
15 the Highland Crusader FROST BROWN TODD, LLC
Fund: 100 Crescent Court, Suite 350
Dallas, TX 75201
16 (214) 580-5852

17 For Redeemer Committee of Terri L. Mascherin
18 the Highland Crusader JENNER & BLOCK, LLP
Fund: 353 N. Clark Street
19 Chicago, IL 60654-3456
(312) 923-2799

20 For Redeemer Committee of Marc B. Hankin
21 the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
22 New York, NY 10022-3098
(212) 891-1600

23

24

25

1 APPEARANCES, cont'd.:

2 For UBS Securities, LLC: Andrew Clubok
3 Latham & Watkins, LLP
4 555 Eleventh Street, NW,
5 Suite 1000
6 Washington, DC 20004
7 (202) 637-2200

8 For UBS Securities: Kimberly A. Posin
9 LATHAM & WATKINS, LLP
10 355 South Grand Avenue, Suite 100
11 Los Angeles, CA 90071-1560
12 (213) 891-7322

13 For Certain Employees: David Neier
14 WINSTON & STRAWN, LLP
15 200 Park Avenue
16 New York, NY 10166
17 (212) 294-6700

18 Recorded by: Michael F. Edmond, Sr.
19 UNITED STATES BANKRUPTCY COURT
20 1100 Commerce Street, 12th Floor
21 Dallas, TX 75242
22 (214) 753-2062

23 Transcribed by: Kathy Rehling
24 311 Paradise Cove
25 Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JULY 14, 2020 - 1:34 P.M.

2 THE COURT: ... to get lawyer appearances. First,
3 for the Debtor, do we have some Pachulski lawyers on the
4 phone? Please make your appearance.

5 MR. POMERANTZ: Good morning, Your Honor. It's
6 Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones. Also with
7 me are John Morris, and then listening in are Greg Demo and
8 Ira Kharasch.

9 THE COURT: All right. Thank you all. And do we
10 have any Hayward lawyers on the phone?

11 MR. ANNABLE: Yes, Your Honor.

12 THE COURT: I presume that was Mr. Annable.

13 MR. ANNABLE: Yes, Your Honor. Sorry. My mic's not
14 picking up. It's Zachery Annable and Melissa Hayward --

15 THE COURT: All right.

16 MR. ANNABLE: -- as local counsel for the Debtor.

17 THE COURT: Okay. Thank you. For the Unsecured
18 Creditors' Committee, who do we have from Sidley Austin?

19 MR. CLEMENTE: Good afternoon, Your Honor. Matthew
20 Clemente from Sidley Austin, and Paige Montgomery is also on
21 the phone.

22 THE COURT: All right. Thank you. All right. I'll
23 go to some of our usual appearances. Do we have lawyers for
24 the Redeemer Committee this afternoon? (No response.) All
25 right.

1 MS. MASCHERIN: Yes. Excuse me, Your Honor.

2 THE COURT: Yes?

3 MS. MASCHERIN: This is Terri Mascherin. I wasn't
4 sure whether I had the microphone on mute or not.

5 THE COURT: Okay.

6 MS. MASCHERIN: I apologize. Terri Mascherin, Jenner
7 & Block. My colleague, Marc Hankin, is on the phone. And I
8 believe that Mark Platt is also on the line.

9 THE COURT: All right. Thank you. What about UBS?
10 Anyone wanting to appear for UBS?

11 MR. CLUBOK: Yes. Good afternoon, Your Honor. This
12 is Andrew Clubok from Latham & Watkins, LLP. And my partner,
13 Kimberly Posin, is on as well.

14 THE COURT: Okay. Thank you. What about for Acis?
15 Any lawyers appearing for Acis?

16 MS. PATEL: Yes. Good afternoon, Your Honor. Rakhee
17 Patel of the Winstead firm and Brian Shaw of the Rogge Dunn
18 Group appearing on behalf of Acis.

19 THE COURT: All right. Do we have Mr. Lynn or Mr.
20 Bonds for James Dondero? (No response.) Maybe not. All
21 right. Is there anyone else who wishes to appear for today's
22 hearings?

23 MR. NEIER: Good afternoon, Your Honor. David Neier
24 of Winston & Strawn making a reappearance, but this time for
25 several employees of Highland: Mr. Leventon, Mr. Sevilla, Mr.

1 Ellington, several others.

2 THE COURT: Oh, okay. Thank you. Any other
3 appearances today?

4 (No response.)

5 THE COURT: All right. I'll assume everyone else is
6 just going to observe.

7 Well, we have two employment applications. Mr. Pomerantz,
8 how did you want to proceed on those?

9 MR. POMERANTZ: So, Your Honor, we have the two
10 motions to present, Your Honor. I'm happy to say that neither
11 of them are opposed.

12 Before I present the motions to Your Honor, I wanted to
13 ask if Your Honor would like to address the mediation issues
14 at the conclusion of the hearing or prior to the presentation
15 of the motions.

16 THE COURT: At the conclusion. Thank you.

17 MR. POMERANTZ: Thank you, Your Honor.

18 Your Honor, the first motion on the docket today is a
19 Motion to Appoint James Seery as the Debtors' chief executive
20 officer and chief restructuring officer, effective as of March
21 15th, which is about the time that Mr. Seery began performing
22 the services as the chief executive officer.

23 While there's a good argument that the retention of a
24 chief executive officer is in the ordinary course of business
25 and does not require court approval, the Debtor, out of an

1 abundance of caution, filed the motion, and the motion seeks
2 approval of the agreement which is attached to the motion.

3 The second motion, Your Honor, is a Motion to Approve the
4 Retention of DSI as the Debtors' Financial Advisor. And as
5 the Court is aware, Mr. Sharp, a managing director of DSI, was
6 approved as the Debtors' Chief Restructuring Officer pursuant
7 to this Court's January 10th order.

8 Although Mr. Seery is proposed to replace Mr. Sharp as the
9 Debtors' Chief Restructuring Officer, Mr. Seery still requires
10 the financial assistance and advisory support that DSI has
11 been providing to him, the Board, and the Debtor for several
12 months.

13 While each of these motions, as I mentioned, Your Honor,
14 are unopposed, we plan to put on the testimony of James Seery,
15 John Dubel, and Brad Sharp to provide the Court with the
16 evidentiary basis to support the relief that is requested.
17 And with the testimony, Your Honor, we intend to accomplish
18 several things.

19 First, Your Honor, in light of our exchange at the hearing
20 on July 8th, we thought it'd be appropriate for Mr. Seery to
21 provide a more fulsome response to Your Honor regarding the
22 nature and extent of the Debtors' operations and assets and
23 the variety of significant activities that the Board in
24 general and Mr. Seery as the chief executive officer has been
25 performing over the last several months.

1 We think this is very important, Your Honor, given that
2 the Debtor has substantial and multiple complex business
3 operations that it oversees that are in -- that are in
4 subsidiaries outside of Chapter 11 or are in entities managed
5 by the Debtor and also not in Chapter 11. And the Court, we
6 appreciate, especially in light of Your Honor's comments, does
7 not have the benefit of seeing what is really going on. So
8 we're hoping, by Mr. Seery's testimony, it will provide Your
9 Honor with a much clear picture, and, quite frankly, a better
10 job doing it than I was able to do last week.

11 Mr. Seery's testimony will support the need for the
12 retention of the chief executive officer and why his
13 particular background and qualifications made him the
14 appropriate choice for the role.

15 Second, Mr. Dubel, as the chairman of the compensation
16 committee of the Board, will testify regarding the process
17 undertaken by the compensation committee that led to the
18 conclusion to ask Mr. Seery to become the chief executive
19 officer and the agreement -- under the terms and conditions
20 set forth in the agreement.

21 Lastly, Mr. Sharp will testify regarding the activities he
22 and DSI have been performing since the commencement of the
23 case, the assistance they have been providing to Mr. Seery
24 over the last few months, and how the nature and extent of the
25 services they are providing will essentially remain the same

1 if Your Honor approves the motion to employ Mr. Seery.

2 Before I turn the virtual podium over to my partner, John
3 Morris, to present the testimony, Your Honor, I thought I
4 would provide the Court with a brief summary of the events
5 leading to the Debtors' filing of the motion.

6 THE COURT: Okay.

7 MR. POMERANTZ: As Your Honor will recall, the Court
8 entered an order on January 9th approving a settlement between
9 the Debtor and the Committee, and a significant part of that
10 settlement involved modifications to the Debtors' corporate
11 governance that resulted in the installation of the
12 Independent Board.

13 The term sheet that was attached in the settlement motion
14 specifically contemplated that the Independent Board, in
15 consultation with the Committee, would determine whether it
16 was appropriate to retain a chief executive officer, and
17 further went on to say that the chief executive officer could
18 be a member of the Board.

19 And the retention of a chief executive officer was on
20 everyone's minds from the beginning, because since Mr.
21 Dondero's authority as the CEO of the Debtor was being
22 terminated in connection with the settlement, the Debtor and
23 the Committee contemplated that, in order to manage a dynamic
24 and widespread asset management platform like Highland's, that
25 the retention of a chief executive officer may very well be

1 necessary.

2 I will leave it to Mr. Seery and Mr. Dubel to explain to
3 the Court what transpired during the early stages of the case
4 and the decision-making process that led to Mr. Seery starting
5 to act as the Debtors' chief executive officer. And I would
6 also leave it to Mr. Dubel to discuss the sequence of events
7 which led from the appointment of him as the chief executive
8 officer through the filing of the motion that brings us here
9 today, which events will include the establishment of a
10 compensation committee; the commissioning of a report from the
11 Debtors' compensation expert, Mercer; the procurement of the
12 Debtors' [sic] and officers insurance coverage to cover Mr.
13 Seery and Mr. Dubel; the negotiations over the (inaudible) of
14 Mr. Seery; and lastly, the negotiations with the Committee
15 which has resulted in the motion being fully consensual.

16 I'll also leave it to Mr. Seery to explain his personal --
17 professional background and why he was qualified to fill that
18 role.

19 The agreement, Your Honor, between Mr. Seery and the
20 Debtor includes the following material provisions.

21 First, there would be base compensation at the rate of
22 \$150,000 a month, retroactive to March 15th. And while Mr.
23 Seery will remain on the Board as part of his role as the
24 chief executive officer, the \$150,000 per month would cover
25 his services not only as a CEO but also a member of the Board.

1 In other words, the Board fees that were agreed to back in
2 January of \$60,000 a month, \$50,000 a month, and \$30,000 a
3 month would be replaced by the \$150,000 a month commencing on
4 March 15th.

5 While the compensation committee and Mr. Seery reached
6 agreement on the structure of potential bonus compensation,
7 the Committee has not agreed to that proposed structure. As a
8 result, the compensation committee and Mr. Seery decided that
9 approval sought in this motion would only be the monthly
10 compensation and the other non-economic terms, but would not
11 include the bonus compensation. Any bonus compensation sought
12 to be paid to Mr. Seery would be pursuant to a separate motion
13 filed, if at all, a lot later in the case.

14 The Committee was also uncomfortable with the open-ended
15 nature of the agreement and wanted some control in being able
16 to seek to terminate it. To accommodate the Committee, Mr.
17 Seery and the Debtor agreed to the following: After 90 days
18 from the date the Court enters an order approving this
19 agreement, if the Court is inclined to do so, the Committee
20 may provide the Debtor with notice that it does not want the
21 agreement to continue. The Debtor would then have two weeks
22 to file a motion on normal notice seeking to extend the date
23 of the agreement, and Mr. Seery would be entitled to his base
24 compensation until the Court ruled on the motion.

25 Also, the Committee asked us that be made clear in the

1 order, which we've done, that Mr. Seery's retention would
2 terminate on the effective date on the plan, subject, of
3 course, of his right to seek bonus compensation pursuant to a
4 separate motion. The agreement also contains standard
5 reimbursement and indemnification provisions.

6 Your Honor, those conclude my initial remarks. I'm happy
7 to take questions. And then, at the appropriate time, I
8 return it over to Mr. Morris, who will put on the testimony of
9 Mr. Seery, Mr. Dubel, and Mr. Sharp.

10 THE COURT: All right. I'd like to pretty quickly
11 get to the evidence. So, I'll ask: Does anyone have a
12 burning desire to make an opening statement? If so, please
13 let's keep it brief.

14 (No response.)

15 THE COURT: All right. I assume everyone is content
16 to wait until the end and speak up in any way they want to
17 speak up.

18 Mr. Morris, are you ready to call your witness?

19 MR. MORRIS: I am, Your Honor. Can you hear me right
20 now?

21 THE COURT: I can. Thank you.

22 MR. MORRIS: Okay. Your Honor, this is John Morris
23 from Pachulski Stang Ziehl & Jones for the Debtor. As the
24 Debtors' first witness, we call James Seery.

25 THE COURT: All right. Mr. Seery, I need to swear

Seery - Direct

13

1 you in by video. So could you take your phone off mute and
2 please raise your right hand. Can you say Testing 1, 2, so I
3 know you're there?

4 MR. SEERY: Testing 1, 2.

5 THE COURT: All right.

6 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: All right. Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor. Before I begin
9 my questioning of Mr. Seery, the Debtor had filed its witness
10 list and its exhibit list. We provided copies of the exhibits
11 to the Court and to the Committee, and I would like to just
12 move into evidence Debtors' Exhibits 1 through 7 at this time.

13 THE COURT: All right. So I have in front of me
14 Docket Entry No. 822 with Exhibits 1 through 7. Any
15 objection? (No response.) All right. 1 through 7 are
16 admitted.

17 (Debtors' Exhibits 1 through 7 are received into
18 evidence.)

19 MR. MORRIS: Thank you, Your Honor. And just as an
20 overview, so you have a sense of where we're going with Mr.
21 Seery's testimony, I am going to begin with some very brief
22 background questionings and then have Mr. Seery answer some
23 questions concerning the overview of the company and the
24 corporate structure of the company. You may have heard some
25 of this before, but I think in the context of a motion such as

005023

Seery - Direct

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1 the appointment of a CEO, I think it would be helpful to hear
2 it all.

3 When I finish with that, we're going to move into the area
4 of the Board and the work that the Board has done and Mr.
5 Seery's work as a member of the Board.

6 And then we'll transition into really the meat of the
7 discussion here, and that is what has he done in his capacity
8 as CEO. And to be clear, he's not the CEO, he doesn't call
9 himself the CEO, but he's functioned as the CEO, and I think
10 that's the point that we want to present to the Court. And we
11 want to present to the Court the fact that he functioned as a
12 CEO really from day one of the process. And we're not going
13 to get into, you know, every single thing he's done, because
14 we'd be here for an awfully long time, but we do intend to
15 highlight a couple of the transactions that he worked on and
16 give you a sense of his role in trying to develop a plan and
17 resolving claims.

18 And I think, with that, you'll have a better understanding
19 of Mr. Seery, his role, and why we believe it's a proper
20 exercise of the Debtors' business judgment to appoint him as
21 CEO.

22 THE COURT: All right. Sounds good.

23 MR. MORRIS: All right.

24 DIRECT EXAMINATION

25 BY MR. MORRIS:

005024

Seery - Direct

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1 Q Mr. Seery, can you hear me?

2 A I can. Can you hear me?

3 Q Yes, I can.

4 MR. MORRIS: Your Honor, just one other point. I
5 have a legal assistant on the phone here. She's participating
6 in the WebEx. Her name is La Asia Canty. La Asia is going to
7 handle the exhibits when and if we need to put them up on the
8 screen. So we've tried to practice that, and hopefully it
9 will go smoothly, but I may turn to Ms. Canty from time to
10 time with some help with the exhibits.

11 THE COURT: All right. Fine.

12 BY MR. MORRIS:

13 Q Okay. Mr. -- what is your current relationship to the
14 Debtor?

15 A I'm an Independent Director of Strand, which is the
16 general partner of the Debtor.

17 Q All right. And when did you become the Independent
18 Director of Strand?

19 A On January 9th, along with John Dubel and Russ Nelms.

20 Q The Court has previously heard about your background, but
21 from a high level, can you just hit the highlights for the
22 Court as to your experience, et cetera?

23 A To go swiftly -- and if Your Honor wants me to go further,
24 I certainly can -- I was a restructuring and finance lawyer
25 for 10 years, handling virtually every type of restructuring

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1 matter as well as financing in distressed matters during that
2 time.

3 In 1999, I went to the business side and I began to manage
4 distressed assets at Lehman Brothers as well as a leverage
5 finance business. That grew into my running the risky finance
6 business as well as the loan business at Lehman globally,
7 which included high-grade loans, high-yield loans, trading and
8 sales of those products, a big part of distressed, all of
9 restructuring, all of asset management, and all of the hedging
10 of the portfolio that we had.

11 From there, I left Lehman with a small group and sold it
12 to Barclay's. I moved on and ran a hedge fund with two former
13 partners of mine who are the founding partners called River
14 Birch Capital. It was a long-short credit fund; mostly
15 credit, though we did structured finance as well, and we also
16 handled some equities.

17 Q Okay. Let's spend a few minutes, as a preview, talking
18 about the Debtor and its business. And let's start with the
19 basics. Is there a way you can summarize the business of the
20 Debtor?

21 A I think, from a high level, the best way to think about
22 the Debtor is that it's a registered investment advisor. As a
23 registered investment advisor, which is really any advisor of
24 third-party money over \$25 million, it has to register with
25 the SEC, and it manages funds in many different ways.

1 The Debtor manages approximately \$200 million current
2 values -- it was more than that at the start of the case -- of
3 its own assets. It doesn't have to be a registered investment
4 advisor for those assets, but it does manage its own assets,
5 which include directly-owned securities; loans from mostly
6 related entities, but not all; and investments in certain
7 funds which it also manages.

8 In addition, the Debtor manages about roughly \$2 billion
9 in -- \$2 billion in total managed assets, around \$2 billion in
10 CLO assets, and then other entities, which are hedge funds or
11 PE style.

12 In addition, the Debtor provides shared services for
13 approximately \$6 billion of assets. Those are assets that are
14 owned by related entities but not owned by Debtor-owned or
15 managed entities. And those are a combination of back office
16 services, which include timely reporting, asset management,
17 legal and compliance support, trading and research support,
18 but not the actual management of the assets.

19 The Debtors run -- and I think the way to think about it
20 is on a functional basis; at least, that's the way I think
21 about it -- and there's really six areas. There's corporate
22 management; finance, accounting and tax; trading and research;
23 private equity and fund investing; compliance and legal; and
24 then structured equity, which really includes all of the CLO
25 businesses.

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1 The goals of the Debtor generally are what you'd expect
2 out of an asset manager. A little bit different than most
3 because the Debtor does own assets, which is a little
4 different than when money asset managers typically hold assets
5 away from the asset manager. But number one, discharge
6 Highland's, which I'll call Highland (inaudible), LP, duties
7 to investors in the funds. Those are fiduciary duties under
8 the Investment Advisors Act. Each day, you've got to make
9 sure that you do that first and foremost.

10 Number two, create positive MPD in each of the funds that
11 we manage, either through sales, purchases, or hedging.

12 Next, make sure that we report timely finances of our own
13 assets, including in the funds, but also, to the third-party
14 investors. Maximize the value of HCMLP's owned assets. And
15 then operate as efficiently as possible for the lowest cost.

16 That's essentially how the Debtor -- how we think about
17 the Debtor from a functional perspective. It's got about 70
18 employees laid out in those areas that I mentioned, and each
19 of those employees every day usually think about those goals
20 and try to discharge their duties by focusing on those goals.

21 Q Thank you, Mr. Seery. And can you describe for the Court
22 how those 70 or so employees are organized? Is there an
23 internal corporate structure that you're working with?

24 A Yeah. The way -- the way -- I apologize. The way we
25 think about it is, as I said, corporate management, which is

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1 really HR and overseeing the function that it's filling every
2 day, that's been really -- because Mr. Dondero was removed
3 from management. It used to all roll up to him. That's been
4 effectively rolling up to me since February.

5 Finance, accounting, and tax. Each of these businesses
6 every day require certain amounts of liquidity. Each of them
7 have requirements that they have to pay out to investors.
8 Each of them have expenses. And all of them have different
9 kinds of tax either obligations or reporting. Those are
10 managed by Frank Waterhouse as the CFO. (inaudible), sorry.

11 Trading and research. With respect to the assets, they're
12 not -- they're not static assets. Many of them do get traded
13 on a regular basis. A gentleman, Joe Sowin, heads up the
14 trading of the liquid assets. John Povish (phonetic) heads up
15 the research and the trading of the more illiquid assets, but
16 not PE. In addition, we have PE assets that require some
17 management every day, including Board seats. That's a
18 gentleman by the name of Cameron Baynard, and also he will
19 fund investments in that area. J.P. Sevilla is responsible
20 for working with Cameron on those investments and leading that
21 team.

22 Importantly, because of the nature of what the Debtor
23 does, the fiduciary obligations, as well as the
24 responsibilities to each investor and the legal overlay, we
25 have a robust compliance and legal department. That's headed

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1 by Thomas Surgent and Scott Ellington. Scott: more focused
2 on transactional issues with respect to legal. He is actually
3 general counsel. Everything that has do with compliance, the
4 interrelatedness of the funds, trading between funds or
5 positions that are shared across funds, which are many, runs
6 through Thomas Surgent and his team.

7 And finally, structured equity. Sitting on top of the
8 structured finance business that we have, understanding those
9 assets, particularly of two billion-ish assets in CLOs, that's
10 headed by Hunter Covitz.

11 Q Can you describe for the Court your interaction with each
12 of the department heads that you just identified?

13 A Well, depending on the nature of the issue each day, I
14 have at least -- I'd say generally at least weekly contact
15 with most, often daily contact with most. So, for example,
16 when there are trading issues, particularly as the market was
17 extremely volatile with respect to unliquid securities, Joe
18 Sowin and I were on the phone several times a day.

19 Relating to the COVID issues, Brian Collins, who heads the
20 HR group, and I were on the phone several times a day.

21 Relating to structured equity, depending on what's
22 happening with a particular fund or what's happening in loan
23 prices, I speak to Hunter Covitz. And it goes down the line.

24 So it really depends on each of the areas and what's going
25 on in the business, but I try to touch base with each of those

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1 department heads on a regular basis.

2 Frank Waterhouse, of course, is at least weekly. We have
3 a standing call every week to make sure that we're focused on
4 liquidity, which is always a concern in a Chapter 11, and
5 Frank and his team are on that call and prepare weekly
6 materials for us.

7 Q Okay.

8 MR. MORRIS: Your Honor, before I move to the next
9 area of questions, the work of the Board, I just wanted to see
10 if the Court had any questions on the corporate organizational
11 structure, the internal structure of the business, or any of
12 the matters that Mr. Seery touched on?

13 THE COURT: I do not. And I do have in front of me a
14 demonstrative aid that Mr. Annable sent over ahead of time, so
15 I appreciate that as well.

16 MR. MORRIS: Okay. Your Honor, I think Mr. Seery
17 covered much of what's on that document, but if you'd like him
18 to go through that, we're happy to do it.

19 THE COURT: No, that's fine.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Then let's shift gears a little bit and start talking
23 about the work of the Independent Board itself. The
24 Independent Board was appointed in mid-January; is that right?

25 A Yeah. It was the first -- January 9th, the first week of

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1 January, and we started working that afternoon.

2 Q Okay. Can you describe for the Court what the -- the
3 Board's initial focus? What were you focused on?

4 A Well, if you think about the areas that I just mentioned
5 previously, the Board initially, for lack of a better term,
6 gang-tackled everything. So we tried to make sure that we had
7 a broad base of understanding among the three of us with
8 respect to the business.

9 I, because of my background, had a lot more familiarity
10 with asset management, these type of asset security
11 businesses. But we wanted to make sure that each of us was at
12 least facile with the main areas that we had to understand.
13 First was operations. How does the company run each day?
14 Particularly, how was it going to run without Mr. Dondero?
15 And I went through some of those functional areas and how we
16 thought about those and who head each of those.

17 Next in the -- I don't mean to say it's second, because
18 it's always first, but liquidity. What did the Debtors'
19 liquidity look like? How are we going to manage that
20 liquidity, not just for the near-term, but also for the
21 medium-term, and then even into the slightly longer-term? We
22 had to think about what assets are there, what money those
23 assets might need that we would have to invest in them, and
24 whether there was liquidity in those assets that we can create
25 liquidity in order to fund the Debtors' business.

1 Personnel, we needed a good opportunity to understand who
2 did what, not just in the senior managers that I mentioned,
3 but deeper into the staff, because we're going to rely on
4 those folks. Particularly worked through with DSI.

5 As I mentioned, the Debtor, unlike a lot of other asset
6 managers, owns a lot of assets. It's a disparate group of
7 assets, but getting a feel and understanding for what those
8 assets were, what the critical issues surrounding those assets
9 are, who managed them day-to-day: We wanted to make sure that
10 each of the directors had a good (inaudible) and understanding
11 of those issues that might arise with respect to those assets,
12 and a good sense of how quickly those issues could, you know,
13 further arise.

14 We also had to get a very good understanding of each of
15 the funds that we manage. As I said, the Investment Advisors
16 Act puts a fiduciary duty on Highland Capital to discharge its
17 duty to the investors. So while we have duties to the estate,
18 we also have duties, as I mentioned in my last testimony, to
19 each of the investors in the funds.

20 Now, some of them are related parties, and those are a
21 little bit easier. Some of them are owned by Highland. But
22 there are third-party investors in these funds who have no
23 relation whatsoever to Highland, and we owe them a fiduciary
24 duty both to manage their assets prudently but also to seek to
25 maximize value. And we wanted to make sure we had a good

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1 understanding of that.

2 Finally, with respect to the shared service arrangements,
3 we needed to get an understanding of that \$6 billion in assets
4 and how our business, HCMLP, worked with those -- those shared
5 service counterparties and exactly who did what for whom.

6 It's very complicated because it had been run much more on a
7 functional basis than on a line basis from each contract. So
8 it's not as if your employees are allocated to NexBank. It's
9 the whole panoply of businesses that we enter into, and
10 providing those services to NexBank, not through a central
11 point but through whatever requests come in from the counter-
12 parties. So we needed a good understanding of what those
13 contracts looked and what those obligations were.

14 A VOICE: John, you're on mute.

15 MR. MORRIS: Thank you.

16 BY MR. MORRIS:

17 Q All of that work was going on in the first weeks of the
18 appointment of the Board?

19 A Yeah, it would not be fair to say we could do that in a
20 couple weeks. So it took far longer than that. But that
21 didn't mean that issues didn't start to arise immediately in
22 February. And so, while we were learning, we were also
23 starting to get a feel for different things that could happen
24 in the company.

25 As in many companies, immediately, one of the first things

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1 you have to deal with is, particularly at the beginning of the
2 year, what does compensation look like; who are the -- what do
3 promotions look like; are you going to be able to hold this
4 team together to service these assets? And yeah, we had that,
5 with an additional wrinkle that Highland's payment structure
6 defers a significant amount of compensation to its employees,
7 and it vests over time, and it has the very typical provision
8 that if you are not there when it vests -- when it is going to
9 be paid, actually, not when it vests. Even if you're vested,
10 if you're not there when it gets paid, you're not entitled to
11 it. And so understanding who was owed what; how the vesting
12 worked; what the compensation structure looked like compared
13 to third parties, was one of the first things we had to do.
14 And Highland has an extremely robust review process. Brian
15 Collins manages it. It's first-rate. It goes through both
16 360 in terms of what other employees think of each other as
17 well as bottoms up, in terms of performance. And then it has
18 a top-down component, which ultimately ran through Mr.
19 Dondero. Since he was effectively removed from that role, the
20 Board had to jump in and get a full understanding with Brian
21 about what the process looked like; how it was going to work;
22 how it compared to other firms; and whether we could go
23 forward with it. And that was one of the motions that was
24 brought early to the Court.

25 A Let's talk a minute about the transactional work that the

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1 Board was called to focus on initially. Are you familiar with
2 the transactional protocols that the Debtor agreed to with the
3 Committee?

4 Q I am.

5 A Can you describe for the Court the impact those protocols
6 had on the Board's work?

7 Q Well, they make it extremely difficult. And I understand
8 the purposes behind the protocols. Was not involved in
9 negotiating them. However, because of the limitations they
10 put on the Debtor, they make it very difficult to manage
11 certain of the assets. So, if an asset needs money to invest
12 in it, depending on the size, it may need Committee approval.
13 If the -- if there are expenses that need to be paid from --
14 in related entities, and the related entity does not have the
15 capital to make the expense payment, the Debtor needs to put
16 the money in. Can the Debtor put that money in without the
17 Committee's approval, and if the Committee doesn't approve,
18 would we have to go to Court?

19 So, the functioning on a day-to-day basis for how to deal
20 with those assets became very difficult. And that came up
21 really early, as the market started to get a lot more
22 volatility by mid-February. We saw with respect to the
23 internal accounts trades that we would have liked to put on,
24 for example, short position, where we just weren't able to put
25 the trades on.

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1 Now, we could go to the Committee, and we did, but
2 understanding why we wanted to put it on; explaining it;
3 presenting that opportunity to the Committee; and then having
4 them go to the full Committee with it: It's very cumbersome.
5 And the trading markets don't wait for a week to determine
6 whether that offering that you want to -- that you want to
7 access is available.

8 So, early on, we got a sense of how difficult it would be
9 to manage the business with the protocols.

10 One of the areas I think that was significant and that we
11 talked about significantly with the Committee was an entity
12 called Multi-Strat. Multi-Strat is a fund that is owned by
13 the Debtor. It's, in essence, a PUNY-style (phonetic) fund.
14 It's an older fund. And it's about 60 percent owned by the
15 Debtor and roughly 30 percent owned by Dondero-related
16 entities.

17 However, there are 90 million, roughly 89 million,
18 approximately, third-party redeemers who had redeemed in that
19 fund but have yet to be paid, so they're treated like equity
20 claims but they're a fixed dollar amount because they are set
21 at the date that they redeemed based on the NAV at that time,
22 the net asset claim.

23 So, we were -- we were stuck with looking at that fund and
24 trying to determine how do we best manage the fund to get up-
25 side for the Debtor as well as the related entities that owned

1 the equity, making sure that we treated the redeemed entities
2 as fiduciaries, so which we acted as their fiduciaries, but
3 then also assuring that we managed the assets that that fund
4 owns in a prudent way.

5 One of the large assets in that fund were 13 life
6 policies. And these are, in essence, life insurance policies
7 that the Debtor bought from third parties. And there's a
8 market that trades life policies, and they owned these
9 policies on (inaudible). The value at the time was marked
10 around \$32 million when -- when we took control.

11 The problem with the policies and some of the other
12 expenses at Multi-Strat is that they didn't -- Multi-Strat
13 didn't have the funds to continue to pay premiums. So, if the
14 premiums weren't paid, that \$32 million was at risk of going
15 to zero. Why? Because if the premiums aren't paid, the
16 policies lapse. And once they lapse, the insurance company
17 will pay you zero for them. They don't them buy them back
18 anywhere. That's the market. But we looked at those assets
19 and began to consider how we would fund, from a liquidity
20 perspective, monies going into Multi-Strat.

21 The amounts required would require CC's approval under the
22 protocols, and the Debtor prepetition had advanced monies to
23 Multi-Strat to make premium payments and other expenses at
24 Multi-Strat. We went to the Committee and were able to get
25 approval to put a couple million dollars in early on to keep

1 the policies alive while we analyzed the best opportunity for
2 maximizing value with respect to those policies.

3 But thereafter, we needed additional money to try to
4 consider how to continue to maximize value, and the Committee
5 balked. So we went to Dondero-related entities, and they
6 actually put equity into the Multi-Strats. So we -- the
7 Debtor had made a postpetition, in essence -- it wasn't a
8 postpetition advance because it was going outside of the
9 Debtor, but postpetition, the Debtor made a loan to Multi-
10 Strat to service the policies, and then Dondero-related
11 entities made an equity investment into Multi-Strat to
12 continue to service the policies.

13 Well, we understood as a Board but that wasn't going to
14 work and that the protocols were going to continue to hinder
15 us, so we entered into a sale process with respect to those
16 policies.

17 Q And the work that you're describing with respect to Multi-
18 Strat, is that -- just to transition to your work as
19 functionary CEO, would it fall into that bucket as opposed to
20 the Board work that we were talking about earlier?

21 A Yeah, absolutely. I think the -- the initial assessment,
22 as I said, we made as a group. And we looked at what the
23 opportunity set was, and determined that, because of the
24 costs, we weren't going to be able to continue to fund money
25 into Multi-Strat to make those payments.

1 So the Board asked me to take on trying to work out a
2 process to sell those policies. So, working with Fred Caruso
3 of DSI, we hired a broker, after interviewing a couple
4 different brokers. We considered the views of the internal
5 Highland team with respect to value and how to maximize that
6 value. We entered into a sale process for those policies, and
7 we ended up with a number of bidders and broke it down to two
8 bidders for the 13 policies, breaking up the policies to
9 maximize the value. They're only on eight lives, so it's not
10 fair to call it a portfolio. And so there's significant
11 amounts of premiums that have to be paid on a monthly basis
12 and going forward, and realizations on those policies are very
13 uncertain because it's hard to take them over an actuarial
14 methodology because there's only eight lives.

15 We tried to consider other ways to finance those policies,
16 but seven turned out to be, in our view, far and away the best
17 net present value for the investors in the fund.

18 The challenge that we had, as I mentioned, is the
19 complexity of Multi-Strat was also layered with a loan from
20 NexBank that was secured by four of the policies. That \$32
21 million loan was also secured by the MGM stock owned by Multi-
22 Strat.

23 And then, as we got towards closing, we learned that one
24 of the buyers wanted a more detailed title rep, and as we
25 peeled through, we found a long-dormant UBS fraudulent

1 conveyance suit that had been brought against Multi-Strat.
2 There was no lien on the policies, but it made it impossible
3 for us to give the clean rep that the buyer wanted.

4 And at this point, I was running that with Fred Caruso, at
5 the request of the Board, and it became almost a full-time job
6 except for the five other things that we have to do during
7 April. And we negotiated a variety of different -- well,
8 considered a variety of different opportunities to try to
9 complete the sale.

10 First, I negotiated directly with UBS to see if they would
11 agree to a release, and then when the funds, other than
12 certain escrows which had to be paid out to NexBank as well as
13 repayment of the Debtors' fund, (inaudible), that didn't -- it
14 was very unfruitful in terms of those negotiations.

15 I then moved towards a potential bankruptcy of Multi-
16 Strat, where we would file Multi-Strat, have to do a 363 sale,
17 have a DIP loan to service the NexBank monthly payments. That
18 seemed very expensive.

19 We also thought about doing it as not selling them, so
20 perhaps we would a 360 -- a filing without a sale and try to
21 maximize the value by holding onto the policies but have to
22 get financing.

23 Ultimately, we came up with a structure which was we
24 escrowed funds for UBS, \$10 million of funds, but they're not
25 actually for UBS. We preserved all of our rights to defend

1 the claims and we had paid down NexBank. We allocated funds
2 to make sure that we can pay NexBank for the next year before
3 their loan comes due. We allocated for all the expenses in
4 Multi-Strat. And then when we went back to the sellers, lo
5 and behold, one of the two sellers balked. Didn't -- or
6 buyers, I'm sorry. Balked. Didn't want to complete the sale.
7 And fortunately, our broker (inaudible) and Fred Caruso had
8 had another buyer in the wings, kept them warm, and were able
9 to complete the sale for \$37 million.

10 So that goes to: How does this business function, what's
11 the complexity of it, and what have I and the rest of the
12 Board been doing? That was virtually a month's worth of work.

13 Q And when did the Board ask you, if you recall, to
14 undertake this project? When did it begin and when did it
15 end?

16 A Well, the initial project, around -- around Multi-Strat,
17 we started analyzing it as a group in January, the first week
18 we were there. I started probably taking control of it
19 sometime in mid-February, with Fred Caruso. So, DSI was
20 already on it. We were looking to work with the Debtors' team
21 as well as hire a broker. We, as a group, as a Board, made
22 the decision to sell the policies. Ultimately, we sold them
23 for about \$37 million, which was -- which was more, a few
24 million dollars more than the mark on the policies when we
25 took them.

1 Q Can you give the Judge a sense of your role, as distinct
2 from the Board's role, how you went about completing or
3 attempting to complete all of the tasks that you've described
4 and the interaction with the Board and what the Board's role
5 was in assessing all of that?

6 A With respect to the Multi-Strat policies?

7 Q Uh-huh.

8 A I think, you know, initially, it was a understand, for the
9 three of us, understand the policies; understand the premium
10 obligations; understand what the benefits, the potential up-
11 sides to those policies were; and understand what the risks
12 were if we were to fail to make a premium payment; what did
13 the lapse period look like. And we did that collectively.
14 From there, all of the individual work around -- we came up
15 with a strategy to sell the policies, and then the tactical
16 work with Fred Caruso about how to execute sale of the
17 policies and completing that sale through the issues NexBank,
18 through the issues with UBS, resolving those issues, that
19 became really my job.

20 Q Now, I do want to take a step back, because we kind of
21 transitioned from the Board to the work that you were doing,
22 and I wanted to ask: You're seeking -- the Debtor is seeking
23 to have you appointed as the CEO, right?

24 A Yes.

25 Q Can you just describe for Judge Jernigan your

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1 understanding of the duties and responsibilities of the CEO
2 position that we're seeking your appointment for?

3 A Sure. From a high level, it's -- I apologize. From a
4 high level, it's what I said earlier, which is the Board sets
5 the strategy, the CEO implements the strategy. And so I work
6 with the Highland team and the managers that I described
7 earlier, whose function that is, to try to execute on that
8 strategy. So that's, that's the basic overlay of what we do.
9 But that includes everything from, as I mentioned, personnel
10 issues to COVID-19 protocol to determining whether we're going
11 to sell certain assets and then how we're going to sell them,
12 determining how we'll resolve issues like Multi-Strat.

13 Another good example was the trading accounts that the
14 Debtor had. So, on the second or third week of January, or
15 perhaps the third or fourth week, we determined as we were
16 going through the asset review that the Debtor had two primary
17 liquid or semi-liquid securities accounts, and those were in
18 the Select account, which was a separate fund that had
19 previously third-party investors but was effectively a hundred
20 percent, 99 and change percent, owned by Highland at this
21 point. And an internal account, which was basically just
22 HCMLP-owned and denominated securities. These were generally
23 at Jefferies. Both of them employed significant margin.

24 THE WITNESS: If this is too pedantic, Your Honor,
25 please tell me if I'm going too deep.

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1 But margin is, in essence, a way for a security purchaser
2 to borrow money to facilitate the purchase and holding of the
3 securities. In essence, the lender, which in this case was
4 Jefferies, a large, well-known, reputable financier and New
5 York investment bank, was the Debtors' account holder. The
6 Debtor would select securities. Jefferies would establish a
7 haircut. The haircut is really the -- how the lender
8 determines how much they want to lend against the assets. So
9 if there's a -- if there's a haircut of a hundred percent in
10 use there, there would be no margin against that asset. A
11 haircut of 50 percent means the debtor will give you -- or,
12 the lender will give you 50 percent of the funds you need to
13 own and hold that asset and you put up 50 percent of the
14 funds.

15 And in a margin loan, the way that the lender protects
16 itself is, each day, it assesses the value of the asset; it
17 looks at the volatility of the asset; and then it asks for
18 more margin if the asset value went down in the trading
19 markets; and then you have a day or two or three, depending on
20 the structure, to post the new margin.

21 If you don't post the new margin, and this the way every
22 margin loan works, the lender has the ability to seize the
23 asset, sell it, and pay off its loan. It will then give you
24 the proceeds above the loan, if any.

25 The debtor -- the lender does that by looking at both the

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1 daily prices, to make sure that it can manage its exposure,
2 but also it considers the volatility. And what it does when
3 it's looking at the volatility, and volatility is really a
4 measure, the way -- the way that securities analysts look at
5 it, is a forward year of the movement, potential movement of a
6 security. And that's how you set your haircut. Because if
7 the -- if the asset is very, very stable -- for example, your
8 home -- if your home was a margin loan and your mortgage, say,
9 is a margin loan, there wouldn't be much calling of margin
10 every day, because if the lender loaned 80 percent of the
11 value of your home, there may be house sales that go higher or
12 lower, but they don't necessary move that much really quickly,
13 particularly if these loans set what's called a threshold
14 amount that allow a little bit of movement each way.

15 The margin loans, though, are on securities that can move
16 tremendously. And what happened in February and then in early
17 March, volatility spiked up, prices moved significantly,
18 prices moved against the Highland positions. So Jefferies did
19 two things. One is it called margin, because it was -- its
20 equity cushion, in essence, was getting trimmed, and it wanted
21 more protection. Number two, it increased the haircuts, which
22 it was entitled to do because it looked forward and said, The
23 volatility in this market is worse than we thought. It will
24 be a higher volatility and there's more risk to us that the
25 asset could be worth less than the loan.

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1 I started working with Joe Sowin, who's a head trader, a
2 very accomplished trader at Highland. He actually reports
3 into the -- not on the Debtors' payroll but another payroll
4 that we don't manage. But he spends a ton of time working on
5 Highland assets and trading those assets. And Joe and I
6 started working together to try to manage the Jefferies
7 exposure.

8 At one point, Jefferies actually seized the Select
9 account. Again, Select wasn't in bankruptcy, but Jefferies
10 had safe harbor provisions or protections anyway and they
11 could have done it. We felt they were about to seize the
12 internal account, and so we sent them a note that said that
13 perhaps their safe harbors weren't as good as they thought.
14 But, more importantly, here's our sale program. Jim Seery's
15 going to take over the account, working with Joe, and we're
16 going to manage it down.

17 In the Select account, Jefferies took it over -- and this
18 is not really a blame to Jefferies; it's part of the market --
19 they sold out of that account pretty quickly. They did work
20 with us, but they were the selling position and covering their
21 loan, and we lost virtually all of the value in that account.

22 In the internal account, we effectively kept Jefferies
23 from seizing it, gave them a sale program, and then day-to-day
24 managed the sale of the more significant assets, as well as
25 the hedges, which mean we traded pretty aggressively

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1 throughout the day. This was a full-day job, trading that
2 account, with Joe as the trader and then me acting as the PM,
3 effectively.

4 We took that account, which if Jefferies had taken it over
5 and done -- it had virtually the same securities, it had just
6 a small number of securities, as well as some hedges which had
7 significant basis risk related to the securities -- we took
8 that account over. If we'd gotten the same program as
9 Jefferies, we would have lost \$11 million. We made about \$23
10 million. So that swing, that swing was pretty significant.
11 I'm sorry, we made about \$11-1/2 million, about a \$23 million
12 swing than if Jefferies had taken it over.

13 So that was another example of what I've been doing that
14 the Board designated me to do to help run this business.
15 Working with Joe, as well as research, as well as discussing
16 these positions on a regular basis with Jefferies, weekly
17 calls and daily e-mails, we were able to preserve that value
18 in that account.

19 Q And so, just for context, this is happening in late
20 February or early March, as COVID is hitting and the markets
21 are volatile; is that fair?

22 A That's when we started taking it over. The real -- the
23 real -- the lay in the markets was about March 22nd or 23rd.

24 Q Uh-huh.

25 A And that's when it became a daily grind on those positions

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1 for a solid month to make sure that we got it in a decent
2 place.

3 And remind you that we were trading those accounts within
4 the strictures of the protocols. So we didn't have the
5 ability to -- the securities were -- rather less liquid. We
6 didn't have the ability to just dump them, because we would
7 have destroyed the market and taken significant losses.

8 In addition, because of the protocols, we didn't have the
9 ability to go out and buy hedges, even though we had a
10 negative bias as to where the market was, particularly in
11 those less-traded securities.

12 And it's -- it was public that Highland (inaudible) and
13 Highland (inaudible) was in bankruptcy, so you can be certain
14 that the traders were leaning on those -- those securities
15 from short decisions. So it was a very difficult, time-
16 consuming effort, and a great job by Joe.

17 Q When you talk about a time-consuming effort, how would
18 you -- how would you characterize the amount of time you spent
19 on this project in the month of March? Was it a full-time
20 job?

21 A Yeah. Yeah. I mean, full-time is relative, right, but it
22 was -- it was a lot of time. So we would start out, you know,
23 like everybody else who is in those markets and do it the same
24 way, it's pretty tried and true: By 6:30 in the morning,
25 you're starting to look at what the EOP, what Asia did, where

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1 European markets were opened up, what the futures were looking
2 like, looking at your own securities, checking all of the
3 mail, talking to your research folks. To the extent that you
4 know that there's other investors in those investments, we
5 reached out to those -- I have a number of contacts in the
6 market who are in these kinds of assets -- to see what they're
7 thinking and how they're looking at value. And then set up a
8 trading strategy with Joe, and then execute on it every day.
9 And that trading strategy, again, was not static. So during
10 the day, a dynamic trading strategy has to be adjusted
11 depending on what the market is doing, and Joe was excellent
12 at it.

13 Q I think you mentioned the protocols earlier. Can you just
14 talk a little bit more about how you and the Debtor
15 communicated with the Committee through this process of
16 addressing the Jefferies mortgage -- mortgage defaults?

17 A Well, every day, we sent a report to -- to the Debtor -- I
18 mean, to the Committee, I apologize -- with our positions in
19 each of the accounts and tell them exactly what we're doing,
20 what the plan is, what we're set up to do, where we think it's
21 going, and what assistance we might need through the
22 protocols.

23 I think it became really difficult for the Debtors'
24 professionals -- the Committee's professionals to deal with
25 these issues, because it's just not what they were used to

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1 doing every day. So we would report to them. The Committee
2 met weekly. We can -- provided direct information to
3 Committee members when they -- you know, there's members on
4 the Committee who are very versed in these types of assets.
5 We would talk to them directly, I would talk to them directly,
6 and tell them exactly what we're doing and why and get their
7 input, because there was no magic special sauce as to exactly
8 what to do.

9 Q And would you characterize the process as transparent and
10 open between you and the Committee and its members?

11 A Oh, oh, absolutely. You know, we were -- they were
12 constructive. I wouldn't say that the Committee wasn't
13 constructive. I think the difficulty the Committee had, which
14 is what, you know, any third party would have, is that: Why
15 are we going to put more money into these accounts when the
16 value is going down, and what's -- what's your -- what are
17 your price targets? How do you think about those assets;
18 who's the analyst who's working on it; how do they compare to
19 other assets? So it wasn't an easy process for the Committee
20 to get their arms around, either.

21 Q Okay.

22 MR. MORRIS: Your Honor, we have other transactions
23 that we could talk about if you think that would be useful, or
24 we could continue to push this forward.

25 THE COURT: You can continue to push it forward.

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1 Thank you.

2 MR. MORRIS: Okay.

3 BY MR. MORRIS:

4 Q Then let's transition for a moment just about your
5 recollection as to kind of when and how, you know, the
6 discussions with the Board and the Committee evolved with
7 respect to your taking over as CEO. Did there come a point in
8 time that you can recall when the Board asked you to consider
9 that?

10 A Yeah. The Board asked me to consider it I would say
11 probably late January or early February. And the initial
12 discussions, even before, you know, before we were selected.
13 So, as John Dubel and I had been selected by the Debtor and
14 the Committee, we talked about the need for one central point
15 of management for this company. That it's 70 employees and
16 diverse assets, diverse business practices. How are we going
17 to mold that as a Committee? It really needed somebody to
18 execute the strategic plan that the Board put in place.

19 And so John had asked me about that even before we were
20 selected. Committee counsel asked me about it. So there was
21 -- there was some, at least away from me, there was some view
22 that perhaps I was going to be the person that was most
23 likely, if it was needed.

24 My view in early February was that, you know, we were
25 effectively, as the phrase goes, drinking from a fire hose,

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1 and I wanted to get a better sense of who the folks were at
2 Highland; what their responsibilities are; how they performed;
3 what I thought of them as performers; how -- I had -- or,
4 having some idea what the claims are and how that process
5 would work; and could we make this a success?

6 So, early on, in January and in February, as we started
7 having these discussions, I was in the Highland offices at
8 least three, usually four days a week. And I was there from
9 7:30 in the morning until 6:00 or 7:00 at night every day.
10 And that gave me just a different feel for exactly how the
11 organization was running and the issues that were coming up
12 every day.

13 That evolved into March where, after I took over the
14 securities accounts in early March and then took over the
15 Multi-Strat issues, that John and Russ Nelms pushed me to
16 really consider stepping up fully to the CEO role. So, by
17 early April, I think it's the first week of April, we actually
18 -- we put it forth and go to the Committee. So we started
19 negotiating what potential terms were, how it would work.

20 You know, one of the concerns that I had, you know, we had
21 no idea, and I suppose we still don't, how the COVID-19 issues
22 will play out and how that would both -- because at the time
23 they were really affecting New York, where I'm based and I
24 live, and less so in Dallas. But by mid-March, it was pretty
25 clear that the whole country was being affected. And now,

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1 obviously, it's hitting all over.

2 And hopefully that will settle, but what we did learn, and
3 I think a lot of businesses learned, is that particularly
4 these types of service businesses that function electronically
5 in lot of respects, even when they are in an office, because
6 you're in front of your screen, that we are very lucky to have
7 these types of roles where we can really perform the job, if
8 not equally well, pretty darn close to how you perform it when
9 you're at the office. And so that issue subsided a little bit
10 in terms of how I would interrelate -- not the issue going
11 away, obviously -- but how I could interrelate and work with
12 the team to drive the business, even if I was doing it from
13 New York.

14 Q And have you continued to play a leadership role from the
15 time you spoke with your fellow Board members in early March
16 until the present?

17 A I have. And I think one of the things that the Committee,
18 you know, recognized was that John and Russ, experienced
19 professionals, were willing to step back and let me take the
20 day-to-day working with the Committee or presenting to the
21 Committee. So we do have weekly Board meetings and we do have
22 almost daily Board calls, and then, without an official
23 meeting, we meet on the phone virtually every Saturday or
24 Sunday, sometimes both, with the three of us, to go through
25 what's happened every -- each week, how the plan has evolved

1 and where we're pushing it.

2 But in terms of the presentations to the Committee, I took
3 the lead on those in both designing and working with the Board
4 then and then implementing them and laying them out for the
5 Committee, as well as the individual negotiations.

6 So, early on, we determined that we had to try to figure
7 out a way to push this case forward, notwithstanding that we
8 weren't getting -- we didn't see a lot of movement from any of
9 the parties, frankly, on trying to figure out a way to
10 coalesce around a direction. So we designed a program that we
11 laid out for the Committee in which we considered three main
12 areas to consider for a plan. And I took the lead on doing
13 that.

14 Q So, let's talk a little bit about the claims resolution
15 process and the formulation of a plan. Have you played any
16 role in the claims resolution process?

17 A Well, we haven't actually resolved any claims completely
18 yet, but we're very close on one, and I've taken the lead on
19 doing that.

20 On the other two, I've been involved heavily with the --
21 both counsel and with DSI in analyzing the claims. As well as
22 with the rest of the Board, frankly. The -- you know, we've
23 got a significant amount of expertise between John Dubel and
24 Russ Nelms with respect to how to think about these issues in
25 the context both of a bankruptcy, obviously, with Russ, and in

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1 the context of both a restructuring and in the business with
2 respect to John.

3 So we've gang-tackled those, again, effectively, all
4 analyzing the various issues with respect to these claims.
5 But in terms of having the direct negotiations, particularly
6 on two of them, I've taken -- I've taken more of the lead
7 about where we could go. And if you -- particularly with my
8 background in restructuring, and having wrestled with
9 substantive consolidation, alter ego, piercing the veil since
10 1988 or '89, you know, some of the issues that have arisen in
11 this case are very, very familiar to me. I've spent a
12 significant part of my career dealing with those. So I've
13 taken the lead on those types of issues.

14 I think that where I was going was in terms of structuring
15 potential outcomes for plans. And we are -- you know, we've
16 been slowed down, as I think Jeff Pomerantz mentioned last
17 week, to a fair degree by COVID, in that the business impacts,
18 we can go into, and Jeff touched on some of those, but the
19 social impacts with respect to negotiating are hard to -- are
20 hard to understate. The -- you can run a business like this
21 through your screen. It's very difficult to simply negotiate
22 by phone or by video. The face-to-face, at least in my
23 experience, makes a big difference in moving parties, and we
24 haven't had as much of that.

25 What we've tried to do recently, starting in May, is we've

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1 put together a program for the Committee, and we'll walk them
2 through what I think are the -- what we determine as a Board
3 and then we laid out the specifics -- I didn't; DSI -- of what
4 the options are in this case.

5 And I think number one was the status quo. Do we maintain
6 this case status quo, continue to run the business, and then
7 try to negotiate, resolve, mediate, or litigate, first through
8 dispositive motions, then through something more significant
9 if we can't do it through dispositive motions, these claims?

10 The Debtor right now on an operating basis does burn cash.
11 I can go into the specifics, but the Committee knows them, and
12 I'd prefer to do those *in camera* if we -- if the Judge would
13 like that. We do burn cash on an operating basis, but not
14 that much. The Debtor has about \$30 million (inaudible) and
15 the business does run, and generally each year the operating
16 burn, if you will, which is, in compensation, is filled by
17 selling some assets that have appreciated in value. And the
18 Debtor runs real -- with those accretions, run roughly
19 breakeven.

20 The problem in this case is that we are burning a
21 significant amount of bankruptcy professional fees. And it's
22 the lament of creditors and business operators and the
23 bankruptcy bar. I think, certainly, the judges that I see for
24 a long time. And the percentage -- the cost of the cases
25 keeps going up and the percentage of the assets keeps going,

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1 but particularly if the asset values are going down.

2 So the status quo didn't make a lot of sense unless we
3 were going to get very swift movement from the parties, and I
4 mean all sides, to try to resolve the case.

5 The other type of outcome we thought about in terms of a
6 plan was a downsiding model. Downsizing model, excuse me. In
7 that model, we would try to significantly cut headcount, try
8 to significantly cut expenses. Run the business as leanly as
9 possible. And then try to go through those steps with respect
10 to resolving the claims.

11 Again, the problem, the problem with that is resolution of
12 those claims was uncertain and could take a long time, unless
13 we had significant movement from either side. But, moreover,
14 in terms of operating the business, we determined that with
15 respect to both the managed accounts and shared service
16 agreements, we really couldn't effectively do the job that the
17 Debtor does with a smaller staff. Truth is, even at 70
18 people, the HCMLP staff is pretty lean. It's a really good
19 team and they are very efficient and they've really proved it
20 through working offsite, you know, through the pandemic.

21 But we really thought that if we -- and analyzed it. If
22 we were to try to cut that team and provide the services, we
23 would fall down. So we would breach the duties or potentially
24 incur liabilities under those various contracts.

25 The third area that we took a look at, which was what we

1 called the subservicing model. In this model, we would try to
2 separate the business of the Debtor, which has a small
3 operating loss, but it's still material money, from the asset
4 management. That way, you could hold onto the assets for the
5 benefit of the creditors or the Debtor, depending on where the
6 claims comes out, still provide the services to those third
7 parties under the subservicing agreements or the management
8 agreements. You wouldn't make money on that, but you'd get
9 rid of the operating burn.

10 And that model had a number of issues, but we've sort of
11 evolved that model to what I think has been referred to in
12 court as the debtor-creditor monetization vehicle. So a
13 little bit of a cumbersome name, but the idea would be to try
14 to separate the assets, which potentially are the ways to pay
15 the creditors, depending on where claims come out, and then --
16 and the operations, and make sure you can continue the
17 operations without a heavy burn.

18 That model also permits us to cut, we believe, bankruptcy
19 operating expenses significantly. So, right now, because of
20 the nature of the case, we have two professionals doing every
21 job: Committee professionals and Debtor professionals. We
22 would be able to reduce that cost by putting those into one
23 entity that'll be a trust-like structure to service the
24 business, resolve the claims, monetize the assets.

25 And, finally, something I started working on -- I'd say on

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1 my own, but that wouldn't be true -- with the DSI team,
2 particularly the two -- we have two excellent analysts on the
3 case. A very detailed model of what I think has been referred
4 to maybe even in court as a potential grand bargain plan. And
5 that plan looks at monetizing the assets over what period we
6 believe that we could get that done. (inaudible) we're
7 looking at the values that we could achieve as well as setting
8 out what we think are reasonable numbers for the claim
9 distributions and then how they would be made.

10 Now, on the asset side of the ledger, we have a pretty
11 good understanding. We obviously know where the assets are
12 bought, and we have a pretty good sense of what the current
13 market looks like for those assets. We're not a forced
14 seller, but we have -- we have been involved in processes
15 around a number of the assets and have a good sense of where
16 values are and how long it would take to achieve those values.

17 You don't have to sell an asset as well to get money from
18 it. There might be ways to finance those assets. Although,
19 to be sure, in this environment, financing particularly these
20 types of assets has become very, very difficult.

21 The other side of the equation of the claims, and we're
22 using our best estimate of where we think those claims come
23 out in terms of payment, the creditors often have a different
24 view as to what they would like those claims to come out with.
25 So we're trying to figure out, through negotiation and

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1 discussion, how we get those two sides closer together. And
2 that, that would be the grand bargain plan.

3 And I think where we're really focused now is that status
4 quo doesn't make sense. We've gone that way too long.
5 Downsizing doesn't work because of the complexity of these
6 operations and the contractual obligations that the Debtor
7 has. And it's really a grand bargain plan or a Debtor
8 monetization, a debtor-creditor monetization vehicle, which
9 would be structured like a trust and still be able to service
10 the business while resolving the claims.

11 Q Taking into account the uncertainty because there are
12 still some options being considered, in your leadership role,
13 have you -- do you have a sense of timing? Is there a
14 timeline by which certain milestones are at least
15 aspirational, if not achievable?

16 A Well, I don't think I'm telling anyone what they don't
17 know, that deadlines get people to act and make decisions.
18 Sometimes they're good decisions, sometimes they're not, but
19 we're going to push forward on both of these plan
20 opportunities now. So we intend to file a debtor-creditor
21 monetization vehicle plan, and we'll keep pushing the parties
22 towards settlements.

23 You know, as we say on the Multi-Strat negotiations, until
24 it was clear that we were either going to default, because we
25 didn't have the money to pay those premiums, or we're going to

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1 file Multi-Strat as a bankruptcy, it was hard to get folks to
2 really come to the table and think about how to settle that
3 issue.

4 These issues in regard to the total case are much more
5 complicated. We're going to file a plan. We believe that
6 will set a bit of a crucible to folks to think about how to
7 move forward with their claims. We are, as Jeff Pomerantz
8 mentioned last time, agreed in principle, but we have some
9 issues to work through with Redeemer that we hope to be able
10 to resolve by this week. And so that's my internal goal, but
11 I expect to be able to do it.

12 The reason that's complex is not that it's simply a -- the
13 arbitration award is not simply a money award; it actually
14 requires certain offsets, it requires certain assets be sold
15 and paid for. And we're trying to carve our way around some
16 of those, because they (inaudible) agreement, because they're
17 -- they're more difficult than simply exchanging cash for
18 assets, because we don't have the ability to do that right
19 now. We don't have the cash, and we're in bankruptcy.

20 So I do believe that we can get these done. And then if
21 mediation is something that would work, great. We're going to
22 try to do it without mediation as well. Going to try to do it
23 before we get to mediation and resolve claims. And if we're
24 unable to do that, hopefully mediation will push it forward or
25 we have to have a fallback, which will be dispositive motions

1 with respect to certain of the claims.

2 But we expect to have and I think we have a number of
3 claims objections that have (inaudible). We've resolved
4 those. We're really down to three claims. And one of them is
5 almost done.

6 Q All right. At the last hearing, --

7 MR. MORRIS: Your Honor, that really does finish the
8 substance of the testimony with respect to this motion, but at
9 the last hearing Your Honor raised some questions about PPP
10 loans.

11 THE COURT: Yes.

12 MR. MORRIS: Would you like me to just take a moment
13 with Mr. Seery to address that?

14 THE COURT: Yes, please.

15 MR. MORRIS: Okay.

16 BY MR. MORRIS:

17 Q Mr. Seery, you're aware that the Judge raised some
18 questions about whether and to what extent the Debtor may have
19 been involved in any of the PPP loans?

20 A Yes.

21 Q And have you done any work to try to figure out the
22 answers to the questions the Judge posed?

23 A Well, work in response to the question, but also work
24 previously. So, just a -- quickly, as I think we all know,
25 the PPP program was put forth to try to give companies cash

1 that they had to use for employee payments, to continue to
2 keep payroll supported and to continue to have folks hold
3 their jobs.

4 We have -- and I think the *Business Insider* article, which
5 I'm not familiar, I know the publication is not something I
6 seen much, but I'm not familiar with the specifics of that
7 article, and -- but any PPP, away from the assets that HCMLP
8 actually owns or controls. And we've got -- we've got three
9 -- and I think there's some substance to the article. But
10 we've got three businesses. And these are -- this is public,
11 but I'll go into the -- sort of the obvious reasons without
12 going into the specifics of the business around the ones that
13 I know of well.

14 Carey Limousine is a business that transports folks in
15 high-quality cars from airports or from events or between
16 businesses. It was hit severely by the COVID-19 pandemic.,
17 particularly with respect to the air transportation, which was
18 really one of its biggest areas. The business,
19 notwithstanding Uber and the other type of shared ride
20 services, had actually done quite well, and Highland was an
21 owner of a significant portion of that business related to
22 some loans that it held in various funds.

23 That business's management, with its own outside counsel,
24 sought a PPP loan. Then our director came to us and discussed
25 with the Board the propriety of that loan. We engaged outside

1 counsel, not bankruptcy counsel but counsel that had
2 particularized expertise in PPP, and spent a ton of time
3 really understanding both the law as well as the specific
4 regs. Carey did get a PPP loan. It is potentially
5 forgivable, depending on how it's used.

6 The second entity that was similar but didn't come to the
7 Board, we have a business called SSP, which is an excellent
8 highway business that provides equip -- materials for a lot of
9 different road construction, but primarily highway road
10 construction. Very well run business. That entity got a PPP
11 loan as well, primarily worried about whether the construction
12 on the highways would shut down.

13 So it's been -- I don't believe that's really happened in
14 Texas, which is where most of their business is, but they
15 qualified for that loan. They did not come to the Board. A
16 very specific carve-out, because one of the interest holders
17 that we share that position with is a Small Business
18 Administration fund and, so it was very clear that it was
19 entitled to that loan.

20 Then there's a third entity called Roma that got a very
21 small PPP loan. We don't control the entity and we were not
22 involved in its acquisition of that loan. Again, it would
23 have to be used as required.

24 One of the things I want to make sure that is in the
25 record and for Your Honor with respect to Carey, we spent a

1 lot of time as a Board focused on, one, whether it was legal
2 to get that loan, first. We're doing everything right, by the
3 book. We're not going to play in the gray. There is no gray.
4 There's black and white in these areas.

5 Number two, was it ethical, was it appropriate that we
6 went and got this loan or that Carey went and got this loan?
7 Management, with the outside counsel, was sure that we could
8 do it, but we didn't want to take their word for it, so we
9 went out and got our own counsel, third-party counsel for the
10 Board to make sure that this was appropriate.

11 Three, the requirements around these loans are significant
12 and the penalties for violating them are severe. So if you
13 get a loan by mistake, are you really required to pay it back?
14 And if you're mistaken, that will be expensive, but it won't
15 be a real penalty. But if you get a loan that's really
16 inappropriate, that you shouldn't have gotten, that was a
17 material misstatement of any of the facts around it, the
18 penalties are significant. And not only in terms of the
19 opprobrium that you'd suffer in the press, because that's
20 coming, but in terms of how you use the funds.

21 So they can only be used in very specific ways, and we
22 were exceptionally careful around this program.

23 The basis of the program is to keep people employed. And
24 with a business like Carey Limousine in particular, where
25 there's a significant amount of debt, where the business is

1 shut down by COVID, where we didn't have the funds to put into
2 Carey, nor even if we wanted to, we might not have been able
3 to do it without the Committee's approval because of the
4 protocol, a PPP loan was not only legal but it was
5 appropriate. And it's being used in that fashion, meaning to
6 keep employees employed.

7 Q Thank you very much, Mr. Seery.

8 MR. MORRIS: Your Honor, I have no further questions
9 of Mr. Seery. Does the Court have any questions?

10 THE COURT: I actually have a follow-up question
11 regarding the PPP, just to kind of put a bow on this.

12 EXAMINATION BY THE COURT

13 THE COURT: I'm looking at the demonstrative aide. I
14 don't know if you, Mr. Seery, have it there handy.

15 THE WITNESS: I do, Your Honor.

16 THE COURT: Okay. So I'm turning to Page 6, the
17 chart, the subchart, Investments and Subsidiaries. The third
18 column, Privately-Held Equity, Various Companies. I mean,
19 that would be the type of investment entity we're talking
20 about here that got the PPP loan: Carey Limousine, SSP, Roma?
21 Nothing that was -- well, I'm going to say Highland affiliate.
22 Affiliate, that's a dicey term, but that's the type of entity
23 in the organizational structure we're talking about, correct?

24 THE WITNESS: Those are the ones -- I want to be very
25 careful, because I know what I know and I know I won't

1 represent anything that I don't know.

2 So, with respect to the entities that HCMLP, the Debtor,
3 controls, that's absolutely the case. I don't know, and I can
4 try to find out, but they are not HCMLP-controlled entities.
5 Whether other entities in the related-party complex received
6 loans -- so, obviously, HCMLP did not receive a loan. And the
7 only entities that we were involved with is the ones I
8 mentioned to you.

9 And I should mention, there are other entities in the
10 privately-held equity that got other government money, in the
11 medical space, that they didn't even ask for. HHS pushed
12 forward payments to folks in the business, medical healthcare-
13 providing businesses, to assure that they had liquidity to
14 provide. And so -- and this has been described to me exactly
15 this way, that they woke up in the morning and found money in
16 their account. And with one of the companies, they actually
17 returned a bunch of the money because it was from a dormant
18 provider number and they didn't believe it was appropriate to
19 keep that money. So that was one of the entities that we
20 control with other investors.

21 But with respect to our HCMLP entities, these are the only
22 ones I know. With respect to other related entities that
23 might be in the family of businesses, for lack of a better
24 term, that were alluded to in the *Business Insider* article, I
25 don't know that answer. So, I -- if I -- I can try to find

1 out. I just don't know the answer, Your Honor.

2 THE COURT: All right. Thank you. Well, this has
3 been extremely helpful.

4 I should ask does anyone have any questions of Mr. Seery?
5 The Committee counsel, perhaps? Anyone else?

6 MR. CLUBOK: Your Honor, this is Andrew Clubok. In
7 light of the testimony, I do have some questions on behalf of
8 UBS.

9 THE COURT: All right. Briefly. Go ahead.

10 MR. CLUBOK: Okay.

11 MR. MORRIS: Your Honor? Your Honor, I'm sorry to
12 interrupt, but there's no objection lodged here. If Your
13 Honor wants to permit it, that's obviously the Court's
14 prerogative. But as just a point of order, having not lodged
15 an objection, I don't know what right anybody has to cross-
16 examine the witness.

17 THE COURT: All right. Well, that's why I said
18 briefly. I think that Mr. Morris makes a good point, Mr.
19 Clubok. You could have filed a written objection, response,
20 comment, or something. So, you're a party in interest. I'll
21 give you a little bit of leeway here. But please keep it
22 brief.

23 MR. CLUBOK: Yeah. Thank you, Your Honor. It's just
24 some of the things that Mr. Seery said which we didn't expect
25 to hear that has raised a few questions that I just very

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1 briefly will try to address.

2 CROSS-EXAMINATION

3 BY MR. CLUBOK:

4 Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham &
5 Watkins, on behalf of UBS.

6 Mr. Seery, you talked about the fiduciary duties you've
7 understood yourself to have with respect to certain parties,
8 and my question to you is: Have you understood, since the
9 beginning of your service as an Independent Director of
10 Strand, that you had fiduciary duties to the unsecured
11 creditors of the Debtor?

12 A It's a -- it's a -- the answer is I understand the
13 fiduciary duties very well. I think we have fiduciary duties
14 to the estate. So Highland -- what I tried to explain is that
15 Highland, as an asset manager, has very specific fiduciary
16 duties that are set forth in (inaudible) in the cases and the
17 rules that have interpreted it. We, as directors of Strand,
18 have a duty to the estate.

19 I don't think it's -- I don't think it's fair, and I'd
20 have to subject myself to some education from counsel, I don't
21 think it's fair to say we had a specific fiduciary duty to a
22 particular creditor.

23 So, for example, if I had a fiduciary duty to UBS, it
24 would be very difficult for me to object to UBS's claim. It
25 would be -- I don't know how I could do that as a fiduciary.

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1 When the claim is crystalized in the estate, I believe that we
2 have fiduciary duties to each and every interest holder in the
3 estate.

4 Q My question is a little simpler, and I just -- well, I'm
5 actually not asking legally whether you do or not. I'm asking
6 what your understanding has been since your role. Have you
7 conducted yourself in a way in which you have treated your
8 obligations as though you have a fiduciary obligation to the
9 unsecured creditors?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q You said that you believe that you have, with respect to
15 Multi-Strat, which is an entity that you manage, you said that
16 you understood yourself to have fiduciary duties to the
17 redeemers of Multi-Strat. Do you recall that?

18 A Yes.

19 Q Yeah. And Multi-Strat is outside of the estate, but HCM,
20 the Debtor manages Multi-Strat. And you said because of, you
21 know, your role, you personally feel as if you have a
22 fiduciary duty to the redeemers in Multi-Strat, correct?

23 A I --

24 MR. MORRIS: Objection to the form of the question.

25 Mischaracterizes the testimony.

Seery - Cross

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1 THE COURT: Sustained.

2 MR. CLUBOK: Your Honor, I believe that the
3 transcript -- I believe Mr. Seery said in direct that he
4 considered himself to have fiduciary duties with respect to
5 the redeemers of Multi-Strat. The transcript will show it. I
6 don't know what the objection is. Maybe I misstated when I
7 asked my question, but I'm just starting --

8 THE COURT: Okay.

9 MR. CLUBOK: I'm just trying to understand --

10 THE COURT: All right. I'll let you rephrase the
11 question, but this -- I've probably -- I may have made a
12 mistake in letting you ask questions, because this is about
13 the propriety of him being CEO and the reasonableness of
14 compensation. This isn't a discovery opportunity. So I'm a
15 little confused the relevance of what you're asking. Could
16 you address that for me?

17 MR. CLUBOK: Sure. Your Honor, Mr. Seery on direct
18 described what he understood his fiduciary duties to be. I
19 think we -- it made me wonder, he didn't mention the unsecured
20 creditors or what he believes his fiduciary relationship is,
21 if any, with the creditors, unsecured creditors. I would -- I
22 think it's a fair question to ask what his understanding is,
23 because now he's going to take on a new role as CEO, and I
24 think it's appropriate for everyone to understand, so we know
25 when we're dealing with Mr. Seery --

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1 THE COURT: Okay.

2 MR. CLUBOK: -- what his --

3 THE COURT: I think -- I think he --

4 MR. CLUBOK: -- he understands -- what he understands
5 his fiduciary duties to be.

6 THE COURT: I think he answered the question, and
7 frankly, I think he answered it correctly. His fiduciary
8 duties go to the estate, right? And the creditors are the
9 beneficiaries of his actions in that regard, right? So I
10 think he correctly answered the question already. All right?
11 Next question.

12 MR. CLUBOK: Okay. He says that there's three
13 aspects of the business he's been managing: \$300 million,
14 roughly, of Highland's own assets; the fact that they manage
15 \$3 billion in other assets, I think in managed assets; and
16 then they have shared services for \$6 billion in assets owned
17 by related entities, mostly.

18 BY MR. CLUBOK:

19 Q For those three separate businesses, I just want to
20 briefly understand: With respect to the first one, for
21 example, there's \$300 million, you said, roughly, of
22 (inaudible) assets. Roughly what were the value of the assets
23 when you started your role in January of 2020?

24 A It's hard to compare apples to apples on this because
25 there are certain assets that we've taken out that didn't

1 change in value. So I would say they were carried on the
2 balance sheet at different levels. I think a good rough
3 number would be in the \$500 to \$600 million area.

4 Q Okay.

5 A And the biggest -- the biggest movants in asset values
6 have been on securities, both ones that we continue to own and
7 the accounts that Jefferies -- that were levered, and those
8 were shown as unlevered marks on the balance sheet and the
9 losses that were incurred there. And then with respect to
10 certain of the PE assets and then a major movement on a
11 related-party loan, where the Board, through analysis that we
12 did with DSI and others, believes that loan is likely to be
13 worthless. Likewise, the claim of that entity we believe is
14 likely to be worthless.

15 Q And then to the extent the assets, you say, have a rough
16 value of \$300 million, you alluded to significant professional
17 fees, bankruptcy costs, administrative fees, the Debtor is
18 burning cash. My question is, If it's \$300 million today
19 roughly of total value of assets, what's your current best
20 estimate of the total amount that will be available to be
21 distributed to the creditors net of those -- that burning of
22 cash and the admin fees and the other issue that you
23 mentioned? What is your current expectation of the total
24 amount that will be able to be distributed to the creditors?

25 MR. MORRIS: Your Honor, just -- I just object to

1 this line of inquiry. It's like free discovery, as Your Honor
2 suggested earlier. I don't know what it has to do with Mr.
3 Seery's work, his qualifications, the compensation
4 arrangements. And I think it's inappropriate.

5 THE COURT: Okay. I'll overrule and allow this one
6 remaining question, but that's going to be it, unless your
7 next questions pertain to the employment or compensation
8 structure.

9 THE WITNESS: Yeah, I don't have a crystal ball as to
10 what the assets are going to be worth. I think that they are
11 fairly marked right now, and we have significant discovery
12 that we've had with respect to a number of the assets and
13 marked at views as to their value. So I think that we're at a
14 pretty good base value, assuming that we don't rush into
15 forced sales of assets.

16 So, as I know the Court is aware and I hope you're aware,
17 when you look at asset values, and you look at them on a
18 liquidation basis, the numbers are normally much lower than
19 when you look at them as selling them on a more controlled
20 basis. If you have liquid securities, that's not the case.
21 So if I have \$500 million of Apple at \$363 today, it's
22 probably a good chance that it'll be worth something different
23 in a month, something different in two months. But if I need
24 to move my position, I can do that.

25 These assets are much more difficult to move. And the act

1 of selling them often changes the value, which is why we
2 engage professional bankers to help move, first, those assets.

3 So I just don't have a good crystal ball. I think the
4 valuations that we have now are pretty good. I think they've
5 been scrubbed well. But that doesn't mean that certain of
6 these assets will maintain the exact value they have. So, I
7 gave a good example of Carey Limousine, which is a very small
8 asset but it's an easy one to understand because everybody can
9 relate to a car service company that does, you know, a little
10 bit more high-end and is focused on the airport travel and how
11 that's been impacted.

12 That asset value has gone down precipitously, even though
13 it was small, because of that. So I don't -- I don't really
14 have a great crystal ball as to what's going to happen. If
15 we're very successful in the fourth quarter and the economy
16 stabilizes and the COVID vaccines are out in record time and
17 move forward, then I think we've got potential for upside.
18 But right now, in the current environment, I think we're
19 marked fairly.

20 BY MR. CLUBOK:

21 Q Yeah. But my question really wasn't about the value of
22 the assets. I realize those could go up or down. And you
23 think they're fairly marked. My question was, What's the
24 total amount of setoff from those assets to the extent the
25 bankruptcy fees you alluded to, the burning of cash on the

1 other businesses, you know, how much, you know, net -- what's
2 the amount that will come off of those assets or that should
3 be -- that we should assume will be deducted from those assets
4 because of the professional fees that have been incurred or
5 you predict will be incurred through the end of the year and
6 the burn of cash that you mentioned, et cetera?

7 I'm trying to understand how you supervised -- because
8 you've managed those expenses as well as the assets, right?
9 And so I just think it's important for us to understand, at
10 the end of six months, and then how things are set for the
11 rest of the year, what's the total amount of, you know, call
12 it liabilities or costs associated with running the business,
13 running the business and at a cash burn rate, bankruptcy fees,
14 et cetera, that we --

15 THE COURT: Okay. I'm going to cut it off. I'm
16 going to cut it off. That, in my view, is going a little too
17 far afield. That's a discussion outside the courtroom. So,
18 thank you, and we're going to see: Does the Committee have
19 anything they want to ask?

20 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
21 the Committee.

22 I certainly do not have any questions to ask. I do have a
23 couple of statements that I want to make, but I don't know if
24 now is the appropriate time or if there's going to be further
25 testimony.

1 THE COURT: Okay. I think there might be another
2 witness or two, but we'll let you make your comments at the
3 appropriate time.

4 EXAMINATION BY THE COURT

5 THE COURT: Mr. Seery, I meant to ask, I forgot to
6 ask: You've mentioned a couple of times the Debtor, Highland,
7 has 70-ish employees. Has the number gone down since the case
8 was filed, is Highland losing employees, or is it staying
9 stable?

10 THE WITNESS: We lost -- we lost seven employees.
11 There were some that were severed for performance reasons.
12 That happens every year. There were some that just moved on
13 because they decided to move on. And that some -- and then we
14 had some that, because of the bankruptcy, we lost. We added,
15 I think, one or two employees that we're pretty excited about
16 in the fund valuation area, which is a pretty critical area
17 for the shared services. Unfortunately, they haven't been
18 able to go to the office, but fortunately, they've been able
19 to work.

20 So we're down, Your Honor, probably eight total, and so
21 we're more of the low to mid-60 area right now.

22 THE COURT: Okay. And --

23 MR. SEERY: And we were a little bit north of 70 when
24 we took the case.

25 THE COURT: Okay. And the COVID situation, I mean,

1 if you walked into the office, would there be people around in
2 masks, or are people still working at home?

3 MR. SEERY: People -- so, in -- yeah. So, in March,
4 very early on, as things started to shut down, Brian Collins,
5 who's the director of human resources and an accomplished
6 professional, came to the Board and basically said, you know,
7 yeah, Texas is better, but it's not immune. We need to come
8 up with a program.

9 And with Russ Nelms and John Dubel and I, we developed a
10 program, with Brian -- with Brian driving it, to figure out
11 exactly how to approach going into the office; how we would
12 maintain the office; and then, if something were to happen,
13 what we would do.

14 We had an employee who, with her family, got COVID in --
15 we believe in New York, came back. And as soon as we found
16 out that person wasn't feeling good in the office, it was the
17 first day they were back, a protocol with thermometers and --
18 at that time, thermometers were thought to be valuable -- we
19 immediately sent that employee home. We then brought in a
20 cleaning crew to clean up the office with EPA and FDA-approved
21 materials, and then had several days off and brought folks
22 back the following week.

23 We found that to be, frankly, unwieldy as COVID started to
24 continue to creep a bit through March and into April. At that
25 point, we did have other employees, not who came into the

1 office, but who had contracted COVID, so we shut down HCMLP.
2 When we cleaned the office, we shut it down completely.
3 Nobody could go in.

4 When -- since then, we have set the office up where we had
5 initial (inaudible) when things were pretty good, so we
6 divided the move into -- into basically 20 percent could be in
7 the office at any one time. And then, since that time, as
8 things have gotten worse, we found that we were, one, working
9 extremely well offsite; and two, that it was just a better
10 environment for the employees. So we've been working
11 continually offsite.

12 If folks need to go in, because either they need more
13 advanced systems that they can't go to plug-and-play at home,
14 or because there's just materials that they want to get,
15 they're able to do in. We have tons of disinfectant
16 everywhere. We have masks available. We put in dividers,
17 Plexiglas dividers between the work stations to assure that if
18 someone was at a station for a long time, it didn't -- it was
19 less likely that you could have transmission.

20 I will tell Your Honor that HCMLP is not reporting to the
21 office. Some of the affiliated businesses, and I don't know
22 the percentage, have been. So those businesses, which we
23 don't control, are going in.

24 From my perspective, as long as the numbers are where they
25 are in Texas, from both a business perspective in terms of

1 making sure that the employee base doesn't contract COVID in
2 material amounts -- first, any amount -- but in material
3 amounts that would impact our ability to run the business.
4 And then with respect to the civic part of it, which is we
5 don't want to be a part of forcing the spread or causing the
6 spread of this disease, we know we can work from home. We're
7 going to continue to do that until we believe it's very safe
8 to go back.

9 Notwithstanding that we have the ability and have been
10 doing it with extensive cleaning, extensive disinfectant, and
11 with dividers, until we are very comfortable that we can go
12 back and protect our employees and that it's the right civic
13 thing to do, we're not going to go back, particularly since it
14 doesn't impact our ability to perform.

15 THE COURT: Okay. I really want to, you know, get to
16 the rest of our hearing soon, but I heard something that made
17 me have a question. You said there are other entities we
18 don't control whose employees are going in. Could you tell me
19 exactly what you meant by that?

20 THE WITNESS: There's -- away from HCMLP, there's
21 approximately another 75 to 80 -- it may be slightly more --
22 employees at the other entities that are NexPoint, NexBank,
23 NexPoint Advisors. They are under different protocols that
24 neither I nor Russ nor John control. The office --

25 THE COURT: Let me just stop you.

1 THE WITNESS: Please.

2 THE COURT: So it's just Nex -- well, NexPoint-
3 related companies?

4 THE WITNESS: Uh-huh.

5 THE COURT: NexPoint and --

6 THE WITNESS: Yes.

7 THE COURT: -- affiliates of NexPoint?

8 THE WITNESS: Correct, Your Honor. The office, the
9 HCMLP offices are huge. And when we were there pre-COVID,
10 with the full complement of folks, it felt like they were
11 relatively empty. I shouldn't say -- they felt like there was
12 plenty of space.

13 What we found, with both sets, our employees and then the
14 NexPoint-related employees, when 140 or 150 people were in
15 that office, which pre-COVID felt comfortable, post-COVID
16 didn't feel so comfortable. So our employees, we started, as
17 I mentioned, with the shift-working. And then we decided to
18 go completely mobile unless somebody feels they have to be in
19 the office, and we want to make sure that they follow the
20 protocols when they do.

21 With respect to the non-HCMLP related entities, those
22 entities, some percent of those employees are still going into
23 the office.

24 Now, when they're there, to be frank, what I said was a
25 pretty comfortable place with 140 people is a pretty empty

1 place if there's only 50. But our employees, we felt it was
2 important, since we were able to execute from home, we didn't
3 need, on most parts, the extra systems to be able to execute
4 in the office, that we could largely perform from home to make
5 sure that we weren't taking any risks with the business but
6 also taking -- one, taking risks for the employees; two,
7 taking any risks for the business; and three, as I mentioned,
8 the civil perspective.

9 THE COURT: Okay. We're going to have to take a
10 five-minute break here in just a second, but let me kind of
11 elaborate on why I was drilling down on that question about
12 NexPoint. I mean, isn't it Highland employees who service
13 NexPoint? Or am I wrong about that?

14 THE WITNESS: Highland employees service a lot of
15 NexPoint. But NexPoint, NexBank, the various funds, NXRT,
16 there's a number of businesses: They have their own employees
17 as well.

18 THE COURT: Okay.

19 THE WITNESS: So the whole complex is about 150
20 employees.

21 THE COURT: Okay.

22 THE WITNESS: Highland Management is about 70.

23 THE COURT: Okay. All right. Well, are we finished
24 with Mr. Seery's testimony, Mr. Morris?

25 MR. MORRIS: Yes, Your Honor. Our next witness after

1 the break will be John Dubel.

2 THE COURT: Okay. Very good.

3 MR. MORRIS: And we --

4 THE COURT: Mr. Seery, again, this has been extremely
5 helpful for me, and I hope for others. I hope you'll stick
6 around, because when we circle back to the mediation
7 discussion at the end of today, I really would like you to be
8 involved in that discussion. I may want your input on one or
9 two things. So can you stick around?

10 THE WITNESS: Absolutely, Your Honor. Other than
11 getting some water and maybe turning the air conditioning back
12 on in this room, I'll stay.

13 THE COURT: You must not be in Texas if you don't
14 have your air conditioning on. I assume you're in New York.
15 All right. Five-minute break. We'll be back.

16 THE WITNESS: It's hot, but not Texas hot.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE CLERK: All rise.

20 (A recess ensued from 3:16 p.m. until 3:22 p.m.)

21 THE CLERK: All rise.

22 THE COURT: All right. Please be seated. We're back
23 on the record in Highland.

24 Mr. Morris, you were going to call Mr. Dubel next?

25 MR. MORRIS: Yes, the Debtor calls John Dubel.

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1 THE COURT: Dubel?

2 MR. DUBEL: Your Honor, may I have just one minute to
3 -- my air conditioner.

4 THE COURT: All right. Mr. Dubel, I said your name
5 wrong. Could you say Testing 1, 2?

6 MR. DUBEL: I can do that, Your Honor. Testing 1, 2.

7 THE COURT: Okay. Very good. Please raise your
8 right hand.

9 JOHN DUBEL, DEBTORS' WITNESS, SWORN

10 THE COURT: All right. Thank you. Mr. Morris, you
11 may proceed.

12 MR. MORRIS: Thank you, Your Honor. As Mr. Pomerantz
13 previewed, Mr. Dubel's testimony is going to largely cover the
14 corporate governance-type issues concerning the evolution of
15 the motion, the discussions or the, you know, beginning of the
16 discussions, and how the proposal itself evolved.

17 If I may, Your Honor, just to perhaps move this along, I
18 might lead the witness a little bit. If it's a problem,
19 you'll let me know, okay?

20 THE COURT: Okay. I will let you know if it's a
21 problem.

22 MR. MORRIS: Okay.

23 DIRECT EXAMINATION

24 BY MR. MORRIS:

25 Q Good afternoon, Mr. Dubel. You're a member of the Board

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1 of Strand today; is that right?

2 A I am.

3 Q And you've held that position since mid-January; is that
4 right?

5 A Since January 9th, yes.

6 Q Okay. And you understand that we're here today on the
7 Debtors' motion to appoint Mr. Seery as the Debtors' CEO, CRO,
8 and the Foreign Representative?

9 A I do understand that, yes, sir.

10 Q Does the Board unanimously support the motion?

11 A I think the Board does, and specifically the compensation
12 committee, because of obviously the conflict that Mr. Seery
13 might have, you know, but the Board fully supports it, and the
14 compensation committee is comprised of Mr. -- Judge -- Judge
15 Nelms and myself.

16 Q Okay. And do you believe that -- withdrawn. Does the
17 Board believe that it's in the Debtors' best interests to
18 retain Mr. Seery on the terms proposed?

19 A We do.

20 Q And why does the Board believe that?

21 A Well, as the Court has heard from the testimony of Mr.
22 Seery today, he has a tremendous amount of skills and
23 experience in the area of asset management. He's effectively
24 been serving as the CEO since -- well, in a lot of ways, since
25 January 9th, when we asked him to step up and take on some

1 additional responsibilities, but very clearly since the middle
2 of February, and specifically, the middle of March.

3 And as the Court noted, he is -- knows these assets very
4 well. He knows the operations. He's done an exemplary job of
5 handling all of the issues. He has spent a tremendous amount
6 of time working with the Committee members, trying to develop
7 good lines of communications.

8 And, you know, Russ -- having, you know, served in a C
9 Suite position for 25 years of my 30-plus years of
10 restructuring experience, and 15 years as a CEO, we need a
11 good leader, an operational leader to run the organization.
12 So we can support him because you need to have someone in
13 there who can make decisions; work quickly; obviously,
14 communicate well with the Board, which he has been doing for
15 quite some time. So, all the -- all of the reasons why we are
16 very pleased to have him take on this role.

17 Q Okay. Let's talk a little bit about what led to this
18 particular motion. Do you recall when the idea of appointing
19 a CEO first arose?

20 A I would say it was back in December, before the
21 Independent Board was put together, when we first started
22 intervening with the creditors and with the Debtor. It was
23 raised to me in my interview, would I be, you know, willing to
24 step in as a CEO if asked to? And I'm assuming it was also
25 asked of Mr. Seery. I didn't ask him that. And it was all

1 obviously coming, you know, out of the protocols that were
2 being developed where Mr. Dondero would step down as the CEO
3 and the Independent Board would basically be responsible for
4 the operations of the company. But we had the opportunity to
5 go out and seek either one of the three Independent Board
6 Members as the CEO or go outside to the marketplace and try
7 and find an independent or a third-party CEO.

8 Q And to the best of your recollection, was that flexibility
9 built into the term sheet that was part of the corporate
10 governance settlement?

11 A It was.

12 Q All right.

13 MR. MORRIS: Your Honor, this is where we're going to
14 test our technological capabilities. I'm going to ask Ms.
15 Canty to put up and to share Exhibit 1, and let's see if we're
16 able to do that.

17 THE COURT: Okay. But if anything goes wrong, I
18 actually do have the docket up on my screen. I can pull them
19 up. But, oh, even better. Even better. Okay.

20 MR. MORRIS: All right. It looks like it worked.
21 Ms. Canty, if you could turn to Page 2, please. I think
22 that's Page 1.

23 (Pause.)

24 MR. MORRIS: I think it's stuck.

25 THE COURT: Hmm.

1 THE WITNESS: If need be, I have a teenager who could
2 probably figure this out, because I sure can't.

3 MR. MORRIS: I'm impressed that La Asia got to this
4 point already. Okay. Good. Just the one on the right. Is
5 there a way to focus in on the top paragraph on the right?

6 THE WITNESS: I'll put my glasses on and I'll be able
7 to read it.

8 MR. MORRIS: Okay. Right there. Perfect.

9 BY MR. MORRIS:

10 Q Is -- are you familiar with the provisions generally in
11 the term sheet relating to the opening of CEO?

12 A I am.

13 Q And is this the provision that you were referring to
14 earlier?

15 A It is.

16 Q And does this provision, to the best of your
17 understanding, provide the Board with the flexibility, in
18 consultation with the UCC, to exercise its business judgment
19 and appoint a CEO if it determined that to be in the Debtors'
20 best interest?

21 A It does. It's consistent with the discussions had -- that
22 were had prior to our appointment, and it obviously was
23 incorporated in the term sheet that was approved by the Court
24 on January 9th.

25 Q And this also reflects the understanding that you

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1 described earlier, where one of the Independent Directors
2 could, in fact, be selected as the CEO; is that right?

3 A That is correct.

4 MR. MORRIS: All right. Let's just take that down,
5 please, Ms. Canty.

6 BY MR. MORRIS:

7 Q Mr. Dubel, has Mr. Seery, in fact, taken on day-to-day
8 operational responsibilities for the Debtor?

9 A Yeah. Yes, he has. And I think early on the Board
10 realized that, between the three Board members, we would try
11 and divvy up the responsibilities, as Mr. Seery referred to
12 earlier, and it was definitely like drinking from a fire hose
13 in the early stages of the case, where the new Board was put
14 in place. And we tried to divvy up our responsibilities,
15 taking into consideration each of the Board Members'
16 expertise.

17 But it was pretty clear that the main business operations
18 required somebody with the skill set that Mr. Seery had, and
19 it would be much more efficient, as we progressed forward, to
20 coalesce around one individual as a CEO.

21 MR. MORRIS: Ms. Canty, can you pull up Exhibit 2?

22 BY MR. MORRIS:

23 Q And while we're doing that, Mr. Dubel, do you recall early
24 on that the Board asked Mr. Seery to become involved in the
25 trading of the prime accounts?

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1 A I do, yes.

2 Q Okay.

3 MR. MORRIS: La Asia, I don't know if you can scroll
4 down just to --

5 Your Honor, these are minutes from the Board's very first
6 meeting. And if we go to the next page, right here, you'll
7 see there's a discussion in the second paragraph.

8 BY MR. MORRIS:

9 Q Mr. Dubel, does that reflect the Board's deliberation and
10 decision, really, on the first day, to give Mr. Seery, you
11 know, the responsibility for dealing and overseeing the prime
12 accounts?

13 A It does. And what I was saying is, prior to the
14 appointment, in doing all of our diligence prior to joining
15 the Board, we realized there were all these issues that needed
16 to be dealt with. And so we came in on the very first day,
17 ready to recognize that there were certain things that needed
18 sort of expertise. And they were presented to us by DSI and
19 the management of HCMLP as areas that needed some additional
20 handling and oversight. And so we asked Mr. Seery to step
21 into that role on the very first day, which he -- which he
22 agreed to and the Board approved it.

23 Q Okay. Let's get to the meat and potatoes here. Did there
24 come a time when the Board and Mr. Seery actually began
25 discussing the possibility of his serving as the CEO?

1 A Yes, there did.

2 Q And can you share with the Court your recollection of how
3 that began?

4 A So, there were informal discussions, I would say, through
5 the month of February, as we started to realize that there
6 were -- the decision-making was going to be cumbersome,
7 having, you know, three parties involved. As I said earlier,
8 having spent 15 years or so my career as a chief executive
9 officer, I understand where you really want to have one person
10 be responsible for these issues.

11 And so we were conversing with Mr. Seery to see if he
12 would take on that role. And, obviously, we had felt very
13 comfortable, Mr. Nelms and I felt very comfortable with the
14 communications that he was having with us on things that we
15 had asked him to do. There was a very free and open
16 discussion with the Board members. So we continued, you know,
17 to look at opportunities where it might make sense.

18 And then, you know, towards the beginning of March, it was
19 pretty obvious that we were going to want to coalesce around
20 the motion. We thought about whether or not that would be
21 some third party. But having, again, experience of having to
22 go out in the marketplace to find CEOs when I'd been either,
23 you know, a director or involved in companies, we realized
24 that can be very time-consuming, would take us months to find
25 somebody.

1 And so we continued to discuss it with Mr. Seery. And
2 around the middle of March or so, right around the time that
3 we had a Creditors' Committee meeting in New York, we asked
4 Mr. Seery if he would take that role on, and he agreed to, to
5 take that role.

6 Q And that's -- and is that why the Debtor is seeking
7 authority to retain Mr. Seery nunc pro tunc back to March
8 15th?

9 A We are. I mean, effectively, he really started the role
10 in the February time frame. But we officially asked him about
11 this in -- right after that meeting on March -- I think it was
12 March 11th or so.

13 Q So, is it fair to say that's when the Board had a meeting
14 of the minds with respect to not necessarily the terms but at
15 least the engagement of Mr. Seery as CEO?

16 A Yes, that is fair to say.

17 Q Okay.

18 A And that's when he really did step up and take on all of
19 those responsibilities, you know, with the acknowledgement and
20 understanding that we would work out the appropriate terms for
21 his engagement.

22 Q Okay. And a couple of weeks later, do you recall that Mr.
23 Seery made a written proposal to you and Mr. Nelms?

24 A He did make a written proposal after, you know, having
25 discussions with us orally about various issues and roles and

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1 responsibilities. I think it was around April 4th or so that
2 he presented us with a written proposal.

3 MR. MORRIS: All right. Ms. Canty, can you call up
4 Exhibit 3, please? (Pause.) Okay. If you'll scroll down.

5 BY MR. MORRIS:

6 Q Mr. Dubel, is this the April, the early April e-mail that
7 you were referring to in which Mr. Seery made a proposal for
8 the terms of his engagement as CEO?

9 A Yes. This document refreshes my recollection. It wasn't
10 April 4th. It was April (audio gap). But yes, that's the
11 document I was referring to.

12 Q Okay. What happened next, after -- after the -- after
13 this was presented to you and Mr. Nelms? What did you guys
14 do?

15 A So, what we wanted to do is understand what was our
16 responsibility as a board. So we reached out to counsel to
17 figure out how the process should work. We set up a
18 compensation committee. It's called a comp committee; it's
19 more I would call it a nomination committee or a governance
20 committee also, because it was all about retaining Mr. Seery
21 in that role.

22 We got advice from counsel on what the process should be.
23 We reached out to our compensation consultant at Mercer, who
24 had been providing us assistance in other areas of the
25 company's compensation program, to talk to them about what the

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1 various market comps, you know, compensation programs were and
2 what would be an appropriate market comp for Mr. Seery's
3 compensation, and, you know, moved forward that way.

4 MR. MORRIS: Ms. Canty, can you pull up Exhibit 4,
5 please?

6 BY MR. MORRIS:

7 Q Do you know what this document is, Mr. Dubel?

8 A Yes. This looks like the minutes from the meeting of our
9 first compensation committee on April 8th, compensation
10 committee of Strand Advisors.

11 Q And this was a meeting between you and Mr. Nelms, with
12 counsel; is that right?

13 A That is correct.

14 Q And this was precipitated by Mr. Seery's written proposal
15 that was made a few days before that; is that fair?

16 A Well, I would say it was precipitated by the advice we had
17 gotten through counsel that we should set up a compensation
18 committee and consider what would be the appropriate way of
19 retaining Mr. Seery, you know, as a chief executive officer.
20 His proposal came in a couple of days earlier than that, and
21 so this was our first official time to get together as a
22 committee and review it and discuss the issue.

23 Q And was this a contemporaneous record of the steps that
24 the compensation committee took to do its due diligence with
25 respect to the proposal?

1 A It is.

2 Q Okay. Did the compensation committee --

3 MR. MORRIS: You can take that down, Ms. Canty.

4 BY MR. MORRIS:

5 Q Did the compensation committee communicate with the
6 Creditors' Committee with respect to these matters?

7 A We did.

8 Q Can you --

9 A As a part of the protocols, one of the things I -- and I'd
10 go back and re-read the protocol language, but one of the
11 things it said was work with the UCC to determine who would be
12 an appropriate CEO. And so we realized we would do that, and
13 we started to reach out to the various members of the
14 Creditors' Committee to discuss that.

15 Q Okay. And do you recall whether the compensation
16 committee or the Debtor generally shared Mr. Seery's proposal
17 with the Committee?

18 A We did. I don't recall the exact date, but we did share
19 it with the UCC through the UCC counsel.

20 Q Do you recall if the report that was commissioned by the
21 Debtor with respect to Mercer, the Mercer Report, was that
22 shared with the Committee?

23 A It was.

24 Q Can you describe for Judge Jernigan your recollection as
25 to, you know, the Committee's reaction and, you know, position

1 with respect to the proposed retention of Mr. Seery as CEO?

2 A We shared the report from Mercer with the Committee in --
3 I think it was early May. And we spent time with them in the
4 April time frame talking about the fact that we were going to
5 be seeking Mr. Seery's appointment as CEO and telling them
6 that we were going to be commissioning a report to make sure
7 we had what we thought was market compensation.

8 The Committee was generally very supportive. They had
9 been obviously experiencing Mr. Seery taking on that role of
10 effectively the CEO for a period of time, so they understood
11 where, you know, where he was coming from and what -- how he
12 was going to operate the business.

13 They understood, to my knowledge and in my discussions,
14 they understood the benefits of having a single person as the
15 CEO rather than trying to manage the business by committee.
16 We discussed with them why it made sense.

17 And so, you know, they were supportive of it. Obviously,
18 we had to negotiate the terms of the compensation.

19 Q And did that take some time, to negotiate the compensation
20 terms?

21 A It did. Initially, it was being done through myself and
22 Mr. Nelms, working directly with the Committee. But, again,
23 having been in that position of having to negotiate with the,
24 you know, the committee on terms of my own personal
25 compensation -- not this committee, but in other cases -- we

1 recognized that it was probably more efficient for Mr. Seery
2 to speak directly with the Committee, Committee members. And
3 so we asked him to pick up that, you know, responsibility
4 also. And he did. He kept us informed every step of the way.
5 And I, as the de facto chairman of the compensation committee,
6 also spoke directly with the various members of the Committee
7 during this time frame, where there was (echoing)
8 communication about compensation.

9 Q Mr. Pomerantz mentioned it in his opening remarks, but do
10 you recall kind of what the bigger issues were with respect to
11 the proposed compensation terms with the Committee?

12 A Sure. The Committee -- well, there was always negotiation
13 going on, obviously. The Committee, at the end of it, they
14 had no problems with the monthly compensation, recognizing
15 that whatever his board compensation would be would
16 effectively be wrapped into the monthly compensation.

17 What the issues really came down to for them revolved
18 around the restructuring fee that was being proposed, success
19 fee, you know, what have you. And there was a lot of
20 different views, as you can imagine, between the four members
21 of the Committee as to how that should be set up.

22 Mr. Nelms and I were very cognizant that we did not want
23 to have Mr. Seery (echoing) -- I'm sorry. I'm getting a lot
24 of background noise here.

25 THE COURT: Yes. I'm not sure who needs to mute

1 their phone, but someone needs to mute their phone. Okay.

2 THE WITNESS: Thank you.

3 THE COURT: Uh-huh.

4 (Echoing subsides.)

5 THE WITNESS: So we were very concerned that
6 structures not be put in place that could cause the potential,
7 the appearance of a conflict between the role that Mr. Seery
8 was playing and his compensation.

9 It's always a, you know, a challenging issue here, to make
10 sure that, you know, a CEO of any company is looking out for
11 the best interests of the estate and not looking out
12 specifically for any particular creditor, equity, or group of
13 creditors, just because that's the way the compensation was
14 designed. And so that was a challenge.

15 At the end of the day, we wanted to have what we felt was
16 fair compensation for the success fee and restructuring fee
17 for Mr. Seery, because we wanted him incented to get the job
18 done, as he has alluded to in his prior testimony as to what
19 he's trying to do here. And so there did come a point where
20 we could not get to a meeting of the minds and so we chose to
21 move forward on the compensation with just the monthly agreed
22 to. Mr. Seery was good enough to agree to that for just the
23 monthly, and that we would put forward the restructuring fee
24 at a later date.

25 BY MR. MORRIS:

1 Q Okay. Thank you. In addition to the CEO title, the
2 Debtor is asking for the Court to appoint Mr. Seery as the CRO
3 and the Foreign Representative; is that right?

4 A That is correct.

5 Q And why is the Debtor seeking that relief?

6 A Well, initially, the CRO was brought in, I believe it was
7 the middle of October, when the case was filed and before the
8 Independent Board was put in place. And there were reasons
9 why, you know, the Committee had asked for the CRO to have
10 certain responsibilities. Those carried through in the
11 protocols.

12 And obviously, you know, we had no issues with those, but
13 what we also felt, Mr. Nelms and I, and in consultation with
14 Mr. Seery, was that it would be more appropriate to have one
15 person be responsible for all of the issues within the
16 company. And since there was an Independent Board, and since
17 one of those Independent Board Members was becoming the CEO,
18 the need for another individual to be the CRO might send
19 conflicting signals inside the organization. And so we
20 decided that it would be appropriate to put those
21 responsibilities into Mr. Seery's lap. And we spoke with Mr.
22 Sharp from DSI, and he agreed. And so that's the reason why
23 we moved it forward that way.

24 Q Okay. I understood you to say that the meeting of the
25 minds, at least conceptually, was somewhere around March 12th

1 in New York, or March 11th. I think the Judge may have asked
2 the question or at least implied that she wanted to know kind
3 of why it took so long to get the motion on file. I think
4 you've discussed some of the issues, but just kind of in a
5 bullet-point way, can you give the Judge an explanation as to,
6 you know, why it took several months to get this motion in
7 front of the Court if a meeting of the minds occurred back in
8 March?

9 A Sure. I believe the motion was filed on the -- I think it
10 was the 22nd or so of June.

11 Q Okay.

12 A And so we -- we asked Mr. Seery. He accepted the
13 responsibility in the middle of March. Right at that point in
14 time was when the whole pandemic issue was, you know, really
15 coming hot and heavy at the company. As Mr. Seery testified
16 earlier, he had -- he was spending a tremendous amount of time
17 just focusing on the operations of the business, focusing on
18 the assets, dealing with the prime accounts, the select
19 accounts, working with Jeff Reeves, working with the other
20 individual investments that we had, to make sure that those
21 were under control.

22 I would say I applaud him for putting the business first
23 in front of him, and then I think probably at 1:00 o'clock in
24 the morning he was able to finally sit down and put together
25 his own compensation request.

1 We did need time to go through with the Mercer folks and
2 get, you know, the market information, and that took a lot of,
3 you know, a lot of time.

4 And then, more importantly, we wanted to make sure we
5 could get something in front of the Court that was agreed to
6 by the Committee. So we did share the information with the
7 Committee. We spent a lot of time in negotiations with the
8 Committee, trying to get to a resolution. As I said earlier,
9 we asked Mr. Seery to step in and there be, you know, one-on-
10 one discussions to maybe shortcut some of that.

11 And finally, at the point in time where we realized we
12 could not get a full, you know, fully-agreed compensation
13 program, we asked him to just break it down into the monthly,
14 and then come back for a restructuring bonus at the end of the
15 case.

16 And so all of that, while trying to manage the business in
17 the COVID era, is what took such a long period of time.

18 Q Did it also take some time to obtain appropriate D&O
19 insurance for Mr. Seery as the CEO?

20 A It did. We had to, as the Board of Strand, we had to set
21 up a D&O program for the Board members when we first got
22 involved back in January. That took a tremendous amount of
23 time. It was very difficult to obtain in the marketplace, for
24 any number of reasons, but mainly because the insurance market
25 understood what Highland was all about and the various

1 players, and they were very reticent to insure Highland.

2 So, because we were Strand, because there were other
3 protections that were afforded to the Independent Directors,
4 we were able to obtain it.

5 When we asked the various carriers to add Mr. Seery on as
6 the CEO for HCMLP, it was very challenging to put folks on.
7 We were eventually able to get our first layer to sign on, the
8 first-layer insurer. The second layer would not do it, and we
9 had to go find a third carrier who would do it. And we
10 actually got that done at some time in the latter part of
11 June, right after we had filed the motion.

12 Q Okay.

13 MR. MORRIS: Your Honor, I've got just a few more
14 questions, but they're going to be devoted to the DSI motion.
15 I don't know if you wanted to ask -- if you had any questions
16 on the motion with respect to Mr. Seery or I should just
17 continue on.

18 THE COURT: I do not have questions. You can
19 continue.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q Okay. So, let's just finish up, Mr. Dubel. There is a
23 second motion in front of the Court, and this one is for the
24 appointment of DSI as financial advisor. Are you familiar
25 with that motion?

1 A I am.

2 Q Does the Board unanimously support that motion?

3 A We do.

4 Q Has the Board concluded, in an exercise of its independent
5 business judgment, that the engagement of DSI as financial
6 advisor is in the Debtors' best interests?

7 A We have. Yes.

8 Q Can you explain to the Court why the Board reached that
9 conclusion?

10 A Well, we do need the services of a financial advisor.
11 It's very important in this case to have an independent, you
12 know, restructuring, you know, financial advisor to assist us.
13 As Mr. Seery testified earlier, they have been very
14 instrumental in helping him prepare the financial analysis
15 that has been part of what he's been using to start
16 negotiating and working forward on the -- putting together a
17 plan of reorganization.

18 They've also spent a tremendous amount of time acting as a
19 bridge to FTI, the Committee's financial advisors, which is
20 very common in these types of cases. And so that's been
21 extremely helpful. And that role needs to continue.

22 They also are handling all of -- all the administrative
23 bankruptcy issues, the SOFAs, the MORs. They're doing a lot
24 of work for us, not necessarily specifically on the large
25 claims, but on helping us analyze and review all of the other

1 myriad of -- I think it's two hundred something claims that
2 have been filed in the case.

3 So they've been here since -- I guess they came in pre-
4 filing. They have a lot of history and knowledge, and we want
5 to continue to utilize that knowledge as we continue to move
6 forward. So that's why. And the Board is very comfortable
7 with the job they've been doing, and so we felt it was
8 appropriate to continue to use them as the financial advisor,
9 just in a slightly different role.

10 MR. MORRIS: Your Honor, I have no more questions of
11 Mr. Dubel.

12 THE COURT: All right. Well, I'm going to just jump
13 in and ask my own questions, and then I will -- I'll, you
14 know, offer him up for cross if people will promise to
15 restrict it to employment terms.

16 EXAMINATION BY THE COURT

17 THE COURT: So, what -- my question is about Mr.
18 Sharp. As I recall, the compensation is not going to change
19 at all, even though the role is changing. He won't be CRO
20 anymore, Mr. Sharp. He won't be the Foreign Representative
21 anymore. But obviously, he and his firm will remain very
22 engaged as financial advisor.

23 What I'm getting at is there was a \$100,000 per month flat
24 fee for Mr. Sharp, and then other professionals at DSI will
25 bill by the hour. Tell me why the Board thinks that's still

1 the appropriate compensation package with the modified role of
2 Mr. Sharp. I'm getting at, \$100,000 a month, is that still
3 the right thing, or hourly compensation, did you discuss that,
4 and why is --

5 THE WITNESS: We did, Your Honor. And I'll be
6 (inaudible) with you. I don't know who negotiated that
7 originally for -- with, you know, with DSI, but I find it to
8 be a very fair-to-the-Debtor compensation package of \$100,000
9 for Mr. Sharp, but it also includes Mr. Caruso, who Mr. Seery
10 has referenced earlier. I think it was a very good
11 negotiation that was had by the Debtor.

12 So when we looked at it, we said, if we switch to a
13 straight hourly, based upon the amount of time and effort
14 that's being put in by the two of those individuals, it might
15 cost us a little bit more. So we chose to continue it at that
16 level.

17 And I know Mr. Seery will continue to lean on those two
18 folks and get his money's worth. I'm confident of that.

19 THE COURT: Okay. You just reminded me of something
20 that I did not remember, I guess. Mr. -- we're getting two
21 for the price of one, is basically the -- Mr. Caruso does not
22 bill by the hour?

23 THE WITNESS: They -- they work together. It's their
24 compensation. I would imagine they keep hours internally,
25 just to keep track of it, but what they bill us for the two

1 individuals, Mr. Caruso and Mr. Sharp, is a flat fee of
2 \$100,000 for the two of them.

3 THE COURT: Okay. All right. And do you remember,
4 by comparison, the financial advisor to the Committee -- is it
5 FDI? Whoever it is.

6 THE WITNESS: It -- it --

7 THE COURT: How are they getting compensated? Is it
8 strictly on an hourly basis, or is there also a combo flat fee
9 and hourly?

10 THE WITNESS: (echoing) on an hourly basis, and I
11 have one of their most recent charts. It was the May fee
12 application that they just filed, and they -- they bill in a
13 range from \$1,245 an hour for, you know, senior managing
14 directors, to \$875 an hour for managing directors, down to,
15 you know, \$690 an hour for directors. Yeah. A very fair and
16 appropriate marketplace compensation, but I think what we are
17 incurring under the structure that we have for DSI is below
18 that.

19 THE COURT: If those two guys were billing normal
20 market hourly fees, you think it would be busting \$100,000 a
21 month, perhaps?

22 THE WITNESS: I think it -- I think it would be well
23 in excess of \$100,000, --

24 THE COURT: Okay.

25 THE WITNESS: -- based upon the hours that we have

1 seen to date from them, Your Honor.

2 THE COURT: Okay. Now, does anyone else have
3 questions for Mr. Dubel related to these employment
4 arrangements proposed?

5 (No response.)

6 THE COURT: I guess not. I actually have one more
7 question. I think it will be for my benefit, but maybe for
8 benefit of parties in interest, I hope. You made a comment
9 about getting insurance for Mr. Seery, and you said it was a
10 bit of a challenge because insurers in the marketplace kind of
11 knew what Highland was about. I think those were your words.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Here is my question. As far as knowing
14 what Highland is about, other persons, not me, have used the
15 words that people were Mr. Dondero's puppet master, or he was
16 the puppet master, had his hands all over this, here and
17 there. And we obviously endeavored to change that with the
18 new Board in place. What would you say if people out there
19 think Dondero still might be a puppet master? What -- I mean,
20 is there any concern there that you could address?

21 THE WITNESS: Sure. And let me, let me take it in
22 two parts, because I think it's important for you to
23 understand from a third-party insurer's point of view. The
24 D&O marketplace has seen a lot of litigation surrounding the
25 Highland Capital name. And because of that, that obviously

1 causes them concern. Their business is to write insurance and
2 never pay a dime. I ran an insurance company for six years,
3 and you never want to pay a dime out, you just want to collect
4 premiums.

5 THE COURT: Yes. And I probably prefaced this in a
6 confusing way. I'm really not going back to the insurance. I
7 just said that comment, when you were talking about insurance,
8 made me want to ask, for my benefit and for other parties'
9 benefit: How much control, if any, does Dondero have? In
10 theory, he was not supposed to have any control over the
11 Debtor anymore, but can you say something to make us all feel
12 comfortable that, if he ever was a puppet master, he's not a
13 puppet master anymore?

14 THE WITNESS: Well, I won't use that terminology.
15 What I will say is, since January 9th --

16 THE COURT: Yes. It was someone else's term, not
17 mine. I'm just repeating it.

18 THE WITNESS: That's okay. Since January 9th, when
19 the Independent Board was put in place, the Independent Board
20 has had the responsibility, is responsible for the operations
21 of this business. Mr. Dondero, as Mr. Seery alluded to
22 earlier in talking about the number of people in the
23 organization, has other businesses that he's involved with
24 that operate out of the offices through shared services. But
25 it's very clear to all the employees that the Independent

1 Board is responsible for HCMLP and that since, really, you
2 know, the early March time frame, that Mr. Seery is the CEO.

3 So there is no concern on my part that Mr. Dondero is
4 having undue influence. He is still our portfolio manager,
5 but Mr. Seery is working with him as appropriate, and I have
6 no concern that Mr. Seery is not getting the job done and
7 getting any undue influence from Mr. Dondero.

8 THE COURT: All right. Thank you.

9 Mr. Morris, do you have any redirect?

10 MR. MORRIS: I do not, Your Honor. I appreciate the
11 question, and I think Mr. Dubel answered it appropriately.

12 THE COURT: All right. Thank you, Mr. Dubel. I do
13 appreciate your testimony today. It was helpful.

14 All right. Mr. Morris, --

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: -- what else do you have? You have Mr.
17 Sharp on your witness list. Did you want to --

18 MR. SHARP: I'm here, Your Honor.

19 THE COURT: -- put him on?

20 MR. MORRIS: I'm intending to do that. If Your Honor
21 thinks it's not necessary, I don't need to ask more questions.
22 It's a relatively brief examination that will just focus on
23 the slight change in his role.

24 THE COURT: All right. Well, if you feel the need to
25 make a record, you may. I just have one question I want to

1 ask him, to shore up the record.

2 MR. MORRIS: So perhaps, Your Honor, could we swear
3 him in, you ask your question, and then I'll see if there's
4 (echoing)?

5 THE COURT: All right. Mr. Sharp, I see you there.
6 Please raise your right hand.

7 (Echoing.)

8 BRADLEY SHARP, DEBTORS' WITNESS, SWORN

9 THE COURT: Thank you. We were getting some
10 distortion there. So, again, if you're not Mr. Sharp, please
11 put your phone on mute.

12 EXAMINATION BY THE COURT

13 THE COURT: All right. Mr. Sharp, I just wanted to
14 hear from you how many hours a month do you think that you and
15 Mr. Caruso are working on the Highland matter?

16 THE WITNESS: I don't have the hours in front of me,
17 Your Honor, but I think Mr. Dubel unfortunately alluded to
18 poor negotiating on DSI's part. That'd be my responsibility,
19 because I'm the one that did that.

20 From October through May, if you look at the time for Mr.
21 Caruso and myself, DSI has provided about a \$730,000 discount.
22 So if we were actually being paid on our hourly rate, our fees
23 would be \$730,000 more than the \$100,000 a month. We
24 typically run -- my rate is \$720 an hour. I think Mr.
25 Caruso's is about the same. The time for the two of us each

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1 month runs about \$200,000, which we then write down to
2 \$100,000.

3 THE COURT: All right.

4 THE WITNESS: (echoing) a month.

5 THE COURT: Okay. That answers my question. Mr.
6 Morris, is there anything you wanted to put on the record?

7 DIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Mr. Sharp, are you the person who was (echoing) with the
10 (echoing) CRO (echoing) Seery (echoing)?

11 A Yes, I am. I think it's much more efficient, frankly.
12 We've worked very well with Mr. Seery since the beginning,
13 since January 9th. That's going to continue. I think it
14 takes away some confusion, both internally and externally, in
15 that, you know, Mr. Seery is the CEO, the CRO, and everyone
16 knows that we are providing the analytical and support for him
17 with whatever he needs.

18 Q And I want to focus just for a second on DSI's (echoing).
19 Is DSI's responsibilities in the case changing at all?

20 A No. No. We have been working for the Board and
21 responding directly to Mr. Seery. You know, as Mr. Seery
22 testified, he works directly with myself and directly with my
23 team, and that's not going to change.

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

25 THE COURT: All right. Anyone have any questions

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1 regarding the employment terms?

2 (No response.)

3 THE COURT: All right. Well, I thank you, Mr. Sharp.
4 We appreciate it.

5 All right. Mr. --

6 MR. MORRIS: The Debtor rests, Your Honor.

7 THE COURT: Okay. Well, I presume no one else had a
8 witness to call. Again, we didn't have any responsive
9 pleadings on this.

10 So, with that, I am going to turn to the Committee counsel
11 at this point. Mr. Clemente, I know you said early on that
12 you wanted to make some comments, so this is your opportunity.

13 MR. CLEMENTE: Well, thank you, Your Honor. Matt
14 Clemente from Sidley on behalf of the Committee.

15 And just very briefly, Your Honor, as you know, we did not
16 file an objection. It sounds from what we heard today that
17 Mr. Seery and the Board are working hard, which is, frankly,
18 what I think you expect and what we expect of them.

19 We don't have an objection to the retention of Mr. Seery
20 as CEO at \$150,000 a month, which is inclusive of director
21 fees. And as Mr. Pomerantz said, the Committee does not agree
22 -- in fact, that was the source of quite a bit of the
23 negotiation of the last couple of months -- with the bonus
24 proposal. But, again, we understand that that will be
25 addressed by a separate motion.

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1 Your Honor, we appreciate Mr. Seery's testimony to advise
2 you and to create the record for purposes of today's
3 uncontested matter. And obviously, the Committee -- there's
4 no live objection. And while the Committee may have different
5 views of what Mr. Seery said -- for example, the working of
6 the protocols, the sophistication of the advisors to the
7 Committee -- again, for purposes of the matter before the
8 Court today, we're not going to take any issue with any of
9 those statements, Your Honor, but reserve the right to do so
10 again in future if it becomes necessary.

11 So, with that, Your Honor, I have no further comments, but
12 I did want to make those couple comments for the record, to
13 make sure Your Honor understood where the Committee is coming
14 from.

15 THE COURT: Okay. Thank you. Does anyone else wish
16 to make comments about the applications before the Court?

17 (No response.)

18 THE COURT: All right. Mr. Morris, I'll turn it back
19 to you.

20 I found in my notes one question that I had. Looking at
21 your Exhibit 3 is what made me decide I have this question.
22 The Exhibit 3 was the e-mail exchange of Sunday, April 5th
23 amongst the Board members. Let me ask you this. There was
24 something in there regarding Mr. Seery, this would be a full-
25 time position, but he would be permitted to serve on outside

1 boards of directors. Is that a term that survived, or no?

2 And if it did, I want to ask how many outside board

3 memberships does he have? Again, I expect, like I think

4 everyone, that it's going to be very full-time, so I don't

5 want to hear that he's on 12 other boards. How did that --

6 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

7 Since I was the one who actually was involved in negotiations

8 more than Mr. Morris, --

9 THE COURT: Okay.

10 MR. POMERANTZ: -- maybe I can answer. I believe it

11 was something that survived. I am not aware of any other

12 boards that Mr. Seery is on. And if he has actually been able

13 to do anything meaningful while performing what is I think

14 probably 200 hours a month and being available 24/7, I take my

15 hat off to him. But I would ask him to confirm if he has any

16 other material role, but I have not seen anything.

17 THE COURT: All right. What about that, Mr. Seery?

18 MR. SEERY: I -- currently, I'm not on any other

19 outside boards except two charities.

20 THE COURT: Okay.

21 MR. SEERY: One is a foundation called the

22 (inaudible) Foundation, which is a charity for (inaudible)

23 individuals, disabled folks, and -- most of whom are abused.

24 And I'm also involved with a charity, I'm not on the board but

25 on a funding committee for Team Rubicon, which is a reference

1 -- reference service, assistance in disasters. So they don't
2 take time like this, and so I'm not going to be involved in
3 any --

4 THE COURT: Okay. Thank you. That's what I would
5 hope to hear. I didn't want to hear that you were on, you
6 know, 12 other for-profit boards.

7 So, all right. So, Mr. Morris, Mr. Pomerantz, do you have
8 anything to say before we wrap up this topic?

9 MR. POMERANTZ: Your Honor, I'm happy to give Your
10 Honor a closing statement if you think it's necessary. I
11 think you know what I would say, to summarize. But I think
12 we've been at this a while, so (inaudible).

13 So unless Your Honor has any questions for me, I would
14 just say that the evidentiary record, I believe, supports the
15 entry of an order approving both the Motion to Employ Mr.
16 Seery as the Chief Executive Officer, CRO, and Foreign
17 Representative, and the Motion to Appoint DSI as the Financial
18 Advisor.

19 THE COURT: All right. Well, I am going to grant
20 both of these motions. Again, as for Mr. Seery, it's as
21 modified per the agreements with the Committee, that
22 modification being that, as for any bonuses, we're just
23 deferring to another day whether Mr. Seery is going to get any
24 bonuses related to a plan, what kind of plan it might be, a
25 case resolution plan or a monetization vehicle plan.

1 You know, I really hope, frankly, Mr. Seery is before me
2 seeking a bonus in the very near future and we're all happy
3 about the prospect of paying him a bonus because a plan has
4 been achieved, hopefully a case resolution plan. I will just
5 tell you right now, I will have a big smile on my face and
6 will warmly consider that if we get a great result here.

7 But it's deferred to another day. So I do find it's --
8 the evidence amply shows a sound business justification and
9 reasonable business judgment on the part of the Debtor in
10 proposing that Mr. Seery be CEO and CRO, essentially, and a
11 foreign representative, where necessary, at the base pay of
12 \$150,000 per month, again, with bonuses to be considered at
13 appropriate times down the road if we feel that that is a good
14 thing for Mr. Seery to be paid.

15 And I likewise find that, under 327, 328, 363, the amended
16 application with regard to DSI Specialists and Mr. Sharp and
17 Mr. Caruso should be granted, it appearing to be reasonable
18 business judgment and in the best interests of the estate and
19 appropriate in all ways under those Code sections.

20 All right. So we are going to look for orders on those
21 two matters.

22 Now, unless you have other housekeeping matters you want
23 to talk about, I want to circle back to the mediation topic.
24 Mr. Pomerantz, Mr. Morris, anything you wanted to raise?

25 MR. POMERANTZ: There is actually one other

1 housekeeping matter that Ms. Patel and I have been speaking
2 about and we said we would raise before Your Honor.

3 As Your Honor heard at the last hearing, we had filed an
4 objection to the Acis claim. We initially set the objection
5 for August 6th. Ms. Patel reached out to us, I understand, I
6 remember at the last hearing indicated that August 6th was
7 difficult for her. And especially since we were having the
8 mediation, we had talked to her about a rescheduling. So we
9 are intending put the matter on the September 10th calendar.
10 We have also granted Acis an extension to file a response to
11 July 31st.

12 What I think we would like the Court's input on, and not
13 now, but we would suggest having it done at the next hearing,
14 which is July 21st, as I'm sure Your Honor has not yet read
15 our objection, but it's a quite lengthy objection, I think 55,
16 60 pages. There's a lot of issues there. There are some
17 factual issues, some -- there are some legal issues. There
18 are some combination of factual and legal issues.

19 We think it would be helpful to the process to set up a
20 status conference with Your Honor -- again, to be held perhaps
21 on July 21st, because discovery motions are pending -- where
22 we could walk through with Your Honor what exactly everyone
23 would intend to accomplish on September 10th. We don't
24 believe it should just be a status conference. We searched
25 other dates. On the other hand, I think both parties will

1 have different views on what exactly will be at issue. But I
2 think it would be helpful, from both sides, to hear Your
3 Honor's expectations and to get some ground rules so we can
4 make a hearing, if necessary, on September 10th as productive
5 as possible.

6 THE COURT: All right. So, in writing down dates,
7 did you tell me what -- a deadline you have given Acis, or
8 what is the deadline that would apply under the Rules versus
9 what you have agreed to? Is there something different you've
10 agreed to?

11 MR. POMERANTZ: Sure. I believe, for a hearing on
12 August 6th, based upon when we filed it, I believe their
13 objection would have been due July 23rd or thereabouts. They
14 have asked us for July 31st, and I don't want to be as
15 presumptuous, Your Honor, to say that I have given them the
16 extension. I know that's up to you, Your Honor, to do so.
17 The Debtor does not have any opposition to an extension in
18 that respect, especially given the fact that we're not going
19 to have a hearing until September, although it's obviously
20 going to be important to be able to move forward with
21 negotiations to understand what their specific position is,
22 and, of course, for a mediator to look at both as well.

23 So, again, it's July 31st, September 10th, and then
24 setting up something with Your Honor, whether it be July 21st
25 or some other date, to walk through Your Honor what that

1 hearing will look like so it could be most efficient.

2 THE COURT: All right. Well, I am agreeable to that
3 set of dates and deadlines. Ms. Patel, did you want to say
4 anything about it?

5 MS. PATEL: No, Your Honor. Mr. Pomerantz hit the
6 salient terms. Yes, July 31st is the agreed response date.
7 And that allows, frankly, parties to -- an opportunity --
8 allows Acis the opportunity to meaningfully brief the issues,
9 as Mr. Pomerantz indicated.

10 It's a 60-page objection. It's very weighty. There's a
11 lot of issues that require due consideration. So we have
12 agreed on that extended date. It's in sufficient time to
13 allow the parties time to read a response and analyze it ahead
14 of a mediation in August.

15 And as Mr. Pomerantz indicated, yes, the parties would
16 like -- effectively, I think he -- he might have referred to
17 it as a status conference. Apologies, my WebEx is cutting in
18 and out a little bit this afternoon. But I think it's
19 probably a status conference/scheduling conference so we can
20 talk about what the trial of the claim objection is going to
21 look like and how it should be structured. And I think, as
22 Mr. Pomerantz alluded to, parties may have very different
23 contexts with respect to that, but we want to just run it by
24 Your Honor, and ultimately it is going to be up to Your Honor
25 with respect to how the trial goes forward.

1 THE COURT: All right. Well, I hope that you all are
2 going to have lots of specific thoughts to share on what the
3 hearing on September 10th would look like, because, holy cow,
4 a \$70 million proof of claim that -- I haven't looked at your
5 proof of claim, but it is presumably based on the 34 counts in
6 the adversary proceeding filed in the Acis case, and maybe
7 then some.

8 So, you know, I don't know how in the world, if we had to
9 have a contested hearing on September 10th, we could get that
10 all done in one day.

11 MR. POMERANTZ: Your Honor, Jeff Pomerantz again.
12 Without getting ahead of ourselves, at least the Debtors' view
13 is there are some threshold legal issues --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- that are raised in the objection.
16 And then there are, of course, a series of issues that are
17 factual-intensive.

18 So what we intend to present is how we think we can
19 efficiently deal with it. Again, it's not our expectation to
20 have a lengthy trial on the entire claim objection. But,
21 again, Ms. Patel and I agreed that what we weren't going to do
22 is turn this into a status conference.

23 THE COURT: Okay.

24 MR. POMERANTZ: To the effect that neither party was
25 ready. I would just leave it at that --

1 THE COURT: Okay.

2 MR. POMERANTZ: -- and say we'd be prepared to talk
3 with you on the 21st.

4 THE COURT: Okay. Well, we -- we'll use that setting
5 partly as a status conference to talk about the September 10th
6 hearing. And, again, I hope you both will have some specific
7 ideas to give me.

8 So, July 21st, we have -- remind me what we have. We are
9 so busy, I haven't looked one week ahead to --

10 MR. POMERANTZ: I believe, and Mr. Morris could
11 correct me if I get ahead of ourselves. I know there's been
12 discussions between us and the Committee on two very -- two,
13 in some sense, the opposite sides of the coin -- discovery
14 motions that are pending before Your Honor. I thought July
15 21st may have been pre-obtained. Again, I could be ahead of
16 my partner there.

17 THE COURT: Okay. That sounds like something that
18 I've set on an expedited basis in the past few days. Mr.
19 Morris, Mr. Clemente -- Mr. Clemente filed a motion, or
20 someone from their shop filed a motion --

21 MR. CLEMENTE: Your Honor? Your Honor?

22 THE COURT: -- during the middle of our last hearing,
23 as I recall. And I was kind of surprised to get out of court
24 and learn about it. But you're saying you haven't gotten
25 information you've been asking for for months, and we also

1 have a motion for a protective order.

2 So, just give me a short -- I'm trying to figure out how
3 much time we're going to be in court next week on the 21st.
4 It's a discovery dispute.

5 MR. POMERANTZ: And I'll --

6 THE COURT: So, Mr. Pomerantz? Go ahead.

7 MR. POMERANTZ: Your Honor, if my colleague, Paige
8 Montgomery, is on, she's in a better position to address that.
9 I don't know if Ms. Montgomery is on.

10 MS. MONTGOMERY: I'm here. I don't -- my WebEx has
11 been cutting in and out, but I think (inaudible) hear me.

12 THE COURT: We can hear you, but we can't --

13 MR. POMERANTZ: Yes, we can.

14 THE COURT: Oh, there you are. We can now see you as
15 well. So, --

16 MS. MONTGOMERY: Yes, Your Honor. I think the amount
17 of time that might be required for the discovery motions is
18 going to be dependent on the number of third-party objections
19 that may or may not be filed tomorrow. We've been in
20 communication with a number of different parties over the last
21 couple of days, trying to resolve those.

22 But I think, if it were just the two motions and the two
23 parties that filed those, John, I don't know if you disagree,
24 but I'd say that's probably an hour. I just don't know how
25 many other people -- I don't know how many other people will

1 want to participate, Your Honor.

2 THE COURT: Okay. Well, it's going to be whatever
3 it's going to be, but we're going to have -- the main event on
4 the 21st is going to be this document discovery contest, and I
5 guess there's a related motion for protective order. But I
6 don't know how much it's going to be about resisting producing
7 documents versus we'll produce documents if we have a
8 protective order.

9 Mr. Morris, can you, in, you know, a few seconds, answer
10 that?

11 MR. MORRIS: Sure. As the Debtor, we're trying to --
12 we've got certain interests to protect. We thought we were in
13 a different place in the middle of June, and, you know, this
14 proposal that the Committee made for the first time on July --
15 on June 26th is really what, from my perspective, prompted us
16 to be here.

17 But we've made a proposal to the Committee. We haven't
18 received a response to that. We're trying to address these
19 issues. But it's not, you know, it's not contentious. I
20 think our interests are legitimate. I think the motion that
21 we made is either for a protective order or for an order
22 directing us to produce the documents. Because as the motion
23 itself sets forth, Your Honor, the Debtor has certain
24 contractual and other obligations to some third parties. We
25 have given notice to those third parties of our -- of our

1 intent to make this motion, because we are kind of between a
2 rock and a hard place. We can't produce the documents
3 without, you know, potentially violating obligations to third
4 parties.

5 And so we'd just ask the Court to be the referee here, to
6 make the decision as to how it gets resolved. And we've given
7 notice to these third parties so that they fairly have an
8 opportunity to be heard, too. And I've been in communication
9 with some of them as well, and I've encouraged them to speak
10 with the Debtor, because ultimately, you know, if the Debtor
11 and the third parties can come to an agreement on the
12 production of the documents, you know, that will resolve, you
13 know, a substantial piece of the issue.

14 MR. POMERANTZ: You mentioned the -- you meant the
15 Committee, John, not the Debtor.

16 MR. MORRIS: I apologize. Yes. Thank you.

17 MR. POMERANTZ: Thank you, John.

18 THE COURT: Okay. Well, I hope you have this largely
19 worked out. Obviously, I hope that. You know, I just
20 remember doing a very quick pass through the Committee's
21 motion, but I do remember them saying they've been trying to
22 get these documents for a very long time, and I think I recall
23 there's pressure building now because I gave you a 90-day
24 deadline to either file a lawsuit regarding the CLO Holdco
25 issues that we had a hearing on a few weeks ago, a couple of

1 weeks ago, or I'm probably going to release the money in the
2 registry of the Court. And so that's part of why you're
3 trying to get these documents as soon as possible, right, Ms.
4 Montgomery?

5 MS. MONTGOMERY: Yes, Your Honor.

6 THE COURT: Okay. All right. You all try to work
7 this out. Okay?

8 MR. CLEMENTE: Thank you.

9 THE COURT: Well, I was partly pressing the issue of
10 what's July 21st going to look like because I think we may
11 carry over the discussion about mediation. We're going to
12 start it right now, but I think we may have to carry it over
13 to the 21st, and I hope finally kind of get a game plan
14 together on that day.

15 So, I wanted Mr. Seery to be available. Mr. Seery is --
16 if you're still there somewhere. You're very important, in my
17 view, to mediation potentially being successful here -- and
18 the whole Board is, for that matter -- because -- well, let me
19 digress a minute.

20 Mediation is going to be very tough here. We all know
21 that mediation tends to be more likely to succeed if we've got
22 face-to-face, in-person participation. And as I said last
23 week, I just don't know how I can order people to be in face-
24 to-face mediation right now. I just -- we've got people
25 spread out, and I think it would be very, very bad to order

1 face-to-face mediation right now.

2 But on the topic of mediation, you know, I've heard some
3 things that, you know, we all know, but I've heard some things
4 from Mr. Seery that are important to stress today. This isn't
5 the type of case that needs to be in bankruptcy for months and
6 months and months and months. Okay? We have the issue of the
7 professional fees accruing, of course, like every case. But
8 we have a company where -- it's a strange fit for bankruptcy,
9 right, this kind of company. And it's so dependent on people
10 to provide value. And people can bolt. You know, people can
11 get weary of the bankruptcy and want to be somewhere else
12 where that taint is not there in the marketplace.

13 The issue of the UCC protocols was brought up by Mr.
14 Seery, and I know that is something that is going to be
15 cumbersome, you know, for this company to be in bankruptcy
16 long-term.

17 So, I want to go to Mr. Seery, and it may be unusual for
18 me to reach out to you and ask this, but I want to hear from
19 you: Do you think mediation is a waste-of-time pipe dream,
20 for lack of a better term? I really want mediation to happen,
21 because I don't know how we quickly get a confirmed plan if we
22 have, well, the voting issue, for one, right? We have to, at
23 a minimum, figure out what is UBS's voting claim. What's its
24 claim for voting purposes? What is Acis's claim for voting
25 purposes? A looming, huge issue in my mind. So I feel like

1 we've got to have mediation. We've got to get a strong shot
2 at getting these two claims liquidated, at least for voting
3 purposes, if not overall.

4 So, is this a pipe dream, Mr. Seery, in your view, that
5 mediation might get to resolution on these two claims? What
6 do you think about it?

7 MR. SEERY: The quick answer, Your Honor, is I don't
8 think it's a pipe dream. I think there's a legitimate shot to
9 move parties together.

10 Let me just say one thing that -- reflecting on what Mr.
11 Clemente said. I want to make clear for the record that, to
12 the extent I misspoke, and it would have been misspeaking, I
13 have no negative implication regarding the sophistication,
14 professionalism, or focus of Sidley --

15 THE COURT: Uh-huh.

16 MR. SEERY: -- or FTI or any of the professionals. I
17 know these folks. They're really good. They're very
18 sophisticated. I have the highest professional and personal
19 respect for them. So, to the extent that I misspoke, I
20 apologize.

21 THE COURT: I don't think you did, and that's not how
22 I heard it --

23 MR. SEERY: Okay.

24 THE COURT: -- and that's certainly not how I meant
25 it. It's just a fact of bankruptcy that it's expensive.

1 Okay? So, --

2 MR. SEERY: Yeah.

3 THE COURT: Right.

4 MR. SEERY: I just wanted that to be clear.

5 I think, particularly with respect, Your Honor, to the
6 Acis and UBS claims, our professionals have done a lot of work
7 on them. Obviously, the professionals for Acis and UBS have
8 done a lot of work on them. There may be things that we know,
9 the perspectives that we have, and perspectives that the other
10 side has, that may not be as well-founded as each side thinks.
11 It could be very valuable to have a third-party objective
12 observer, cajoler, somebody who's strong, to help move the
13 parties off of certain positions.

14 We would like to think, as a Board, Independent Board, and
15 I'd like to think as an Independent Director and now as a CEO,
16 I didn't really have a -- the proverbial dog in that fight for
17 either of those claims. I wasn't -- I'm not a Highland
18 employee. I don't have any animus towards any of the sides.
19 I don't have any history with any of the sides.

20 But I'm realistic that I take a perspective around certain
21 claims and how they're brought, the factual and legal basis
22 for them. And I get a lot of that information from Highland
23 employees, and we use that information to then perform the
24 analysis with our professionals.

25 Likewise, these parties have been involved in, on the

1 other side, very entrenched disputes with Highland and
2 Highland employees. And they've dug in on their positions.

3 Having a third party hear each side and start to move
4 could give us the chance to break it open. I think there's --
5 and there's two really important aspects. One is the claim
6 amount, and then, obviously, the distributions on the claims:
7 How to make those, how much are they, when are they made? We
8 can work on both of those, and I think we need some help
9 moving us both on the claim amounts and on how to make the
10 distributions.

11 We've made progress with Redeemer because even though they
12 had -- they had an arbitration award, so we knew what the
13 outside would be. Now, Redeemer and their attorneys are very
14 good and very creative. They could stretch the outside in
15 those discussions. I won't get into what they are. But we
16 were able to more easily fashion around the particulars of
17 that claim because there was that judgment from the
18 arbitrators that, while it hasn't been entered, gave us much
19 more guidelines as to where we could look. The other claims
20 are much more amorphous, at least at this stage, and having a
21 third party help us develop perhaps closer goal lines would be
22 useful, in my opinion.

23 But, again, I think it's very important that we do it
24 quickly. I think we -- you know, somebody who is focused,
25 strong. I'm sure they'll be highly intelligent and versed in

1 the field, but somebody who's got the opportunity and time to
2 do it. And then, if it's unsuccessful, then, as Mr. Pomerantz
3 and Ms. Patel alluded to, then perhaps we may need some
4 judicial help to move those goal lines a little bit.

5 But I do think that mediation -- and I apologize for the
6 length of my answer -- could be a very helpful way to do it,
7 provided we get there quickly.

8 THE COURT: All right. I guess my other question I
9 wanted your view on is structure. You know, when someone --
10 Mr. Pomerantz, I think -- told me that he or others had
11 reached out to our judges in Houston, Judge Jones and Judge
12 Isgur, my initial reaction -- and, frankly, my continued
13 thought on that -- is they just don't have meaningful time,
14 because I don't think one day of cajoling is going to be
15 enough to get -- you know, you're a billion dollars apart on
16 UBS, right? The Debtor, I guess, thinks zero is the amount of
17 their claim, and UBS thinks it's a billion, and it's been
18 litigated for 11 years. And then I personally know, you know,
19 how Acis feels about its positions.

20 So, anyway, what I'm getting at is structure. I in some
21 ways think what we need here is sort of a master statesman-
22 type person who would spend meaningful time, not just a day or
23 two, but days or even weeks trying to reach a grand
24 compromise.

25 On the other hand, in my experience -- I've never done

1 that in a case as judge. But as a lawyer, I felt like that
2 kind of person can hijack a case, and we don't need that here.
3 We have wonderful professionals, a wonderful Board, a
4 wonderful CEO. We don't need that kind of help, I worry.

5 So, I guess where I'm evolving, you know, we've got the
6 two-sitting-judge option that would be free mediators that
7 could give you a day or two. Maybe. And then we have kind of
8 the master statesman who might be in there for weeks, trying
9 to help you reach a grand compromise.

10 Another option, I think, is one or two mediators who just
11 zero in, you know, on the UBS claim versus -- and the Acis
12 claim. And I have a couple of private mediators in mind that
13 have very good video capabilities to have a sophisticated
14 video mediation.

15 So, all of this rambling to say, Do you think we need to
16 just zero in on Acis and UBS and maybe have one or two people
17 to do formal video mediation with those two parties, or do we
18 need sort of more of a grand pooh-bah, grand compromise-type
19 person?

20 MR. SEERY: My view, Your Honor, is that we should
21 focus on the claims, but they're not just going to be two-
22 party, because we do have other active constituents. I think
23 Redeemer, with their party in interest status, is going to
24 want to be part of it.

25 I think if we can focus on those, we have the

1 professionals to help drive the grander bargain that I've
2 alluded to in some of those discussions we've been having. So
3 they haven't progressed as far as I would like, but they have
4 progressed. We do need the bottom line number for where
5 claims are going to come out. But also that will help frame a
6 little bit as to what parties expect in terms of distributions
7 on their claims.

8 And I think the reason that we had some impetus behind a
9 sitting judge -- frankly, I didn't know that sitting judges
10 couldn't be paid. I think that's -- there should be a
11 standard rate, because we shouldn't take people's time for
12 free in these cases, and I know judges work extremely hard and
13 if they're going to put in extra time, then they should maybe
14 be compensated, but that's a whole different issue.

15 I don't think we should get too hung up on the cost. We
16 are -- the costs of this case are extremely high, and we are,
17 with best intents, sometimes getting ourselves wrapped up in
18 things that should be, I think, more swiftly and economically
19 dealt with and dispatched.

20 So, if we can get a good mediator, and I think the reason
21 folks think about a judge is -- a sitting judge, it's not just
22 the vast experience that folks -- judges like yourself have,
23 Your Honor, and in particular with these issues, but also the
24 requirement that all the participants, notwithstanding the
25 professionals and -- that you see here, the requirement that

1 all the participants know that they're dealing with a sitting
2 judge, there's a certain decorum that's required. But that, I
3 think we get anyway. But there's also a -- there's less
4 willingness to go to the furthest reaches of your argument
5 when you have someone who's on the bench who sees those types
6 of positions taken frequently and can dispatch with them more
7 readily.

8 So, I think there are a number of individuals that I've
9 dealt with in the past who would have the ability, the
10 gravitas, for lack of a better term, to be able to help push
11 the parties in the right direction. And I think it's a matter
12 of finding somebody, as you said, with both the capabilities,
13 which we'll find, but also the capacity in terms of the time
14 to do it. And then, in the video age, maybe some facility in
15 being able to make that happen both rapidly and effectively on
16 screen.

17 THE COURT: Okay.

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
19 And I'd just make a couple of comments.

20 THE COURT: Okay.

21 MR. POMERANTZ: You know, as Mr. Seery said, we were
22 predisposed towards a sitting judge. And while we did share
23 the same concerns about the timing of Judge Jones and Isgur,
24 we understand you've probably been in communication with them,
25 and if that's not going to work, we appreciate it. We want

1 this mediation to be effective and we want someone to spend
2 the time with it. And if you didn't feel that they, you know,
3 could commit to that, we totally appreciate that.

4 We thought long and hard about the people that you
5 identified at the last hearing, former Judge Peck and Sylvia
6 Mayer. We've done our diligence. The Debtor would be willing
7 to mediate before Sylvia Mayer. We think that, based upon our
8 diligence, the people we've spoken to, that she, if she
9 otherwise had the time and the abil... the time to devote to
10 it, that being a former big-firm lawyer in permanent practice
11 now as a mediator, that the Debtor would find her acceptable.

12 THE COURT: All right. Does anyone else wish to
13 comment? Because I have a very positive view of Sylvia Mayer,
14 and certainly her video capabilities, I think, are far and
15 away better than a few other people I've chatted with.

16 MS. PATEL: Your Honor?

17 MR. CLEMENTS: Your Honor? Oh, I'm sorry.

18 MS. PATEL: Go ahead.

19 MR. CLEMENTE: Your Honor, --

20 THE COURT: Not that I would ever, you know, put that
21 ahead of, you know, overall abilities, but it just is an added
22 plus, a huge plus right now during COVID.

23 Go ahead.

24 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of
25 the Committee. Just a couple observations, building a little

1 bit on what Mr. Seery said.

2 We had consensus among the Committee around Judge Isgur
3 and Judge Jones. I think the view, the consensus view -- and,
4 again, I use the word consensus and not unanimity because I
5 want Your Honor to understand that -- is that having a sitting
6 judge, ideally, given the personalities as you've expressed
7 and I think as Mr. Seery has expressed, provides the best
8 possibility for a successful mediation. It may not be that
9 overlord that spends three weeks, but, you know, it is a
10 strong personality that -- not that any of the names that have
11 been raised aren't tremendously to be respected, but that
12 would be respected by all of the parties simply by the fact
13 that they're a sitting judge.

14 With that said, Your Honor, and, again, the speed. Again,
15 I don't have unanimity from the Committee, but there is
16 consensus to see if Sitting Judge Green from the Southern
17 District of New York would have the time and the capability to
18 spend. And I know Your Honor has concerns about the time. I
19 think Judge Isgur and Judge Jones occupy a special place in
20 terms of how busy they are, but at least among the Committee
21 members, there's been discussion that that may be a suitable
22 approach in terms of identifying a mediator and accomplishing
23 the objectives of having a very strong mediation, mediator, on
24 a timely basis, that has the best possibility of success.

25 That being said, Your Honor, based on what Mr. Pomerantz

1 said, if Mr. Green is not acceptable or if Your Honor doesn't
2 wish for us to go in that direction, I do have consensus among
3 the Committee members to move forward with Ms. Mayer as
4 mediator.

5 So, a little -- maybe a little convoluted in my comments
6 there, Your Honor, but the main thrust is I think there is
7 consensus among the Committee to consider a sitting judge, and
8 Judge Green would be someone who would be satisfactory. And
9 if he's not acceptable, or I should say acceptable but not
10 able to do it, Ms. Mayer would be acceptable to the Committee.

11 THE COURT: All right. Well, let me put this out
12 there. I talked on a no-names basis with Ms. Mayer last
13 Friday. And it was actually more in the nature of making
14 inquiries about how an organization she's connected with, the
15 AAA -- you've heard of the American Arbitration Association;
16 they, of course, do mediation -- what their experience and
17 capabilities were with many, many parties and video mediation.
18 And as you might guess, they have a lot of experience already
19 -- you know, a number well in excess of a hundred; I can't
20 remember -- of doing video mediations with many parties and
21 having the different constituencies in this caucus room and
22 that caucus room. And, very importantly, having lots of IT
23 staff to give instructions, to give help, to, you know, tackle
24 technology problems.

25 But in that discussion, I learned that there is a panel

1 that AAA has put together of 12 mediators that have bankruptcy
2 expertise. And, of course, Sylvia Mayer is one of those
3 people. But Retired Bankruptcy Judge Gropper -- is it Groper
4 or Gropper from the Southern District of New York? I always
5 forget which way he pronounces his name. Anyway, he is on
6 that. He is on that panel of 12.

7 Mr. Seery, you're grinning like you want to say something
8 about this.

9 MR. SEERY: No. Only on the Gropper/Groper, because
10 there's a professional that I know that is similarly named,
11 and I believe -- and I believe Judge Groper -- I may have it
12 wrong, but I think it's -- it's Judge Groper and Dan Gropper.
13 But that's the best I --

14 MR. NEIER: It's Dan Groper and Judge Gropper. I
15 actually had a mediation with the two of them when they argued
16 about the pronunciation of their name.

17 THE COURT: Okay. Well, Gropper. So we -- it's
18 Gropper. Okay.

19 A VOICE: Yes.

20 THE COURT: My point was, without -- I've not talked
21 to him at all. And by the way, I haven't personally reached
22 out to Jim Peck, but we'll stop that discussion about him.
23 But after getting off the call with Sylvia Mayer and a couple
24 of other people at the AAA Friday, I put together in my brain,
25 maybe we could have a Sylvia Mayer/Allan Gropper tag team, two

1 mediators. Okay? I don't know how that would affect the
2 cost, but that might be the way to go in such a complex case.
3 You know, maybe they could divvy up among themselves. One
4 would be the primary mediator on Acis, one would be the
5 primary mediator on UBS, but they would both work together.

6 If you all want to think on that, digest that a little,
7 and we, you know, decide definitely next week on the 21st, we
8 could do that. Or we could just all say, yeah, that's a good
9 game plan, and I can get on the phone after this. Or it
10 actually may be tomorrow, because I have a terrible hearing
11 that I've got to prepare for at 9:30 in the morning tomorrow.
12 It may be tomorrow.

13 But do people want to let that soak in a little bit, or
14 shall -- I mean, --

15 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

16 THE COURT: -- frankly, I can order it either way. I
17 can order it. But I just really want to be conciliatory to
18 the parties who are owed the money and have to pay the money,
19 if you want to think on it some.

20 MR. POMERANTZ: Your Honor, it's Jeff Pomerantz.
21 Having my newly-minted CEO on the phone, Mr. Seery, I would
22 ask him, and if he says that it would be okay, then it would
23 be okay with me.

24 MR. SEERY: Be fine with me.

25 THE COURT: Okay.

1 MR. SEERY: Yeah, I think the key is moving forward.
2 I know it's much harder with a Committee, and I respect, you
3 know, Matt Clemente's job there of having to get consensus.
4 But from our perspective, if we were to push it off, you know,
5 on the 21st, Your Honor, we -- we would request you to order
6 something, because I don't want this to delay.

7 THE COURT: Okay.

8 MR. CLUBOK: Your Honor, if I may, speaking for UBS,
9 it's Andrew Clubok. You'll be happy to know I think that
10 we're in agreement with Mr. Seery, and I guess, derivatively,
11 Mr. Pomerantz. We think the most important thing is to move
12 it along quickly, and we trust -- you know, we're familiar
13 with Judge -- or, with Mayer, and whether it's Groper or
14 Gropper, I lost track, but I'm sure he is also going to be
15 equally capable. We do kind of think that two is probably
16 necessary, given, you know, the sort of multi-layer
17 (inaudible).

18 But, really, our position has simply been we'll happily
19 mediate with any, you know, effective mediator as quickly as
20 possible, because we do think the sooner we do that, the
21 sooner we might have a chance to get to yes. So, I'm -- we're
22 prepared to just say yes to the idea.

23 THE COURT: All right. Does anyone else want to
24 comment?

25 MS. PATEL: Your Honor? And can you hear me? I'm

1 sorry. It's --

2 THE COURT: Yes.

3 MS. PATEL: Again, I'm still having WebEx problems.

4 THE COURT: Yes.

5 MS. PATEL: Your Honor, again, for the record, Rakhee
6 Patel.

7 Acis is fine with the proposal, Your Honor. We've been
8 amenable to virtually every proposal, and have been trying to
9 hopefully be helpful with respect to getting this moved to
10 mediation as quickly as possible. We equally think that we
11 should get to mediation as quickly as we can.

12 And, you know, the only -- the only -- and I appreciate
13 Your Honor's contemplativeness on this. As you know, at least
14 in connection with the Acis case, you know, we've been through
15 two unsuccessful mediations so far. So we're really hoping
16 that the third time will go much better than the prior two.

17 So, anyway, this is my very long way of saying we're fine
18 with the proposal and are happy to kind of sign off on it. We
19 don't need until July 21st to respond on that.

20 THE COURT: Okay. Anyone else?

21 (No response.)

22 THE COURT: All right. Well, very good. I'm going
23 to move ahead on this and will confirm to you, hopefully
24 before the 21st, through my courtroom deputy. And, again,
25 given the late hour, I think it's going to be tomorrow before

1 I pick up the phone and reach out to Sylvia Mayer and former
2 Judge Gropper.

3 But, again, I did, in speaking generically with Sylvia
4 Mayer, asking her, Have you ever done like a two-mediator
5 mega-mediation, and she said, Oh, sure. You know, that's --
6 she acted like it was quite common. It's not something that I
7 have seen very often, but I think we'll be in business with
8 this game plan.

9 Because, you know, I know everyone on this call knows
10 this, but maybe not everyone's client knows this: If we don't
11 -- if we don't have a successful mediation of both of these
12 claims, or at least one of these claims, it's going to be
13 years and years and years. I mean, I know it's already been
14 years for UBS, but it will -- it will be many, many more
15 years. And that's not what we're supposed to do in
16 bankruptcy. We're supposed to stop burdensome litigation and
17 solve problems. And I can't imagine your clients want to go
18 on with three or four more years of litigation. But that's
19 exactly what it will be, it's exactly what it will be, many
20 more years of litigation, if we don't have mediated
21 settlements.

22 So, all right.

23 MS. PATEL: Your Honor, if I may very quickly. I
24 just wanted to make sure the Court was aware of something. In
25 the context of mediation and as it relates to Acis's claim,

1 yesterday counsel for Mr. Dondero filed a joinder in the
2 Debtors' objection to Acis's claim. So, again, just thinking
3 about this in the context of mediation, I think, with that
4 joinder, they will be a necessary party. So, going back to
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing
12 further, we'll see you on the 21st. And, again, my courtroom
13 deputy may be reaching out before then if we've got things
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

16 --oOo--

17

18

19

20

CERTIFICATE

21

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

23

24 **/s/ Kathy Rehling**

07/16/2020

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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

In re:	)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054 (SGJ)
)	
Debtor.)	
)	

CERTIFICATE OF SERVICE

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On July 16, 2020, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**:

- **Webex Meeting Invitation to participate electronically in the hearing on Tuesday, July 21, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan**

Furthermore, on July 16, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Instructions for any counsel and parties who wish to participate in the Hearing** [Attached hereto as Exhibit C]
- **Notice of Hearing; to be Held on July 21, 2020 at 1:30 p.m. (Central Time)** [Docket No. 850]
- **Notice of September 17, 2020 Omnibus Hearing Date** [Docket No. 851]
- **Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of Unsecured Creditors' Motion to Compel Production by the Debtor** [Docket No. 852]
- **Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Granting Amended Motion of the Debtors Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Authorizing the Debtor to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services, Nunc Pro Tunc, to March 15, 2020** [Docket No. 853]

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

- **Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020** [Docket No. 854]

Dated: July 20, 2020

/s/ Vincent Trang

Vincent Trang

KCC

222 N Pacific Coast Highway, Suite 300

El Segundo, CA 90245

EXHIBIT A

Exhibit A

Core/2002

Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities	Butler Snow LLP	Attn: Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com;
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com

Exhibit A
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Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com;silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	James T. Bentley	james.bentley@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov

Exhibit A

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Description	CreditorName	CreditorNoticeName	Email
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Bojan Guzina, Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	bguzina@sidley.com; mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Jessica Boelter	jboelter@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

EXHIBIT B

Exhibit B
 Core/2002
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation as Administrative Agent	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq Revenue Accounting Division- Bankruptcy Section	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts		PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW	Carvel State Office Building, 8th Floor		Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue		820 N. French Street	Wilmington	DE	19801

EXHIBIT C

Judge Jernigan - July 21, 2020 at 1:30 p.m. Highland Capital Mgmt 19-34054

Tuesday, Jul 21, 2020 1:30 pm | 3 hours 30 minutes | (UTC-05:00) Central Time (US & Canada)

Meeting number: 160 664 4815

Password: bankruptcy

Agenda: 19-34054 Highland Capital Management

Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor (808)


Debtors Motion for Entry of (I) a Protective Order, or, in the Alternative, (II) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors, Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034 (810)

Status conference

REMINDERS:

1. Attendees should join the Webex hearing via cell phone, tablet, laptop, desktop, or landline telephone at least 10 minutes prior to the hearing time.
2. Attorneys who anticipate giving extensive legal argument and examining witnesses are strongly encouraged to use the video function (with actual witnesses required).
3. Participants who wish to speak during the hearing should choose the "use computer for audio" or "call me" options. If you choose the "call in" option, please enter the Attendee ID when prompted to do so. This will allow the court to see the names of caller participants. This will greatly speed up the appearance phase at the beginning of the hearing because the judge can simply call roll at the start of the hearing instead of having lawyers possibly talk over each other.

 Use computer for audio 

 Call me

 Call in

4. Please, please, please use the mute function when you are not speaking.
5. Remember to state your name for the record each time before speaking.
6. Use headphones whenever possible, especially if using a desktop PC with external speakers.

005154

7. During examination, attorneys and witnesses should use a separate camera and microphone.
8. Attendees may use the "share" button to easily share their screen or document with the group.

When it is time to join the meeting, click the link below:

<https://us-courts.webex.com/us-courts/j.php?MTID=mb808626180b2279e1213eb6079e6e6b0>

Join by phone (Please see #3.)

1-650-479-3207 Call-in toll number (US/Canada)

Access code: 160 664 4815

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) January 9, 2020
) 9:30 a.m. Docket
Debtor.)
) DEBTOR'S MOTION TO COMPROMISE
) CONTROVERSY WITH OFFICIAL
) COMMITTEE OF UNSECURED
) CREDITORS [281]
)

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

APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtors: Ira D. Kharasch
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtors: Melissa S. Hayward
Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.

2 For the Official Committee Matthew A. Clemente
3 of Unsecured Creditors: Dennis M. Twomey
4 SIDLEY AUSTIN, LLP
5 One South Dearborn Street
6 Chicago, IL 60603
7 (312) 853-7539

8 For the Official Committee Penny P. Reid
9 of Unsecured Creditors: SIDLEY AUSTIN, LLP
10 2021 McKinney Avenue, Suite 2000
11 Dallas, TX 75201
12 (214) 981-3413

13 For the Issuer Group: James T. Bentley
14 (Telephonic) SCHULTE ROTH & ZABEL, LLP
15 919 Third Avenue
16 New York, NY 10022
17 (212) 756-2000

18 For the Issuer Group: James E. Bain
19 (Telephonic) JONES WALKER, LLP
20 811 Main Street, Suite 2900
21 Houston, TX 77002
22 (713) 437-1820

23 For Acis Capital Rakhee V. Patel
24 Management GP, LLC: Annmarie Antoinette Chiarello
25 WINSTEAD, P.C.
2728 N. Harwood Street, Suite 500
Dallas, TX 75201
(214) 745-5250

For Redeemer Committee of Terri L. Mascherin
the Highland Crusader JENNER& BLOCK, LLP
Fund: 353 N. Clark Street
(Telephonic) Chicago, IL 60654-3456
(312) 923-2799

For Redeemer Committee of Mark B. Hankin
the Highland Crusader JENNER & BLOCK, LLP
Fund: 919 Third Avenue
(Telephonic) New York, NY 10022-3098
(212) 891-1600

1 APPEARANCES, cont'd.:

2 For the U.S. Trustee: Lisa L. Lambert
3 Meredyth A. Kippes
4 OFFICE OF THE UNITED STATES
5 TRUSTEE
6 1100 Commerce Street, Room 976
7 Dallas, TX 75242
8 (214) 767-8967

9 For Jefferies, LLC: Patrick C. Maxcy
10 (Telephonic) DENTONS US, LLP
11 233 South Wacker Drive, Suite 5900
12 Chicago, IL 60606-6361
13 (312) 876-8000

14 For Patrick Daugherty,
15 Pro Se: Patrick Daugherty

16 Recorded by: Hawaii S. Jeng
17 UNITED STATES BANKRUPTCY COURT
18 1100 Commerce Street, 12th Floor
19 Dallas, TX 75242
20 (214) 753-2006

21 Transcribed by: Kathy Rehling
22 311 Paradise Cove
23 Shady Shores, TX 76208
24 (972) 786-3063

25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 9, 2020 - 9:56 A.M.

2 THE COURT: All right. Let's roll to Highland now.
3 Let's get appearances from lawyers in the courtroom, please.

4 MR. POMERANTZ: Good morning, Your Honor. Jeff
5 Pomerantz; Pachulski Stang Ziehl & Jones. Happy New Year,
6 Your Honor.

7 THE COURT: Happy New Year.

8 MR. POMERANTZ: Here on behalf of the Debtor.

9 THE COURT: Okay. Thank you.

10 MS. HAYWARD: Good morning, Your Honor. Melissa
11 Hayward and Zachery Annable on behalf of the Debtor.

12 THE COURT: Good morning.

13 MS. LAMBERT: Lisa Lambert, and I think Ms. Kippes
14 will be joining me, representing William Neary, the United
15 States Trustee.

16 THE COURT: Thank you.

17 MS. CHIARELLO: Good morning, Your Honor. Annmarie
18 Chiarello and Rakhee Patel here on behalf of Acis Capital
19 Management, LP and Acis Capital Management GP, LLC.

20 THE COURT: Thank you.

21 MR. CLEMENTE: Good morning, Your Honor. Matthew
22 Clemente from Sidley Austin on behalf of the Official
23 Committee of Unsecured Creditors. With me today are my
24 partners Dennis Twomey and Penny Reid.

25 THE COURT: Okay. Good morning. All right. Is that

1 all of the courtroom appearances?

2 All right. We have several people on the phone. I think
3 most of them are just listening in. If you're on the phone,
4 though, and you wish to appear, you may do so at this time.

5 MR. BENTLEY: Good morning, Your Honor. This is
6 James Bentley of Schulte Roth & Zabel. Also on the line is my
7 co-counsel, Joseph Bain of Jones Walker. We represent the
8 Issuers.

9 THE COURT: Okay. Good morning.

10 MS. MASCHERIN: Good morning, Your Honor. This is --

11 MR. MAXCY: Good morning. Patrick --

12 MS. MASCHERIN: Good morning, Your Honor. This is
13 Terri Mascherin of Jenner & Block. Also on the line with me
14 is my partner, Mark Hankin. We represent the Redeemer
15 Committee of the Highland Crusader Fund, which is one of the
16 members of the Unsecured Creditors' Committee.

17 THE COURT: Okay. Good morning.

18 MR. MAXCY: Good morning, Your Honor. This is
19 Patrick Maxcy from Dentons US, LLP on behalf of Jefferies,
20 LLC.

21 THE COURT: Okay. Thank you. All right. Well, I
22 guess that is it for the phone appearances.

23 Mr. Pomerantz, we're -- we have just one matter on the
24 calendar, the motion to compromise with the Committee. I saw
25 two limited objections, and then a U.S. Trustee's broader

1 objection. I'll start with, Do you have any of these
2 objections worked out?

3 MR. POMERANTZ: Yes, we do.

4 THE COURT: Okay.

5 MR. POMERANTZ: We believe we have the Jefferies
6 objection worked out, as well as the objection of the Issuers.
7 And I'll, during the course of my presentation, alert Your
8 Honor to how that's worked out.

9 THE COURT: Okay.

10 MR. POMERANTZ: And then we'll have a revised order
11 that basically addresses each of their concerns, or at least
12 Jefferies' concerns, but the statements on the record for the
13 Issuers' concerns.

14 THE COURT: Okay. Very good.

15 MR. POMERANTZ: Good morning again, Your Honor. Jeff
16 Pomerantz; Pachulski, Stang, Ziehl & Jones. I'm joined in the
17 courtroom by Ira Kharasch, Greg Demo, and John Morris from my
18 office. I would also like to introduce the Court to the
19 proposed new members of the board of directors of Strand
20 Advisors, which is the Debtor's general partner. They're all
21 sitting in the first row behind counsel's well. And that's
22 Mr. James Seery, --

23 THE COURT: Good morning.

24 MR. POMERANTZ: -- Mr. John Dubel, --

25 THE COURT: Good morning.

1 MR. POMERANTZ: -- and the Honorable Russell Nelms.

2 THE COURT: Yes. I've met him before.

3 MR. POMERANTZ: As have we. We thought you would
4 remember him.

5 The resumes of Mr. Seery and Mr. Dubel were attached to
6 the motion filed on December 27th, and those two resumes and
7 the resume of the Honorable Judge Nelms were attached to the
8 reply that was filed last evening. And while Mr. Seery and
9 Mr. Dubel may be new names to Your Honor, we know that you are
10 familiar with Judge Nelms, who sat with you in this district.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: Also in the courtroom, Your Honor, is
13 Brad Sharp, the Debtor's chief restructuring officer from DSI,
14 --

15 THE COURT: Good morning.

16 MR. POMERANTZ: -- and his colleague, Fred Caruso,
17 who spends most of his working hours at the Debtor's Dallas
18 headquarters.

19 THE COURT: Good morning.

20 MR. POMERANTZ: We have the declaration of Mr. Sharp
21 that we would move into evidence at this point in time.

22 THE COURT: All right. I've got a stack of paper.
23 If you have an extra copy for me to use, --

24 MS. HAYWARD: Your Honor, may I approach with the --

25 THE COURT: You may.

1 MS. HAYWARD: Your Honor, it was filed, the
2 declaration was filed. I'm not sure that we have a copy of --

3 MR. POMERANTZ: Your Honor, we will also at the
4 appropriate time during my presentation, I'll bring up to Your
5 -- ask to bring up to Your Honor revisions to the term sheet
6 that was attached to the motion.

7 THE COURT: Okay.

8 MR. POMERANTZ: Copies have been given to Ms. Lambert
9 as well as the Committee.

10 THE COURT: Okay. Very good. All right. Well, what
11 was handed to me was the preliminary term sheet as well as the
12 CVs for the proposed new board members. I don't see the
13 declaration --

14 MR. POMERANTZ: Your Honor, if I may approach, I have
15 a copy.

16 THE COURT: You may. All right. Very good.

17 MR. POMERANTZ: So we would move that declaration
18 into evidence.

19 THE COURT: All right. The Court will admit this.
20 It was filed on the docket at 327, but I will additionally
21 admit it as Exhibit 1 today.

22 (Debtor's Exhibit 1 is received into evidence.)

23 THE COURT: At some point in time, I want to give
24 parties the opportunity to cross-examine Mr. Sharp. Do you
25 want to do that now, or shall we hear an opening statement?

1 MR. POMERANTZ: However Your Honor prefers. I mean,
2 maybe it's helpful to hear argument first, and then, before
3 the Trustee --

4 THE COURT: I think I'd like to hear opening
5 statements and then we'll --

6 MR. POMERANTZ: Thank you.

7 THE COURT: -- make the opportunity available. Okay.

8 OPENING STATEMENT ON BEHALF OF THE DEBTOR

9 MR. POMERANTZ: Your Honor, by way of background, we
10 appeared before Your Honor on December 6th and December 19th.
11 And during each of those hearings, we described for the Court
12 negotiations that were underway between the Committee and the
13 Debtor which, if successful, would have -- would eliminate the
14 need for contested and uncertain and costly litigation
15 regarding the appointment of a Chapter 11 trustee and really
16 put this case in a position where the Debtor and the Committee
17 would be able to work together constructively towards
18 negotiation of a plan.

19 As a result of our hearing on December 19th, Your Honor
20 entered a scheduling order that set deadlines for either the
21 filing of a motion to approve a settlement, or alternatively,
22 the filing of one or more motions for the appointment of a
23 trustee.

24 As set forth and required by the scheduling order, we
25 filed our motion on December 27th, and in that motion we

1 sought approval of a term sheet and ancillary documents
2 between the Debtor and the Committee, which I'll describe
3 shortly.

4 While a couple of items had not yet been agreed to at the
5 time the motion was filed, I'm pleased to report that over the
6 last couple of days we've been able to reach closure with the
7 Committee with respect to those items, and there would also be
8 some modifications to the term sheet, which I'll go through in
9 a few moments.

10 The motion, Your Honor, seeks approval of the term sheet,
11 which accomplishes a variety of things that, again, will allow
12 the Debtor and the Committee to put the acrimony that has
13 existed in this case for the first three months behind us and
14 allow us to focus on productive matters. In the last 24
15 hours, as I mentioned, there have been a few changes to the
16 term sheet that I will describe. And I would like to hand up
17 Your Honor a redline and a clean copy of the revised term
18 sheet and exhibits. May I approach?

19 THE COURT: All right. You may. Do you have an
20 extra for the law clerk? Okay. Thank you.

21 (Pause.)

22 MR. POMERANTZ: Your Honor, the term sheet does a
23 number of things. Would you like me to give Your Honor some
24 time to look through the redlines?

25 THE COURT: No. You may proceed.

1 MR. POMERANTZ: Okay. The term sheet does a number
2 of things. The first thing the term sheet does is appointment
3 of an independent board at Strand Advisors. Strand Advisors
4 is the GP of the Debtor. The Debtor is an LP. The Debtor
5 previously had filed a motion to approve the retention of Brad
6 Sharp as the chief restructuring officer, and that initial
7 agreement and motion contain details regarding the scope of
8 Mr. Sharp's authority and the scope of what the Debtor could
9 do without Mr. Sharp's prior consent.

10 The Committee raised concerns that the structure was not
11 sufficient to ensure that decisions were being made for the
12 Debtor only in their best interests and without any
13 inappropriate influence from Mr. Dondero.

14 To address the Committee's concerns, a focal point of the
15 settlement was the Debtor's agreement to appoint an
16 independent board of directors at Strand who would be
17 responsible for managing the operations of the Debtor.

18 Over the last few weeks, a principal aspect of the
19 negotiations between the Committee and the Debtor have been
20 discussing who should the independent directors be.
21 Conceptually, the Debtor and the Committee both agreed that
22 the board should include, first, a person with significant
23 industry experience in which the Debtor operates -- hedge
24 funds, money management; second, a person with deep
25 restructuring experience from the financial advisor side; and

1 third, a person with some sort of judicial or governmental
2 experience.

3 The Debtor originally provided the Committee with three
4 proposed candidates. The Committee considered the Debtor's
5 request, but instead presented the Debtor with four different
6 candidates and asked the Debtor to choose from those four.
7 The Debtors interviewed each of those people and ultimately
8 agreed on Messrs. Dubel and Seery, who were each on the
9 original list.

10 As of the deadline to file the motion on December 27th,
11 the Committee and the Debtor had still not agreed on the
12 identity of the third board member, but the parties were
13 hopeful that an agreement could ultimately be reached and we
14 decided to go ahead and file the motion. As I'm sure Your
15 Honor saw in the motion, it was contingent upon everyone
16 agreeing on the third board member.

17 Ultimately, the Debtor and the Committee both agreed that
18 Mr. Dubel and Mr. Seery could identify the third board member
19 out of a pool of four people: Two of the people originally
20 requested by the Committee and two people identified by the
21 Debtor. This week and over the weekend, Mr. Seery and Mr.
22 Dubel interviewed each of the four candidates, and ultimately
23 decided on the appointment of Judge Nelms as the third
24 independent board member.

25 The board, as it will be constituted going forward, in the

1 Debtor's opinion, consists of three exceptional individuals
2 who are independent of the Debtor, have a sterling reputation
3 in the community, and bring to the Debtor a variety of the
4 skills that we believe, and believe the Committee agrees,
5 gives the Debtor the best opportunity to achieve a consensual
6 restructuring and otherwise manage the affairs of the Debtor
7 in the best interests of the stakeholders.

8 It is contemplated that the Debtor will continue to retain
9 the services of DSI as the chief restructuring officer, and
10 ultimately the board will determine if it's important to
11 retain a CEO going forward.

12 The second thing that the term sheet does, Your Honor, was
13 the removal of Mr. Dondero as an officer and director of
14 Strand and eliminate all of his control over decision-making
15 of the Debtor. The Debtor recognized early on in this case
16 that Mr. Dondero's continuing role with the Debtor in a
17 position of authority made the Committee extremely uneasy.
18 Accordingly, the term sheet provides for him removing himself
19 as an officer and director of Strand and that he would no
20 longer be in a position of control at the Debtor.

21 However, since the filing of the motion, over the last
22 several days, concerns have been raised about whether removing
23 Mr. Dondero from the business entirely would have unintended
24 consequences. I believe I may have mentioned at prior
25 hearings that, because of his involvement as a portfolio

1 manager under various contracts with third parties, that there
2 could be adverse economic consequences to the Debtor if he
3 didn't stay in some role.

4 As a result of discussions over the last 24 hours, the
5 Committee has agreed and the Debtor agreed to modify the term
6 sheet to allow the new board to decide whether to retain Mr.
7 Dondero in his capacity as a portfolio manager, provided,
8 however, that he will not receive any compensation and he will
9 agree to resign if requested by the board.

10 In any event, he will have no decision-making control at
11 all and he will report to the independent board.

12 The corporate governance documents that create the new
13 independent board of Strand also provide that Mr. Dondero, as
14 the owner of the equity in Strand, may not replace the board
15 without the Committee consent or court order.

16 The third major aspect of the term sheet, Your Honor, was
17 the agreement on operating protocols, and it really relates to
18 the ground rules for the Debtor's operations going forward and
19 when notice to the Committee is required of certain
20 transactions that would otherwise be in the ordinary course of
21 business.

22 Importantly, Your Honor, we are not trying to modify the
23 Bankruptcy Code in any way. Any transactions out of the
24 ordinary course of business would still be subject to Your
25 Honor's approval.

1 However, in this case, as we indicated in the initial
2 motion we filed when the case was in Delaware, whether or not
3 something is ordinary is not straightforward in a case such as
4 the Debtor's, given the nature of the Debtor's operations. So
5 we thought it was important to establish ground rules up
6 front, and establishing those ground rules was one of the
7 things we did initially in the case. We had opposition from
8 the Committee, and we've worked through the opposition and
9 ultimately arrived at the operating protocols that are
10 attached to the term sheet.

11 They have been slightly modified in nonmaterial ways in
12 the documents I handed up to Your Honor.

13 They were subject to substantial negotiations between the
14 Debtor and the Committee, and we also expect them to be the
15 subject of future discussions with the Committee and the
16 independent board after the independent board takes -- takes
17 place. Takes over.

18 Two parties in interest, Your Honor, Jefferies and a group
19 of Issuers, the CLOs, have filed comments to the term sheet,
20 which I'll describe in a few moments.

21 THE COURT: Okay.

22 MR. POMERANTZ: The next aspect, Your Honor, of the
23 term sheet was the provision of standing to the Creditors'
24 Committee to pursue certain insider claims.

25 During the negotiations, the Committee requested immediate

1 standing to investigate and potentially prosecute claims
2 against insiders to the extent those insiders were not
3 employed by the Debtor. Granting standing at this stage of
4 the case was a difficult give by the Debtor. However, the
5 Committee impressed upon the Debtor the importance of them
6 being able to control the filing of any actions against the
7 insiders, and the Debtor decided to accede to the Committee's
8 request.

9 It still remains the Debtor's hope that, with the creation
10 of the independent board, that the Debtor, the Committee, and
11 any insiders who might be subject to any such claims will be
12 able to come together and negotiate a consensual resolution of
13 this case. While all parties, I'm sure, can and know how to
14 litigate, hopefully they will agree that a negotiated outcome
15 is better than a litigated outcome.

16 The next aspect of the term sheet, Your Honor, was the
17 document preservation protocols, and it provides for certain
18 procedures to be put in place to address the Committee's
19 concerns about document preservation. They are contained in
20 an exhibit to the term sheet. Again, slight nonmaterial
21 modifications were made in what I handed up to Your Honor.
22 And essentially they provide also for the Committee's access
23 to privileged documents to aid in their investigation and
24 prosecution of claims to which they are granted standing, and
25 also sets forth a procedure to be followed to address concerns

1 if the information is subject to shared privileges by several
2 entities.

3 As I mentioned, Your Honor, three parties have filed
4 responses to the motion. The first is Jefferies. Jefferies
5 is a secured creditor of the Debtor with respect to its margin
6 account held at Jefferies, and also has a similar account held
7 by a non-debtor affiliate. They have asked for clarification
8 that, one, nothing in the protocols or the motion affects its
9 rights under the underlying agreements or the safe harbor
10 provisions of the Bankruptcy Code entitling them to enforce
11 their remedies; and two, that the Debtors will not trade in
12 the prime account without Jefferies' consent, and if that
13 consent is sought and not obtained, only subject to court
14 order.

15 The Debtor has agreed to include language in the order to
16 address Jefferies' concern, and at the conclusion of my
17 presentation I'll submit to Your Honor an order and a redline
18 containing that language.

19 THE COURT: Okay.

20 MR. POMERANTZ: The second objection -- or not
21 objection, Your Honor -- the second statement was filed by a
22 group of Issuers of CLO obligations.

23 THE COURT: Uh-huh.

24 MR. POMERANTZ: And they were concerned that certain
25 aspects of the operating protocols which require notice to the

1 Committee prior to the Debtor being able to take certain
2 actions could conflict with the provisions of the underlying
3 agreements which might require the Debtor to take action on a
4 more expedited basis.

5 Neither the Issuers or the Debtor are aware of any
6 potential transactions that will arise prior to the next
7 hearing before Your Honor on January 21st. We understand --
8 we were not party to these discussions between the Committee
9 and the Issuers yesterday, but we understand the way it's been
10 resolved is that the Issuers will withdraw their objection as
11 it relates to going forward today, subject to being able to
12 come back to the Court on the 21st and revisit the issue if
13 additional changes are not made acceptable to them to resolve
14 their issues and concerns.

15 THE COURT: Okay.

16 MR. POMERANTZ: But I think all parties acknowledge
17 that over the next 12 days this is a theoretical issue rather
18 than a practical issue.

19 THE COURT: Okay.

20 MR. POMERANTZ: This brings us, Your Honor, to the
21 United States Trustee's opposition, which is really the only
22 true objection to the motion that has been filed. No creditor
23 has filed an objection, no investor has filed an objection,
24 and no governmental agency -- which the U.S. Trustee in its
25 objection purports to be pursuing their interests -- has filed

1 an objection, either.

2 As Your Honor probably recalls, at the December 19th
3 hearing the Trustee indicated its intent to oppose any
4 agreement between the Debtor and the Committee that would
5 involve corporate governance and to file its own motion for
6 the appointment of the trustee. That motion is currently
7 scheduled for hearing on January 21st. We had asked the U.S.
8 Trustee to reserve judgment on the Committee's and Debtor's
9 agreement until after we had come to an agreement and after we
10 had presented it to the Trustee, in hopes that it would
11 address their concerns. However, as the Court told us -- as
12 the U.S. Trustee told us and Your Honor at the December 19th
13 hearing, there was nothing short of appointment of a trustee
14 that would satisfy the Trustee.

15 The comments really didn't make sense to us, and I believe
16 it perplexed Your Honor, but here we are.

17 At its core, Your Honor, the U.S. Trustee's objection is
18 really a request that the Court substitute its business
19 judgment for that of the Debtor and the Committee, the
20 Committee who represents the substantial majority of all
21 claims in this case, when both of them have decided that
22 agreeing to certain changes in corporate governance, among
23 other things, is preferable to the uncertain, costly, and
24 time-consuming litigation over a trustee, and also the
25 uncertainty, even if a trustee was appointed, on how the case

1 would be administered.

2 To the contrary, under the corporate governance proposal,
3 we have three highly-qualified individuals who are poised to
4 take over management of the Debtor, and each bring with them
5 various skills that one trustee would not have.

6 The Trustee has filed its motion for appointment of a
7 trustee, and I'm sure on the 21st will argue that the Code
8 requires it. However, that's not the issue before Your Honor
9 today. It's not whether a trustee is appropriate. It's
10 whether the motion and the term sheet is a sound exercise of
11 the Debtor's business judgment under Section 363, and,
12 importantly, a reasonable compromise of the pending disputes
13 between the Debtor and the Committee.

14 The Trustee's objection raises three general points, none
15 of which have any merit. First, the Trustee argues that there
16 is a lack of disclosure of significant matters. The first
17 aspect that the Trustee raises to, or points to, is the
18 absence of identification of the third board member and the
19 absence of disclosure of the compensation that the board
20 members will receive, which will be backstopped by the Debtor.

21 As I described before, Your Honor, the identity of the
22 third member of the board was a fluid process which was only
23 resolved earlier this week, and the Debtor did not believe
24 that it was appropriate to reach agreement on director
25 compensation until all board members could provide input.

1 Last night, we filed a reply to the Trustee's objection in
2 which we disclosed the identity of the third board member, and
3 we'll also disclose the proposed compensation to be provided
4 to them, which essentially is as follows. Each member of the
5 board will receive \$60,000 a month for the first three months
6 of the case, \$50,000 a month for the next three months of the
7 case, and the presumption thereafter would be \$30,000 a month.
8 However, people recognize that this case will look a lot
9 differently six months from now, and while the presumption is
10 \$30,000, the Debtor, the independent board members, and the
11 Committee will sit down, see how the case looks, and decide
12 whether any modifications are appropriate.

13 The amount of compensation, which at first blush may seem
14 significant, really reflects the significant amount of work
15 that the Debtor, the Committee, and the independent directors
16 anticipate will be required from them not only to get up to
17 speed about the case, but to effectively manage this complex
18 Debtor's business operations. The directors have heard from
19 the Debtor and the Committee of all the issues, of all the
20 concerns, and this is not an enviable task that they are
21 undertaking. The compensation they are being provided thus
22 far we believe is appropriate under the circumstances and
23 commensurate with the work that they are going to be expected
24 to complete.

25 If they are successful and they are able to achieve a

1 consensual restructuring here, the million and a half or so
2 that will be spent on them will be best million and a half
3 dollars I think spent in this case.

4 Your Honor, we also have updated corporate governance
5 documents which --

6 (Pause.)

7 MR. POMERANTZ: Your Honor, may I approach with the
8 updated corporate governance documents?

9 THE COURT: You may. Okay.

10 MR. POMERANTZ: As I will discuss in a moment, Your
11 Honor, there is really no need for the Court to approve the
12 corporate governance documents, as they have been executed by
13 Strand, which is not a debtor before this Court. However,
14 there are a couple of matters in those documents that I want
15 to bring to the Court's attention that do impact on the
16 Debtor.

17 THE COURT: Okay.

18 MR. POMERANTZ: First, as is typical for board
19 members, Strand has agreed to indemnify the independent
20 directors to the full extent permitted by law. The
21 independent directors have requested that the Debtors backstop
22 Strand's agreement, and the Debtor and the Committee agree,
23 and the documents so provide.

24 Strand has also committed to obtain directors and officers
25 coverage for the independent directors. It has been located,

1 it's in the process of being finalized and bound, and the
2 Debtor will pay the cost of that coverage.

3 The independent directors have also asked for language in
4 the order approving the settlement that requires a party
5 seeking to assert a claim against the independent directors
6 relating to their role as an independent director to
7 demonstrate to this Court that a claim is colorable before
8 filing the claim and providing the Court with jurisdiction
9 over any such claim. This is language that's similar in other
10 similar types of cases.

11 THE COURT: Uh-huh.

12 MR. POMERANTZ: That will be reflected in the order.

13 Next, the Trustee objects to the failure of the Debtor to
14 identify who the potential chief executive officer of the
15 Debtor will be. And essentially, she's arguing that you have
16 to identify that CEO now; it has to be subject to court
17 approval. However, there's no requirement that any company
18 retain a CEO. It's not a corporate law requirement. And the
19 fact that the board reserves the right to retain a CEO in the
20 future is consistent with corporate law and is not a basis to
21 deny the motion. And in any event, normally, the retention of
22 a CEO is not a subject that is brought to the Court's
23 attention for Court approval.

24 So the lack of any clarity over the identity of the CEO is
25 a reflection of the fact that this independent board does not

1 know if a CEO is required. They will come in, they are going
2 to interview all the employees, they're going to sit down with
3 the CRO, they're going to sit down with counsel, they're going
4 to sit down with the Committee, and ultimately they will
5 decide if a CEO is to be retained. And if a CEO is to be
6 retained, they will go through the process of identifying who
7 that CEO is. But again, it's not a reason to deny the motion.

8 The Trustee has also argued that because the Committee is
9 not granted standing to pursue claims against current
10 employees, as opposed to former employees, that there might be
11 some statute of limitations concerns with respect to claims
12 against those employees. The argument doesn't really make
13 sense to us. In the standard case, the Debtor retains causes
14 of action. And the Committee can investigate causes of
15 action. And at some point during the case, a Committee could
16 come in and could demand that the Debtor prosecute them, and
17 if the Debtor unreasonably refuses, could seek standing before
18 the Court.

19 In this case, the Debtors agreed up front that the
20 Committee has the standing to prosecute certain claims against
21 insiders that are not employees of the Debtor, which obviates
22 the need for standing. So we've gone one step more. But the
23 Trustee is arguing that that leaves a void for the claims that
24 are not subject to the agreement on standing.

25 However, the term sheet provides that the board is going

1 to make determinations on what employees should remain, what
2 employees should not remain. To the extent the board
3 terminates any employees and there are claims against them,
4 then basically the Committee will have the ability to bring
5 those claims.

6 To the extent that those people aren't terminated, we have
7 no doubt that the Committee, in the course of its
8 investigation, will determine whether claims should be brought
9 against those people, and at some point in time may ask the
10 Debtor to prosecute those claims or ultimately seek standing.

11 In any event, these things are not being swept under the
12 rug. There's no real legitimate concern that there's any
13 statute of limitations issue that will prevent those claims
14 from being prosecuted.

15 I am very much aware and have no doubt that the Committee
16 is going to be laser-focused on claims, and any concern that
17 statute of limitations is going to lapse I think is not well-
18 taken.

19 The Trustee next argues that the Court does not have the
20 jurisdiction to implement the corporate governance matters,
21 and for that reason the motion should be denied. They -- she
22 argues that because Strand is not a debtor, that the Court has
23 no authority to appoint --

24 MS. LAMBERT: Your Honor, I object. The United
25 States Trustee is a he. I am not the United States Trustee,

1 and the attacks *ad hominem* are inappropriate.

2 THE COURT: All right. Well, clarification, the U.S.
3 Trustee is the guy in Washington. But anyway, you may
4 proceed.

5 MR. POMERANTZ: I apologize to Ms. Lambert.

6 MS. LAMBERT: Actually, he's downstairs right now.
7 Bill Neary.

8 MR. POMERANTZ: I apologize to --

9 THE COURT: Oh, well, I thought you meant the big guy
10 in Washington. But anyway, you may proceed.

11 MR. POMERANTZ: I apologize to Ms. Lambert and no
12 offense was meant.

13 THE COURT: Okay.

14 MR. POMERANTZ: So, the U.S. Trustee argues that
15 because Strand is not a debtor that the Court has no authority
16 to appointment the independent directors and limit Mr.
17 Dondero's right to remove the independent directors. The
18 Debtor is not really seeking authority to appoint -- to have
19 court authority for the appointment of the directors at
20 Strand. Again, as I mentioned before, that authority exists
21 outside of bankruptcy. Strand is not a debtor. Strand could
22 appoint anyone it wants to carry out its responsibility as the
23 general partner of the Debtor, and it's exercising its
24 corporate authority to do so by installing a board at Strand.

25 Nor is the Debtor seeking court authority for Strand to

1 enter into the corporate governance documents. Other than the
2 couple of items I mentioned before, Your Honor, Strand can
3 enter into these documents without authority from this Court.
4 The only court authority that was required: Debtor to
5 backstop the indemnification obligations, Debtor to pay
6 compensation to the board members, and Debtor to pay for the
7 D&O policy.

8 With respect to the Court's right to limit Mr. Dondero's
9 ability to terminate the independent directors, the term sheet
10 contemplates the Court approving a stipulation which limits
11 Mr. Dondero's ability to terminate the independent directors,
12 and if he does in fact seek to terminate the appointment of
13 the independent directors, he would be in violation of court
14 order. But even more importantly, Your Honor, if he decided
15 to terminate the independent directors without the Committee's
16 consent and without the Debtor's consent, I wouldn't imagine
17 it would take anyone very long to come back before Your Honor
18 and ask Your Honor to very quickly appoint a trustee.

19 Accordingly, Your Honor, I think the argument of lack of
20 jurisdiction over Strand is a red herring and should be
21 denied.

22 Lastly, Your Honor, the Trustee makes a curious argument
23 that a trustee is needed to protect all investors and
24 governmental authorities. The Trustee argues that this case
25 demands transparency which can only be accomplished by a

1 Chapter 11 trustee.

2 One thing I think the Debtor and the Committee and the
3 U.S. Trustee will agree on, this case does demand
4 transparency. And we believe we've installed a corporate
5 governance structure, an operating protocol structure, a
6 document preservation structure, that does just that, provides
7 transparency that this Debtor has not been subject to and
8 which is quite different from the case that was before Your
9 Honor before.

10 So we believe that what the Debtor and the Committee have
11 done is not only in the interests of the Debtor, the
12 creditors, but investors and all governmental entities.

13 And no investor or governmental entity has had any
14 concerns or any problems with what is being done. They
15 haven't filed any objection. The U.S. Trustee apparently is
16 proceeding by proxy asserting those interests.

17 Second, nothing in the term sheet or any of the documents
18 limits the rights of investors or of governmental entities to
19 seek a trustee, to seek documents, or to do anything they
20 would -- that they would be entitled to do under the
21 Bankruptcy Code.

22 In any event, Your Honor, the fact that the Trustee
23 believes that a trustee is more appropriate, again, is an
24 argument that they can make at the January 21st hearing. It's
25 not a basis for denial of this motion.

1 In conclusion, Your Honor, the only economic stakeholders
2 in this case believe that proceeding with the transactions
3 contemplated by the term sheet is in the best interest of the
4 estate, will maximize their ability to achieve a consensual
5 restructuring, and move this case through the system as
6 quickly and efficiently as possible. The term sheet is a
7 valid exercise of the Debtor's business judgment under 363 and
8 an appropriate compromise of controversy, and the Trustee's
9 objections are really nothing more than a rehash of its
10 request for an appointment of a trustee.

11 For all these reasons, Your Honor, we request that the
12 Court overrule the U.S. Trustee's objection and approve the
13 motion.

14 THE COURT: All right. Well, before I hear from our
15 objectors, is there any friendly commentary? Mr. Clemente, I
16 figured you might want to address this.

17 MR. CLEMENTE: I do, Your Honor. And good morning.

18 THE COURT: Good morning.

19 OPENING STATEMENT ON BEHALF OF THE OFFICIAL COMMITTEE OF
20 UNSECURED CREDITORS

21 MR. CLEMENTE: For the record, Matthew Clemente from
22 Sidley Austin on behalf of the Official committee of Unsecured
23 Creditors. I do have some comments that I would like to make,
24 Your Honor, some, so please bear with me. I will try and be
25 brief.

1 THE COURT: Okay.

2 MR. CLEMENTE: I think as late as 1:00 o'clock in the
3 morning I wasn't sure that I would be in front of you with
4 this settlement fully in place in a manner that was
5 satisfactory to my Committee. As I mentioned to you in my
6 prior appearances in front of you, every provision was
7 important to the Committee, and they all work together. As
8 Your Honor can imagine, there was a lot of negotiation that
9 took place, including late in the day and early morning, to
10 come to that conclusion.

11 Some comments on our perspective as a committee, Your
12 Honor. As an initial matter, we were absolutely not okay with
13 the governance structure that was in place when the petition
14 was filed. As we detailed in our objections to the CRO motion
15 and the protocol motion back when the case was in Delaware,
16 the Committee has very real and identifiable concerns about
17 the Debtor's ability to dispatch its fiduciary duty. And the
18 Committee very seriously contemplated moving for a Chapter 11
19 trustee daily. That conversation is something that the
20 Committee continues to -- continued to engage in, Your Honor.
21 So it's something that they considered very, very carefully.

22 That was the lens through which the Committee was
23 approaching negotiations over the settlement agreement and the
24 independent director structure. That's how they viewed it.
25 That's the backdrop against which they came to it.

1 The Committee had two primary goals that it had sought to
2 achieve with the settlement agreement. The first was to
3 ensure that Mr. Dondero does not remain in a position of
4 management authority or control in any fashion with the
5 Debtor. Goal number two was to ensure that the value of the
6 Debtor's estate is preserved and maximized. Those two goals
7 needed to work together.

8 The Committee believes that the carefully-crafted
9 settlement agreement achieves these objectives in a manner
10 that is more beneficial to the estate than a potential Chapter
11 trustee and a related fight over its appointment at this
12 time.

13 The lynchpin of the settlement, Your Honor, is the
14 appointment of the three independent directors. And as Mr.
15 Pomerantz outlined for you, that was the subject of intense
16 discussion, negotiation, debate among the Committee and with
17 the Debtor. But we believe that Mr. Seery, Mr. Dubel, and
18 Judge Nelms are fully independent, highly qualified, and bring
19 relevant and complementary skillsets to this board. Mr.
20 Pomerantz referred to that, but we believe that the three
21 directors all bring unique talents and attributes that will
22 allow them to function effectively as a board and provide the
23 appropriate oversight and direction that we believe is
24 necessary here.

25 However, regardless of how independent or highly skilled

1 they may be, they would be of no use if they weren't bestowed
2 with the appropriate power. So that was another point that
3 was very important to the Committee, and we believe that the
4 settlement does this. The settlement makes clear that the
5 independent directors are granted exclusive control over the
6 Debtor, including over all employees. That's absolutely
7 critical to the Committee.

8 The settlement also provides that the CRO and the Debtor's
9 professionals shall report and serve at the direction of the
10 independent directors. That is also very important.

11 And let me be clear, Your Honor, because I think you may
12 have raised this at a prior hearing: This is not a board that
13 we expect to work at 50,000 feet, as demonstrated by the
14 compensation structure that Mr. Pomerantz outlined for you.
15 This will be a board that's hands-on, members of which will be
16 on the ground, at the Debtor, with a strong presence and a
17 clear message of who is in charge. That is critical for this
18 Committee.

19 Additionally, as Mr. Pomerantz mentioned, the new board,
20 in consultation with the Committee, is empowered to determine
21 whether a CEO should be retained. It's possible that one of
22 the independent directors could be that CEO, Your Honor. But
23 we wanted to make clear that that was an important part of the
24 structure, should the board determine that that was the way it
25 wanted to go.

1 So, in sum, Your Honor, we believe that the independent
2 board has the clear authority and the skillset that's
3 necessary to take control and will be actively and
4 aggressively doing so.

5 But let me be clear, rest assured, Your Honor, this is not
6 going to be a board that answers to the Committee in that
7 sense. I think that we will all be moving together
8 directionally, but it's very possible that I will be in front
9 of Your Honor arguing against a decision that this independent
10 board made. So I want to assure Your Honor that although the
11 Committee was very active and in fact picked Mr. Seery and Mr.
12 Dubel, and then Mr. Pomerantz detailed how the third director
13 was picked, we understand who their duty -- what their duty is
14 and we also understand that they're not a rubberstamp for the
15 Committee, Your Honor. And so I wanted to make that point to
16 you to assure Your Honor that that's not the structure that's
17 being set up here, nor are they the type of individuals that
18 would allow that to happen.

19 Additionally, Your Honor, the settlement grants the
20 Committee standing to pursue estate causes of action against
21 the related parties. That was very important to us, Your
22 Honor.

23 And in addition to that, the settlement provides the
24 Committee access to privileged documents and sets forth a
25 discovery protocol that will assist the Committee in its

1 investigation.

2 The Committee strongly believes that Mr. Dondero's
3 repeated past behavior, that there are many questionable
4 transactions that will need to be thoroughly investigated and
5 pursued. And so having those causes of action with the
6 economic party in interest related to those causes of action,
7 the Committee and its constituencies, we thought was very
8 important and very critical.

9 Granting standing, Your Honor, as I mentioned, avoids any
10 issues regarding who will be controlling those claims.

11 I'll touch on this in a moment, but Mr. Pomerantz talked
12 about Mr. Dondero remaining in name as an employee. Let me
13 assure Your Honor that that is not a backdoor around the
14 Committee's ability to investigate and immediately pursue
15 claims against him should that be the course that we choose to
16 take. So he's not part of that carve-out for current
17 employees. That's not at all happening. That would never be
18 something that my Committee would be comfortable with. So I
19 wanted to make clear to Your Honor that that's not something
20 that's happening with sort of this late edition of Mr.
21 Dondero's continuing on in name as an employee.

22 Your Honor, the settlement also lays out a very detailed
23 set of operating protocols which we do believe are appropriate
24 and provides the Committee with transparency, which I've been
25 expressing to Your Honor we've needed since this case has

1 started.

2 Finally, as we point out in our reply and as would always
3 be the case, should new facts develop or the situation demand
4 it, the Committee reserves the right to seek a Chapter 11
5 trustee, as does any other party in interest, to the extent it
6 may be appropriate at that time.

7 In short, Your Honor, the Committee very carefully and
8 diligently weighed the independent director option versus the
9 Chapter 11 trustee option. The Committee had very clear goals
10 in mind, as I expressed to you, and determined that those
11 goals could be achieved in a value-maximizing manner through
12 the independent director structure.

13 The negotiations were very intense, and it was only after
14 the Committee determined that each piece of the settlement was
15 to its satisfaction did it ultimately conclude that the
16 settlement maximizes value for all stakeholders while at the
17 same time protecting those stakeholders from exposure to
18 continuing insider dealing, breaches of duty, and
19 mismanagement.

20 Therefore, the Committee believes approving the settlement
21 is in the best interest of the estate, and therefore it
22 believes it should be approved.

23 I do want to offer a word about Mr. Dondero continuing as
24 an employee. As Your Honor was aware, the term sheet as
25 originally filed provided that Mr. Dondero would, among other

1 things, resign as an employee of the Debtor. Mid to late
2 afternoon yesterday, Mr. Ellington called me and said that the
3 Debtor was now of the view that Mr. Dondero should remain on
4 as an employee in that capacity for the benefit of the estate.
5 The Committee was, very appropriately, very skeptical of this,
6 as well as the sort of last-minute offer, last-minute, you
7 know, addition, however you want to view it -- some might
8 argue retrade -- that Mr. Dondero was to leave the Debtor,
9 period. That was our view. That was the way that the term
10 sheet was initially structured. And under no circumstances
11 was the Committee going to allow Mr. Dondero to have any
12 control over this Debtor.

13 Your Honor, the Committee doesn't know what, if any, the
14 consequences are of removing Mr. Dondero as an employee. And
15 we're not conceding at all that there are any value lost by
16 removing Mr. Dondero as an employee. Instead, what we're
17 doing is we're staying true to our structure with the
18 independent directors and we're empowering them to decide.
19 And so it's consistent with, you know, our goals of having the
20 independent director structure in place. And under the
21 settlement as now constructed, even with this late addition or
22 adjustment, Mr. Dondero would remain as an employee in name
23 only, subject in all respects to the direction, oversight, and
24 removal by the independent board. And importantly, should
25 they decide to do that, Mr. Dondero shall resign. And he

1 shall receive no compensation.

2 So he will not be in control of this Debtor. The
3 independent directors are. And he's not going to be empowered
4 to make decisions on behalf of the Debtor. Instead, we're
5 empowering our independent directors to make those decisions
6 and determinations on behalf of the Debtor.

7 I wanted -- I thought it was important that I provide that
8 perspective to Your Honor, as this is something that came in
9 at a very, very late hour.

10 Overall, Your Honor, for the reasons I have stated and the
11 reasons in our reply, the Committee, as a fiduciary of all
12 creditors in this case, believes that the settlement is in the
13 best interests of the creditors and should be approved. And
14 at this time, it's the better alternative than the cost,
15 delay, and uncertainty resulting from a Chapter 11 trustee
16 fight and the potential appointment of a Chapter 11 trustee.

17 It is time to put the governance issues behind us, Your
18 Honor, and to move forward to determine how to maximize value
19 for the creditors and how to get them paid.

20 Your Honor, just regarding the specific resolutions of
21 objections that Mr. Pomerantz put on the record, I agree with
22 how Mr. Pomerantz characterized those, and the Committee is
23 supportive of those resolutions as well.

24 Those are all my remarks, Your Honor, but I am happy to
25 answer any questions or address any concerns Your Honor may

1 have.

2 THE COURT: Okay. Two follow-up questions. First, I
3 know I asked you this at a previous hearing and you told me,
4 but your Committee, as I recall, is very well constituted.
5 Just remind me of the members.

6 MR. CLEMENTE: Yes.

7 THE COURT: You have a representative from the
8 Redeemer Committee, --

9 MR. CLEMENTE: Yes, Your Honor.

10 THE COURT: -- which is a \$140 million or so
11 arbitration award?

12 MR. CLEMENTE: Yes, Your Honor.

13 THE COURT: Okay. And who else is on the Committee?
14 Is an Acis representative?

15 MR. CLEMENTE: Acis is on the Committee, Your Honor.

16 THE COURT: Uh-huh.

17 MR. CLEMENTE: Meta-e Discovery, who is a trade
18 vendor of the Debtor, is on the Committee. And UBS
19 Securities, who is also --

20 THE COURT: Okay.

21 MR. CLEMENTE: -- a litigation claimant, is on the
22 Committee.

23 It was the U.S. Trustee in Delaware's parting gift to me
24 to name a four-member committee, Your Honor.

25 (Laughter.)

1 THE COURT: Okay. Makes it awkward at times. And
2 then back to the Dondero subject.

3 MR. CLEMENTE: Yes, Your Honor.

4 THE COURT: I mean, again, both Mr. Pomerantz and you
5 clarified that the proposal now is the new board will decide
6 if he stays on, Mr. Pomerantz said as a portfolio manager.

7 MR. CLEMENTE: That is correct, Your Honor.

8 THE COURT: Am I -- I mean, I'm hearing that
9 correctly?

10 MR. CLEMENTE: That is correct, Your Honor.

11 THE COURT: So, right now, whatever officer positions
12 he has, he's technically not resigning? Or --

13 MR. CLEMENTE: He is resigning as an officer of the
14 company, Your Honor.

15 THE COURT: Okay. He's resigning? So the board will
16 just decide, is he going to be a portfolio manager or some --
17 whatever the employee title is?

18 MR. CLEMENTE: Or they could decide that he's not
19 necessary.

20 THE COURT: Or not necessary? In any event, no
21 compensation?

22 MR. CLEMENTE: That is correct, Your Honor.

23 THE COURT: Okay.

24 MR. CLEMENTE: And as you can see, the term sheet
25 provides that Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor as well. That was
2 language that was added last night as well.

3 THE COURT: All right. So they're going to make the
4 decision, does he help preserve value by staying in some
5 capacity or not?

6 MR. CLEMENTE: That is correct, Your Honor.

7 THE COURT: Okay.

8 MR. CLEMENTE: That, cutting through it, that is the
9 way that ultimately the Committee views it.

10 THE COURT: Okay.

11 MR. CLEMENTE: And if there's an opportunity -- and
12 I'm not conceding that there is. I'm not conceding that he
13 preserves any value.

14 THE COURT: Uh-huh.

15 MR. CLEMENTE: But we wanted to give the option to
16 our independent directors to make that determination. Because
17 if there's an opportunity to preserve value, that's what we're
18 trying to achieve.

19 THE COURT: Okay. And I don't even know if you've
20 thought through this. Would there be some sort of notice
21 filed on record in the case if --

22 MR. CLEMENTE: If --

23 THE COURT: -- if the decision is made to --

24 MR. CLEMENTE: To -- to --

25 THE COURT: -- hire him or keep him as a portfolio

1 manager?

2 MR. CLEMENTE: So, I think the default under the term
3 sheet, as revised, is he stays in that capacity in terms of
4 name. The independent directors will -- they're subject to
5 his control and direction, and they could decide to remove
6 him.

7 THE COURT: Uh-huh.

8 MR. CLEMENTE: Perhaps if Your Honor --

9 THE COURT: Okay.

10 MR. CLEMENTE: We could provide notice if they make
11 the determination to remove him, but I think the default is
12 that, you know, he's in that -- he's remaining as that
13 employee name currently. So that's the current default.

14 THE COURT: Okay. All right. Thank you.

15 MR. CLEMENTE: Thank you very much, Your Honor.

16 THE COURT: Well, Ms. Patel, you're getting up so
17 I'll hear -- I don't know who all has been in the loop over
18 this overnight development.

19 OPENING STATEMENT ON BEHALF OF ACIS CAPITAL MANAGEMENT

20 MS. PATEL: Your Honor, Acis has been in the loop as
21 a member of the Committee. And I will be very brief with
22 respect to Acis's individual comments. And I just want to be
23 clear: Obviously, I'm here as counsel for Acis, and so this
24 is Acis's individual position. Mr. Clemente aptly and very
25 ably handled the Committee's overall position with respect to

1 this.

2 But Your Honor, I just want to, on behalf of Acis, make
3 sure that, because of these developments, that's really -- I
4 really had hoped to have zero role today, but I want to make
5 sure that we're -- Acis is on record with respect to our
6 position. And obviously, given Your Honor's knowledge and
7 oversight of the long history of Acis's bankruptcy case and
8 seeing some of the events that transpired there, I'm sure that
9 this will all, against that backdrop, make an awful lot of
10 sense.

11 But, you know, it's this continued role for Mr. Dondero
12 that is of concern. You know, this issue even being raised
13 within like the last 48 hours by Mr. Ellington, the timing of
14 it just creates an issue. I mean, did this -- how could this
15 possibly have come out of left field when this is such a huge
16 part of what the Debtor does in its ordinary course of
17 business, is serve as a portfolio manager, and these are
18 contracts that have been negotiated, generally speaking,
19 internally by Highland. So the fact that if Mr. Dondero were
20 to exit the structure and there would be some potential
21 ramifications to that, I've got to wonder how much of a
22 surprise could that really have been to Highland folks.

23 But I just wanted to highlight, in connection with the
24 term sheet -- this is the preliminary term sheet that was
25 handed up Your Honor, and I believe Your Honor has a redline

1 version of it as well --

2 THE COURT: Uh-huh.

3 MS. PATEL: -- on Page 2, with respect to the role of
4 Mr. James Dondero, there's various provisions in there. And I
5 guess I would be remiss, Your Honor, if I didn't say, at least
6 out of the gate, Acis obviously supports the implementation of
7 this independent board of directors. We believe all the
8 candidates are very capable and are -- we put our reliance
9 upon them.

10 Obviously, we don't concede any issues. We'll see what
11 we're going to do. But certainly, for the time being, we do
12 support the entry of this agreement of the settlement -- or,
13 I'm sorry, approval of the settlement agreement by the Court
14 that lets the independent board be put into place.

15 But what I'll focus the Court on, on Page 2 under the role
16 of Mr. James Dondero, it goes through various provisions as to
17 what he'll resign to -- positions he'll resign from and that
18 he will remain as an employee of the Debtor, including
19 maintaining his title as portfolio manager for all funds and
20 investment vehicles for which he currently holds that title.
21 And then it goes on to provide as to who he'll report to and
22 how he will be governed, which includes by the independent
23 board, he will receive no compensation, and that he will be
24 subject to at all times the supervision, direction, and
25 authority of the independent directors.

1 Again, we have faith that the independent directors will
2 oversee this and will govern his role accordingly. However,
3 given Acis's history with how transactions have transpired at
4 Highland, we remain highly cautious with respect to what
5 happens next.

6 And to that end, Your Honor, the very last sentence there
7 on Page 2, "Mr. Dondero shall not cause any related entity to
8 terminate any agreements with the Debtor," is a key provision
9 of this that keeps Acis, as a Committee member, on board with
10 this agreement. I wanted to highlight that and note that, in
11 the last less than 48 hours, in the last 12 hours, or maybe a
12 little bit more than that, call it 18 to be safe, that's where
13 -- that's a provision that's been -- that's where we've ended
14 up. It's all of these issues have been going at lightning
15 speed, but I did want to just, for the record and so everybody
16 is clear, that is an important piece of this agreement to --
17 for Acis.

18 And as Your Honor knows, this Debtor, Highland, is wont to
19 try to terminate agreements and to try -- in an attempt to try
20 and transfer valuable contracts away and valuable revenue
21 stream away from an entity to an alternate entity. And that's
22 really the heart of our concern, Your Honor.

23 So, with that, I just wanted to be clear and be on record
24 as to Acis's position. Thank you.

25 THE COURT: Thank you. All right.

1 MR. POMERANTZ: Your Honor, if I briefly may respond
2 to the issues with Mr. Dondero while they are fresh in Your
3 Honor's mind?

4 THE COURT: Okay. Okay.

5 MR. POMERANTZ: Your Honor, look, we appreciate the
6 timing of this coming to the attention of the Committee as
7 being less than optimal. As Your Honor can appreciate, this
8 case that's been filed three months ago, a lot of people are
9 looking very carefully at what's happening to the Debtor.
10 Investors are looking. There was a transfer of venue. There
11 have been a lot of reports about potential trustee motions.
12 And we believe a lot of parties are waiting to see the outcome
13 of this hearing and the trustee hearing to determine whether
14 they will determine to continue to do business with the
15 Debtor.

16 It's not only an issue of contractual rights. It's also
17 an issue of whether investors feel comfortable on who is
18 managing, who is managing their investments.

19 This issue of Mr. Dondero's continuing role has been
20 something that at the Debtor we've continued to grapple with
21 over the last several weeks. It's always been our thought
22 that we should do nothing that would unduly harm the company
23 from an economic standpoint. I think the Committee shares
24 that. That if it's determined by an independent board -- and
25 don't take current Debtor professionals, don't take current

1 Debtor employees' word for it -- but if they determine that
2 there's an economic benefit by keeping him on to preserve
3 material revenue stream, they should be able to make that
4 determination. I think that's really at the core here. And I
5 think the Committee got ultimately comfortable with it because
6 it will be an independent board, the majority of the members
7 identified and chosen by them and accepted by the Debtor.

8 So, again, we apologize to the parties and the Court for
9 bringing this on late. It wasn't my intent to come here and
10 present modified versions of the term sheet that hadn't been
11 filed. But that's where we are, and that's why it has come
12 up, and that's why it's an extremely important issue, because
13 preserving whatever revenue we can for the Debtor is
14 important.

15 Now, at the end of the day, the board may either decide
16 that he doesn't preserve the revenue, or the negatives from
17 keeping him involved with the company outweigh any benefits.
18 And that's a decision they will have to make, and it'll be
19 their province to make. So I just wanted to give Your Honor
20 that perspective.

21 THE COURT: Okay.

22 MR. DAUGHERTY: Your Honor, may I approach?

23 THE COURT: Mr. Daugherty? You may.

24 OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

25 MR. DAUGHERTY: I apologize. I was not planning to

1 address the Court at all today. I would have had my attorney
2 here for it. But I just ask a little bit of indulgence to
3 represent myself *pro se* for this issue.

4 This is the first I've heard that Mr. Dondero would stay
5 with the company. I think it's an awful idea. There's a
6 litany of reasons for that.

7 By the way, I'm completely in support of this -- of this
8 board that's been chosen. I have every confidence that
9 they'll be able to make good decisions eventually. But
10 they're stepping into this thing new. Obviously, I've been
11 through this in your court with *Acis* and other matters, and I
12 have deep, deep concerns about Mr. Dondero continuing in that
13 role, simply because of the influence it has on the rest of
14 the organization and the message that it sends, both
15 internally and externally, of where the company goes from
16 here.

17 So I just wanted to let you know my thoughts. I wasn't
18 planning to make them. I haven't filed anything. But that's
19 where I stand.

20 THE COURT: All right. Thank you, Mr. Daugherty.

21 All right. Before we hear from the U.S. Trustee, who I
22 know is going to have a lot to say, let me just circle back
23 briefly to Jefferies counsel and the CLO Issuers' counsel.
24 You heard the representations of Mr. Pomerantz earlier about,
25 well, first, in the case of Jefferies, that the Debtor has

1 agreed to language to address your concerns. Do you want to
2 weigh in on that and confirm that you're content that you're
3 going to have language to work out your concerns?

4 OPENING STATEMENT ON BEHALF OF JEFFERIES, LLC

5 MR. MAXCY: Thank you, Your Honor. Patrick Maxcy for
6 Jefferies.

7 No, I don't have anything additional to add to what Mr.
8 Pomerantz said. The language that we have worked out will
9 speak for itself and will be included in the order.

10 THE COURT: All right. Thank you.

11 And counsel for the CLO and CDO Issuers, do you confirm
12 that you would be in agreement to basically withdraw your
13 objections for now, but perhaps come back and make argument on
14 the 21st if you have not worked out language with the
15 Committee that you think works?

16 OPENING STATEMENT ON BEHALF OF THE ISSUER GROUP

17 MR. BENTLEY: James Bentley from Schulte Roth for the
18 Issuers, Your Honor.

19 I believe the deal that Mr. Pomerantz and Mr. Clemente
20 and I have discussed was adjourning our objection to the 21st,
21 --

22 THE COURT: Okay.

23 MR. BENTLEY: -- rather than withdrawing it.

24 THE COURT: Okay.

25 MR. BENTLEY: We're -- we believe we will be able to

1 come up with language acceptable to the Issuers, but we would
2 like to reserve the right to come back to the Court on our
3 limited objection if we cannot, given that our issue is really
4 -- really only relates to the 25 Issuers we represent.

5 THE COURT: Okay. Thank you very much.

6 All right. Ms. Lambert?

7 OPENING STATEMENT ON BEHALF OF THE UNITED STATES TRUSTEE

8 MS. LAMBERT: May it please the Court. As the Debtor
9 acknowledges, the motion that they are settling, the issues
10 that they are settling, are the issues that the U.S. Trustee
11 has raised in his motion to appoint a Chapter 11 trustee. As
12 a matter of statutory construction, Section 1104 does not
13 contemplate settlement of these issues. 1112, in contrast,
14 has a provision that if the Court finds and determines that
15 there is cause to convert a case, there are unusual
16 circumstances and the Court can find a reasonable
17 justification for the wrongdoing or the error that occurred
18 that led to cause -- for example, administrative defects in
19 1112, not filing monthly operating reports -- and that can be
20 cured. The Court has to make a finding that those -- these
21 defects can be cured within a reasonable period of time.
22 Section 1104 contains no analog to his.

23 If the Court finds cause to direct the appointment of a
24 Chapter 11 trustee, then the Court is supposed to appoint a
25 Chapter 11 trustee. And *Trailer Ferry* and *AWECO* both stand

1 for the proposition that, on today's day, we're supposed to
2 have evidence about what the management issues are that led to
3 this agreement. There's been no evidence. There's been no
4 allegations in the motion for settlement. And so the U.S.
5 Trustee is prepared to put that evidence on.

6 And Your Honor, one aspect of this is that the arbitration
7 agreement has been sealed. And there are people on the phone.
8 I don't know who's on the phone. The U.S. Trustee has opposed
9 the sealing of the arbitration -- not arbitration agreement,
10 the arbitration judgment -- has opposed the sealing of that.
11 And then they referenced a confidentiality order as the basis
12 to seal it. The U.S. Trustee also opposed that
13 confidentiality motion, which was filed subsequently to the
14 motion to seal.

15 There is no confidentiality order. An interim order was
16 entered sealing the arbitration award, but -- and the U.S.
17 Trustee has honored that by redacting all of the pleadings
18 that we filed relating to that, but it's important today for
19 the U.S. Trustee to be able to discuss it in argument, and it
20 is here -- and we have it prepared to be admitted into an
21 exhibit.

22 So, to proceed with my argument, Your Honor, I need some
23 clarification about what I can say.

24 THE COURT: You want clarification from me on what
25 you can say?

1 MS. LAMBERT: Well, I mean, either that or we need to
2 clear the room.

3 THE COURT: I've read the arbitration award.

4 MS. LAMBERT: Right.

5 THE COURT: It's in my brain.

6 MS. LAMBERT: Right. Okay.

7 THE COURT: Uh-huh.

8 MS. LAMBERT: And so one of the arguments here today
9 is that the U.S. Trustee is representing the SEC and
10 representing other Government agencies and things. No.
11 Obviously, that is not the U.S. Trustee --

12 THE COURT: I didn't hear that.

13 MS. LAMBERT: Okay. The -- one of the positions has
14 been, in the papers, is, well, that we don't have standing to
15 raise their issues. And that's true.

16 THE COURT: Okay.

17 MS. LAMBERT: But the problem is that the U.S.
18 Trustee has been constrained from discussing those issues with
19 the SEC. The arbitration award is very relevant to the SEC's
20 oversight. I anticipate the evidence today will be that the
21 SEC, after the financial crisis of 2008, imposed restrictions
22 on this Debtor on breach of fiduciary duty issues. I
23 anticipate that the arbitration findings would be very
24 relevant to whether those issues are ongoing or not.

25 THE COURT: Okay. Let me weigh in. I view the legal

1 standard that this Court has to weigh today as being: Is the
2 Debtor proposing something that is reflective of sound
3 business judgment, reasonable business judgment? And to the
4 extent this is a compromise of controversies with the
5 Committee, is this fair and equitable and in the best interest
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this
8 maybe doesn't even need Court approval. But to the extent
9 there are aspects of this that are appropriate to seek Court
10 approval on, you know, this is my task. I have to look at
11 what's presented, and is this reflective of sound business
12 judgment? Is this fair and equitable? Is it in the best
13 interest?

14 So, assuming there are tons of bad facts here reflected in
15 the arbitration award, reflected in other evidence, bad facts
16 that might justify a trustee, a Chapter 11 trustee, is this
17 nevertheless, what's proposed today, a reasonable compromise
18 of, you know, the trustee arguments the Committee could make
19 or, you know, is this a reasonable framework for going
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you
22 know, do I need to look at the arbitration award? Do we need
23 to have evidence of all of that? I can assume that there are
24 terrible facts out there that might justify a trustee, but I'm
25 looking at what's proposed. Is this a fair and equitable way

1 to resolve the disputes? Is it sound business judgment?
2 Frankly, is it a pragmatic solution here to preserve value?
3 So that's the legal standard I have in my mind here.

4 MS. LAMBERT: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. LAMBERT: The standard is whether it is fair and
7 equitable to resolve the issues in the Chapter 11 trustee
8 motion, and it is the U.S. Trustee's position that they are
9 not resolved by this. And how are they not resolved? Number
10 one, they're not resolved because the problems that led to the
11 breach of fiduciary duty issues and findings are more
12 pervasive, both based on this Court' finding in the *Acis* case
13 and in the arbitration court's finding in Mr. Dondero. Other
14 officers are implicated.

15 THE COURT: But how --

16 MS. LAMBERT: Other employees are implicated.

17 THE COURT: Okay. I feel like maybe we're talking at
18 each other, not getting each other. I've got a proposed
19 solution here to totally change the playing field, if you
20 will. Bring in incredibly qualified people to --

21 MS. LAMBERT: Those people --

22 THE COURT: -- to change out the, you know, the
23 person that you say breached fiduciary duties, the, you know,
24 mismanagement, whatever bad labels we have here, but bring in
25 a clean slate.

1 MS. LAMBERT: No, Your Honor, because employees
2 remain at the Debtor who are problematic. The board that is
3 appointed owes a fiduciary duty to whom? Strand. Dondero.
4 He's still the board -- he is the sole stockholder. Yes. In
5 addition, --

6 THE COURT: And they won't be taking directions from
7 him.

8 MS. LAMBERT: In addition, --

9 THE COURT: The term sheet is they won't be taking
10 directions from him.

11 MS. LAMBERT: Your Honor, there is no evidence before
12 the Court today that Mr. Dondero has entered a stipulation.
13 This is part of the problem. This continues --

14 THE COURT: Well, if he doesn't, in five minutes the
15 Committee is going to be filing their trustee motion, right?

16 MS. LAMBERT: Well, then we haven't saved any time or
17 any money. This is the whole issue. They have to put on
18 evidence that this is a resolution of issues. We're going to
19 have the motion to appoint a Chapter 11 trustee either way.

20 THE COURT: All right. Well, we did have the
21 evidence of Mr. Sharp. Would you like to cross-examine him at
22 this point?

23 MS. LAMBERT: Your Honor, I would like to put the
24 U.S. Trustee's exhibits into evidence and then cross-examine
25 him.

1 THE COURT: All right. Your exhibits?

2 MR. POMERANTZ: Your Honor, we would object to any
3 exhibits. The Trustee has not filed an exhibit list.

4 MS. LAMBERT: Your Honor, this matter was set on an
5 expedited basis and the Court does not require exhibit and
6 witnesses lists when a matter is filed on an expedited basis.
7 It's impossible, when a response is filed at 5:00 o'clock the
8 evening before and supplements are made in the morning of the
9 hearing, for the U.S. Trustee to put on a witness and exhibit
10 list.

11 MR. POMERANTZ: Your Honor, we were here on the 19th.
12 We set out a briefing schedule. And maybe it was a couple
13 days short of normal notice. Ms. Lambert agreed to issue
14 discovery by a certain date, and she at no point said that
15 because there was 13 days' notice as opposed to longer period
16 that she couldn't comply and provide a witness list.

17 We provided with a witness list. We provided an exhibit
18 list. The Trustee's effort and attempt to now submit exhibits
19 and rely on maybe there were some changes this morning, that
20 just doesn't cut it, and that's not fair and that's not due
21 process.

22 THE COURT: Okay. I sustain the objection. The
23 exhibits won't be admitted since there was no exhibit list.

24 MS. LAMBERT: Your Honor, I do not have an exhibit
25 list from them. And they --

1 THE COURT: Well, they haven't offered any.

2 MS. LAMBERT: They put on new exhibits this morning.
3 The exhibits that the U.S. Trustee has are all things that
4 they are familiar with.

5 THE COURT: Let me back up. They didn't introduce
6 any exhibits. They --

7 MS. LAMBERT: But they introduced the declaration,
8 they introduced the supplements to the agreement that were
9 drafted this morning, they've introduced the new corporate
10 resolutions, all of which they handed me this morning.

11 THE COURT: All right. Well, the declaration of Mr.
12 Sharp, it's two pages long. It is, I don't think, any kind of
13 surprise information.

14 MS. LAMBERT: Your Honor, --

15 THE COURT: I'll allow you to cross-examine him.

16 MS. LAMBERT: -- the U.S. Trustee's exhibits are no
17 surprise, either. The *Acis* opinion is no surprise to anybody
18 in this courtroom.

19 THE COURT: Okay. Well, what are your exhibits?

20 MS. LAMBERT: The --

21 THE COURT: I probably should have asked.

22 MS. LAMBERT: The exhibits are the *Acis* opinion, the
23 arbitration awards or the determinations, both the partial and
24 the final, and the SEC's original judgment. There are four
25 exhibits.

1 THE COURT: All right. Well, Mr. Pomerantz, what
2 would you like to say? One of them I have obviously seen,
3 since I wrote it.

4 MR. POMERANTZ: Yes, you've written it. You wrote
5 it.

6 (Laughter.)

7 MR. POMERANTZ: Your Honor, I think this is a tempest
8 in a teapot. The Committee's brief that it filed in
9 opposition to the CRO retention, the ordinary course
10 protocols, and the cash management motion had a litany of
11 description of the Redeemer litigation, of the SEC litigation.
12 There are plenty of bad facts out here. Okay? We have an
13 interim order to seal. There was no hearing set today for our
14 final hearing.

15 The Trustee has objected to that order, and I suspect that
16 will be heard on the 21st. We don't think it's appropriate to
17 introduce the Redeemer award. However, we have read the
18 redacted provisions or portion of the U.S. Trustee's brief,
19 and we have no problem if the U.S. Trustee limits its argument
20 to the redacted portion in presenting that to the Court.

21 In other words, we don't believe that the few sentences
22 that were redacted need to be redacted.

23 However, to the extent they intend to submit the
24 arbitration award, we don't think it's appropriate, we don't
25 think it's necessary, we think Your Honor hit it right, that

1 the issues today are not whether there's mismanagement at the
2 Debtor. Okay?

3 The U.S. Trustee's position is, notwithstanding this new
4 structure, it doesn't work. She has a trustee motion on. She
5 can argue on the 21st that it doesn't work. Nobody is
6 prejudicing her right to do so.

7 We think it's prejudicial, it's unfair, it's procedurally
8 improper to submit the Redeemer arbitration award and to allow
9 the Trustee to do anything other than describe exactly what
10 she has in her pleading.

11 THE COURT: Okay. I sustain the objection to those
12 exhibits. Again, I've read them. They're in my brain. I
13 wrote one of them. But I will allow you to cross-examine Mr.
14 Sharp. So, Mr. Sharp, would you please come to the witness
15 stand? Please raise your right hand.

16 BRADLEY SHARP, DEBTOR'S WITNESS, SWORN

17 THE COURT: All right. Please be seated.

18 MS. LAMBERT: To clarify, Your Honor, has the Court
19 considered the *Acis* opinion and the arbitration opinions based
20 on judicial notice?

21 THE COURT: And we're doing a lot of hair-splitting
22 here. I'm just letting you know I -- the facts are in my
23 brain. You can't extract them from my brain. Okay?

24 MS. LAMBERT: Okay.

25 THE COURT: I know there have been a lot of bad

Sharp - Cross

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1 things, arguably bad things. But to me, the real issue here
2 today is whether this framework that has been heavily
3 negotiated with the Committee reflects reasonable business
4 judgment on the part of the Debtor, is a fair and equitable
5 resolution of the Committee's, you know, arguments in favor of
6 a trustee, and whether this makes, you know, sense going
7 forward to allow this Debtor to go forward without a trustee.
8 Okay?

9 So I really think that the evidence you want is not
10 terribly relevant. We technically aren't here on a trustee
11 motion today. We're here on whether a new board and the
12 terms, the protocols suggested, reflect reasonable business
13 judgment and reflect a fair compromise of arguments the
14 Committee has raised. All right? So I don't know how much
15 more clear I can make that. I guess the technical answer is
16 I'm not taking judicial notice of those things for purposes of
17 today.

18 All right. You may proceed.

19 CROSS-EXAMINATION

20 BY MS. LAMBERT:

21 Q Mr. Strand, can you state your name for --

22 A Sorry. Bradley Sharp, S-H-A-R-P.

23 Q Sharp. Mr. -- oh, sorry.

24 A No relation to Strand.

25 Q All right. Strand is the general partner of the Debtor,

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1 right?

2 A That is correct.

3 Q And there has been no change in the board of the Debtor
4 except Mr. Dondero's resignation; is that right?

5 A Well, it's a little different, because the -- Strand is
6 the general partner of the Debtor.

7 Q Yes.

8 A So the new board will be acting and in control of the
9 Debtor.

10 Q Yes. And there is -- Strand is a non-debtor, correct?

11 A That is correct.

12 Q And the stock of the non-debtor, Strand, is owned by
13 Dondero?

14 A Mr. Dondero owns Strand Advisors.

15 Q In its entirety?

16 A That is correct.

17 Q So the board will owe a fiduciary duty to Mr. -- to Mr.
18 Dondero?

19 A The board will have a fiduciary duty to the Debtor and to
20 Strand Advisors.

21 Q All right.

22 A Their duty is to the entity.

23 Q The -- Strand, as the general partner, as an entity, owes
24 a fiduciary duty to the Debtor, right?

25 MR. MORRIS: Objection to the extent it calls for a

1 legal conclusion.

2 THE COURT: Sustained.

3 BY MS. LAMBERT:

4 Q Do you know?

5 A As a lay person. I'm not an attorney.

6 Q Okay. So you don't know what the fiduciary roles of the
7 board will be; is that right?

8 A Well, the fiduciary board will be acting -- you know,
9 looking at it from my perspective as the chief restructuring
10 officer, the new board will be acting as the Debtor-in-
11 Possession. And, you know, they will be directing the Debtor-
12 in-Possession. You know, the Debtor-in-Possession has duties
13 to all parties in interest, and they will be directing the
14 Debtor. They will be directing me as CRO.

15 Q And, in addition, there may be a CEO, right?

16 A That is contemplated, correct.

17 Q It is contemplated? It --

18 A It is -- it is an option that the board has if they think
19 a CEO is necessary.

20 Q But you don't know whether a CEO is going to be appointed
21 or not?

22 A That's up to the board.

23 Q And you don't know what the compensation for that
24 individual might be, right?

25 A Again, that's up to the board.

1 Q Mr. Dondero is going to be an employee of the Debtor,
2 right?

3 A That's correct.

4 Q And Mr. Dondero started the Debtor, correct?

5 A I believe so.

6 Q And he also started Strand, right?

7 A I believe that's correct.

8 Q And he is also in control of a number of entities that the
9 Debtor does business with; is that right?

10 A That is correct.

11 Q Mr. Ellington is going to remain on with the Debtor?

12 A That -- Mr. Ellington is an employee. All employees are
13 now subject to the board.

14 Q Okay. And Mr. Ellington's role with the Debtor is what?

15 A He is general counsel with the Debtor.

16 Q And there are other in-house attorneys with the Debtor,
17 right?

18 A That's correct.

19 Q And who else is there currently?

20 A I don't have the list in front of me, you know, the
21 employee list. As of now, because obviously this is still --
22 hasn't been effected, so the board has not made any decisions
23 with respect to any employees going forward.

24 Q And the CFO remains the same?

25 A Yeah, that is, again, as of now. I don't know what the

1 board is going to do, if anything.

2 Q Do you have any anticipation of what you would recommend
3 to the board regarding the CFO?

4 A You know, I have many recommendations I have not made to
5 the board yet. I just met them this morning.

6 Q Are you aware that historically this Court has found that
7 the lawyers provided bad advice to the Debtor?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Sustained.

10 BY MS. LAMBERT:

11 Q Do you have any knowledge about whether there have been
12 findings that the law firm gave erroneous advice to the
13 Debtor? Or, I mean, the in-house counsel gave erroneous
14 advice.

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Sustained.

17 MS. LAMBERT: Your Honor, I'm asking for the
18 foundation.

19 THE COURT: Rephrase.

20 BY MS. LAMBERT:

21 Q Do you -- are you aware of any concerns about the in-house
22 counsel?

23 A Yes.

24 Q What is your knowledge?

25 A I have read the rulings from this Court.

1 Q And what is your understanding of those rulings?

2 A I don't recall specifically. I read that early on when I
3 was first employed. But there have been concerns with respect
4 to, you know, management of the Debtor.

5 Q As the CRO, have you made any recommendations to change
6 employees to date?

7 A As of now, I don't have a -- the board. You know, the
8 board has just been employed. We have not made
9 recommendations up to this point. We are still -- obviously,
10 have been evaluating our position and what needs to happen. I
11 think it's important for the Debtor at this time, a little
12 stability would be a good thing for -- until we develop the
13 direction going forward.

14 Q Are you familiar with the compensation terms for the
15 directors?

16 A Yes.

17 Q And the directors are employees of Strand but paid by the
18 Debtor; is that right?

19 A Oh, I'm not sure they're employees of Strand, but they are
20 paid by the Debtor, their compensation. That's correct.

21 Q And yet the compensation is technically through Strand,
22 right?

23 A They -- they are. They have to act through the general
24 partner of the Debtor because of the corporate structure.

25 Q One of the portions of the agreement is that the Committee

1 acquires litigation claims. Are you familiar with that?

2 A I am.

3 Q Have you parsed out which litigation claims those might be
4 at this point?

5 A I think the agreement says they have litigation claims
6 against insiders and related parties. So I don't know what
7 those individual claims are. I don't know what exists.

8 Q Are you aware that the Committee obtains the attorney-
9 client privilege and work product privilege?

10 A Yeah. Subject to the terms of those agreements, correct.

11 Q Have you gone through the documents and determined which
12 ones would fall on -- which attorney files would fall on which
13 side?

14 A Not as of yet.

15 Q Have you been taking direction from Mr. Dondero?

16 A We've had -- I've had limited interaction with Mr. Dondero
17 since my retention. You know, we have been complying with the
18 protocols that we had been negotiating with the Committee and
19 providing information to the Committee. We have been, as a
20 result of those protocols, instructing management of the
21 company on compliance with those protocols. So they have
22 brought to us transactions that they would like to do. We
23 have reviewed those transactions and compared it to the
24 proposed protocols and have been enforcing those. So if
25 management has asked to do a transaction that does not meet

1 within those protocols, we have been declining the
2 transaction. And that -- you know, the company has agreed
3 with that decision and accepted that decision.

4 Q When you say management, who are you -- to whom are you
5 referring?

6 A You know, the whole management team at the company. In-
7 house counsel. The CFO. You know, I've had limited
8 interaction with Mr. Dondero. One interaction was he did
9 question one of my decisions that I made. We discussed it and
10 he accepted my conclusion.

11 Q You're at the Debtor every day?

12 A My team is.

13 Q You are not?

14 A I have had some travel restrictions due to a medical
15 issue, but I have three of my team there every day.

16 Q Is Mr. Dondero there every day?

17 A I don't know. I don't think so. In the few days I'm
18 there, I've not seen him.

19 Q Is Mr. Ellington there every day?

20 A No.

21 Q Who on the management team is there every day?

22 A You know, our primary interaction is with Isaac Leventon,
23 Frank Waterhouse, the CFO. You know, primary interaction, you
24 know, with David Klos, who is the controller, in dealing with
25 the financial issues.

1 Obviously, we spend a lot -- my team spends a lot of time
2 with the head of compliance.

3 Q Were you surprised by this addition that Mr. Dondero would
4 remain as an employee?

5 A I can't say I was surprised. It is an issue that we
6 struggle with, given the nature of this company's business.
7 You know, I see the change in the language and, you know, as
8 CRO, I am comfortable with it.

9 Q So, as CRO, if Mr. Dondero is necessary now, you recognize
10 that he was necessary three weeks ago?

11 A I'm not saying that he's necessary. I'm saying that it is
12 important for the board to be able to make that decision.

13 Q And it wasn't important when the settlement was filed?

14 A It was the -- it was a struggle at the time. I was
15 concerned at the time it was filed the unintended consequences
16 of Mr. Dondero resigning completely and disappearing, because
17 there are a significant number of funds that the Debtor deals
18 with related parties that are controlled by Mr. Dondero, and I
19 was worried about the financial impact with it. I knew this
20 issue was important to the Committee. And if that's something
21 that the Debtor agreed to and the Committee agreed to, so be
22 it.

23 You know, I think the last-minute compromise is acceptable
24 and appropriate. I think the language as negotiated is going
25 to be very helpful to the Debtor. And I think, then, it's up

1 to the board to make the decision, with full knowledge on
2 what's the best avenue forward.

3 Q And the language as negotiated was added because, in the
4 past, there have been problems with Mr. Dondero changing or
5 terminating agreements with related entities, right?

6 A There was that -- I've seen that -- issues raised in the
7 *Acis* case.

8 MS. LAMBERT: No further questions.

9 THE COURT: All right. Any redirect?

10 MR. POMERANTZ: Not from the Debtor.

11 THE COURT: Anyone have examination? No? All right.

12 Thank you, Mr. Sharp. You're excused.

13 THE WITNESS: Thank you.

14 (The witness steps down.)

15 THE COURT: All right. Are we going to have any
16 other, I guess, witnesses, evidence?

17 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

18 MR. POMERANTZ: No, Your Honor. I just had a couple
19 points. One, Ms. Lambert mentioned that she hadn't seen a
20 copy of the stipulation referred to, which was prohibiting Mr.
21 Dondero from terminating the board. There's a good reason for
22 her not having seen it. I hadn't provided it to her. It just
23 came this morning, right before the hearing. I have one
24 signed copy. I have other copies that I could represent, even
25 though they're unsigned, are the same, so I would like to

1 provide Your Honor. I'll keep the signed copy but provide you
2 with an unsigned copy, but it's the same, and also give one to
3 the U.S. Trustee.

4 THE COURT: But you've got a signature of Mr. Dondero
5 on that?

6 MR. POMERANTZ: Yes, I do.

7 THE COURT: Okay.

8 MR. POMERANTZ: May I approach?

9 THE COURT: You may. Thank you.

10 MR. POMERANTZ: Your Honor, maybe for the record it
11 would be appropriate for me to show Your Honor the signature,
12 so you could say that you've seen it?

13 THE COURT: Yes. Yes.

14 MR. POMERANTZ: May I approach again?

15 THE COURT: You may. (Pause.) Okay. Thank you.

16 The record will reflect I've seen Mr. Dondero's signature.

17 MR. POMERANTZ: Your Honor, one of the threads that
18 Ms. Lambert said to Your Honor is that there were employees
19 still remaining at the Debtor and that those employees may
20 have been involved in some wrongdoing.

21 I submit, Your Honor, if Your Honor appointed a Chapter 11
22 trustee today, what would a Chapter 11 trustee do? A Chapter
23 11 trustee wouldn't terminate every employee at the Debtor. A
24 Chapter 11 trustee, if he or she was doing what they should
25 do, would go down to the company, would interview members of

1 the company, senior management, and decide who should stay on
2 and who should not stay on.

3 That, I submit, Your Honor, is exactly what this board
4 will do. So the concept of there being something different
5 done, if you have a board here or not, I don't think makes
6 sense.

7 And lastly, Your Honor, Ms. Lambert expressed the issue as
8 whether it's fair and equitable to resolve the U.S. Trustee
9 issues in this way. I don't think that's the standard. The
10 only fair and equitable I understand is in plan confirmation.
11 I think Your Honor said it straight, which is: Is this a
12 valid exercise of the Debtor's business judgment and is it an
13 appropriate compromise of controversy? That is the standard.
14 And, again, we have always acknowledged that, notwithstanding
15 how Your Honor rules today, the Trustee reserves the right to
16 come back to court and argue a trustee is appropriate on the
17 21st.

18 We believe, Your Honor, that many of the cases, in this
19 circuit and elsewhere, look to the continuing management of
20 the company and whether management issues have been addressed
21 as a significant factor in determining whether a trustee is
22 appointed. And it'll come as no surprise, of course, if Your
23 Honor grants our motion today, this will be a lynchpin of our
24 opposition to the trustee motion.

25 But, again, those issues are for another day, and we

1 believe that we have satisfied our standard, and we request
2 that Your Honor approve the motion.

3 THE COURT: All right. Other closing arguments?

4 CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES TRUSTEE

5 MS. LAMBERT: Yes, Your Honor. As the Debtor
6 acknowledges, the Court has no jurisdiction over Strand. This
7 is a complicated structure. A trustee avoids all of the
8 complications involved in the Court exercising jurisdiction
9 over an entity that it doesn't have jurisdiction over.

10 To enter a stock stipulation related to a non-debtor is
11 highly irregular, and Mr. Dondero is the person behind that.
12 It has happened in cases where people have been in these kinds
13 of structures, like that FSLIC used to put in these kinds of
14 structures -- there's published opinion, the *Gaubert* case --
15 where the person continued to exercise control even though
16 they had a stock trust.

17 The Court needs a person beholden to the Court. The
18 evidence is that, historically, this Debtor has entered into
19 things that breached its fiduciary duty and resulted in self-
20 dealing and liability for the Debtor. The evidence is that
21 these go beyond Mr. Dondero and the Court does not have
22 jurisdiction over his stock. The Court does not have
23 jurisdiction over Strand. The board members of Strand are not
24 employees of the Court, they're employees of Strand, a non-
25 debtor. These members have a fiduciary duty to Strand.

1 Yes, Strand is the general partner of this Debtor and has
2 a fiduciary duty, but all these fiduciary duties intermix in
3 ways that result in conflicts for this case. These conflicts
4 are unnecessary. The Court could just appoint a trustee who
5 only owes a fiduciary duty to the members and creditors of
6 this case, as well as the next (inaudible).

7 There is no evidence that this is cheaper. There is no
8 evidence that this is a total resolution, because issues are
9 left open, such as whether or not a CEO is going to be
10 appointed, how much that person is going to cost.

11 Finally, Your Honor, the sealing has constrained the
12 ability of some of the parties to understand what's going on
13 in this case. And that is material to the argument about who
14 is here, because we don't know who -- that all the people who
15 would have participated in this discussion had an opportunity
16 to participate in it.

17 Yes, the creditors have a fiduciary duty, and I believe
18 that they represented to the best of their ability, but they
19 are not charged with the issues that others are charged with,
20 such as the SEC.

21 There is no evidence that the officers are disinterested.
22 Rather, the new officers are going to be conflicted by the
23 nature of their position. There's no evidence that it's
24 cheaper. And a trustee, if appointed, could be appointed on
25 an hourly basis. This is a Chapter 11 trustee.

1 They argue that the trustee would not have the knowledge,
2 and yet they've been able to find three candidates to serve
3 for the board who are qualified. So there's no evidence that
4 it would not be better to have a trustee for that reason as
5 well.

6 The evidence is that, historically, the Redeemer Committee
7 was set up to prevent these kinds of transactions and have
8 oversight. Historically, the evidence is it did not work.
9 For this reason, the statute provides a solution, and the
10 Court should impose it. The Court should deny this motion as
11 not being in the interest of the estate, as not being a sound
12 exercise of discretion, because it's really the discretion of
13 Strand, not the Debtor, and it will remain the discretion of
14 Strand, not the Debtor.

15 Thank you.

16 THE COURT: All right. Anyone else have comments?

17 MR. POMERANTZ: Your Honor, just a couple of minor
18 points.

19 THE COURT: Okay.

20 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

21 MR. POMERANTZ: Ms. Lambert started by saying the
22 Court doesn't have jurisdiction over Strand. I know I just
23 handed her the stipulation, but the last paragraph of the
24 stipulation specifically says that the parties stipulate and
25 agree that the Court shall have exclusive jurisdiction over

1 all matters arising from or related to the interpretation and
2 implementation of this stipulation and the adjudication of any
3 parties breaching the stipulation.

4 So the Court does have jurisdiction now that the
5 stipulation has been signed, assuming that the Court enters
6 it, so I think that addresses that issue.

7 Your Honor, the evidence of the disinterestedness of the
8 members of the board, we've provided their *curriculum vitae*.
9 We've made representations that they have no connections with
10 the Debtor or any of the parties in interest. We don't think
11 that, just because they become appointed and become a director
12 of Strand, that that renders them disinterested [sic], and we
13 think that the Trustee's arguments that being at a different
14 level creates different duties is just not -- is not accurate.
15 I don't think that the Committee would have had any appetite
16 for this type of structure had they believed that each of
17 these board members wouldn't feel that their fiduciary duty
18 was to the Debtor's estate. And they all are seasoned
19 restructuring people from different aspects, all understand
20 their fiduciary duties well, and all are prepared to carry
21 them out.

22 Lastly, the Trustee points to the historic issues, and
23 specifically mentioned the Redeemer Committee and that
24 structure didn't work. Well, I think it speaks volumes, Your
25 Honor, that not only the Redeemer Committee, are they on the

1 Committee and the Committee has supported this motion, but the
2 Redeemer Committee hasn't come to Your Honor and said that,
3 notwithstanding that structure that may or may not have been
4 effective, this structure is ineffective.

5 And at the end, Your Honor, the Trustee is trying to
6 replace the business judgment of the Debtor. The Debtor is
7 entitled to deference of the judgment, again, focusing on the
8 correct standard. And, again, the Trustee will have her day
9 in -- his day in court in connection with the ultimate trustee
10 motion on the 21st.

11 Thank you, Your Honor.

12 THE COURT: Anyone else?

13 All right. Well, the Court is going to note a few things
14 as part of its ruling, obviously. The new proposed
15 independent board members for Strand, Strand obviously being
16 the general partner of the Debtor, Highland -- Mr. James
17 Seery, Mr. John Dubel, and retired Judge Russ Nelms -- are
18 highly-qualified individuals with respect to the industry.
19 Some of them with respect to restructuring. Certainly, in the
20 case of retired Judge Nelms, with regard to fiduciary duties
21 and the Bankruptcy Code requirements.

22 These three individuals were chosen by the Creditors'
23 Committee, whose constituency is broad, whose constituency is
24 owed well over \$100 million. And they were chosen by the
25 Committee after literally months of negotiation. Obviously,

1 this bankruptcy was filed in October, and it appears to this
2 Court, from the representations of counsel, that from the very
3 beginning of the case -- the Committee was, I guess, appointed
4 a week or two after the case was filed in October -- there's
5 been haggling over corporate governance of this Debtor.

6 So we have highly-qualified individuals. We have
7 individuals who were chosen by the well-constituted Creditors'
8 Committee. And what has been proposed to the Court is that it
9 is these independent directors that would have sole and
10 exclusive management and control of the Debtor.

11 An interesting jurisdictional argument has been made, and
12 it's one of those arguments that, frankly, you know, sounds
13 good when you first hear it, but when you really drill down
14 about the governance structure here, I mean, obviously, this
15 Debtor is a limited partnership and it acts through a general
16 partner. It's the general partner that controls the Debtor
17 entity. And while Strand Advisors, Inc., the general partner,
18 may not technically be in bankruptcy, it's the structure of
19 these entities such that it controls the Debtor. So the
20 jurisdictional argument, when you drill down, feels a little
21 off.

22 Moreover, we have language in the stipulation where Strand
23 is stipulating and consenting, if you will, to this Court's
24 exercise of jurisdiction over it.

25 There are many things about the compromise here that have

1 very compelling appeal. Among them, certainly, the Committee
2 that's negotiated this term sheet retains the right at any
3 time to move for a Chapter 11 trustee if it believes there are
4 grounds. The Committee is granted standing to pursue estate
5 claims, certain estate claims right off the bat, without
6 having to come back and ask the Court, without having to rely
7 on the Debtor to pursue that. There are document production
8 provisions, document preservation provisions, a shared
9 privilege negotiated, that are very powerful tools for the
10 Committee, and certainly operating protocols that have been
11 negotiated regarding the Debtor's operations that are very
12 powerful tools for the Committee.

13 I said many times during the *Acis* case -- those who were
14 here will remember -- that the company, *Acis*, was not a great
15 fit for Chapter 11. Lots of companies aren't great fits for
16 Chapter 11, I suppose, but the kind of business it was was
17 kind of tough to maneuver in Chapter 11. Human beings and
18 their expertise create value. And while we had a Chapter 11
19 trustee, a stranger come in and take control over *Acis*, you
20 know, there's great uncertainty whether that stranger is going
21 to be able to preserve value and have the smooth transition
22 into Chapter 11 that's really going to be the best fit.

23 Here, as I've said earlier, the legal standard I view as
24 controlling here is 363 and whether what has been proposed
25 reflects reasonable business judgment. Is there a sound

1 business justification for proposing the independent slate of
2 directors at the GP level for the Debtor, the protocols, the
3 negotiation with the Committee, the document sharing, the
4 standing given to them? Does all of this reflect reasonable
5 business judgment? And I find, quite clearly, it does. I
6 find it to be a pragmatic solution to the Committee's concerns
7 about existing management and control.

8 And I think I used the words "fair and equitable," not
9 just Ms. Lambert, because it is also presented to the Court as
10 a 9019 compromise of disputes with the Committee, and we
11 traditionally use a fair and equitable and best interest of
12 the estate analysis in this context. So, to the extent that
13 applies, I do find this a fair and equitable way of resolving
14 the disputes with the Committee, and I find this to be in the
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet
17 as it's been presented, the various terms therein, the
18 exhibits thereto. I'm specifically approving the new
19 independent directors, the document management and
20 preservation process, the standing to the Committee over
21 certain of the estate claims, the reporting requirements, the
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the
24 role of Mr. Dondero. When Ms. Patel got up and talked about
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of
2 the term sheet, the sentence reading, "Mr. Dondero shall not
3 cause any related entity to terminate any agreements with the
4 Debtor." Her statement that that was important, it really
5 resonated with me, because, you know, as I said earlier, I
6 can't extract what I learned during the *Acis* case, it's in my
7 brain, and we did have many moments during the *Acis* case where
8 the Chapter 11 trustee came in and credibly testified that,
9 whether it was Mr. Dondero personally or others at Highland,
10 they were surreptitiously liquidating funds, they were
11 changing agreements, assigning agreements to others. They
12 were doing things behind the scenes that were impacting the
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,
15 but I am going to require that language to be put in the
16 order. Okay? So we're not just going to have an order
17 approving the term sheet that has that language. I want
18 language specifically in the order. You know, you can figure
19 out where the appropriate place to stick it in the order is,
20 but I want specific language in here regarding Mr. Dondero's
21 role. I also -- the language in there that his role as an
22 employee of the Debtor will be subject at all times to the
23 supervision, direction, and authority of the Debtors, I want
24 that language in there as well. Let's go ahead and put the
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want
4 it crystal clear that if he violates these terms, he's
5 violated a federal court order, and contempt will be one of
6 the tools available to the Court. He needs to understand
7 that. Mr. Ellington needs to understand that. You know, if
8 there are any games behind the scene, not only do I expect the
9 Committee is going to come in and highlight that to the Court
10 and file a motion for a trustee or whatever, but we're going
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a
16 clean redline of the order, of course not including the
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload
20 and hope to get an order signed by Your Honor today, if you're
21 around. But to go over the other changes, the changes to
22 Jefferies, the other language changes I discussed before. I
23 gave a copy to Ms. Lambert and to the Committee. May I
24 approach with a --

25 THE COURT: You may.

1 MR. POMERANTZ: Thank you.

2 THE COURT: Okay. All right. (Pause.) All right.

3 The form of order looks fine to me. Obviously, you'll add the
4 Dondero-related language, and we may have further wording
5 tweaks negotiated with the CLO Issuers. But, again, I approve
6 all of this. I didn't say on the record the compensation, but
7 certainly I am approving that as reasonable. I expect these
8 three directors are going to be working very, very hard. And
9 so, as you said, not 50,000-foot level monitoring, actually
10 rolling up sleeves on-site, so I think the compensation is
11 reasonable.

12 MR. POMERANTZ: Thank you, Your Honor. We will
13 submit an order shortly that includes Your Honor's language
14 requested.

15 THE COURT: Okay.

16 MR. POMERANTZ: Are you around this afternoon?

17 THE COURT: I am around, --

18 MR. POMERANTZ: Okay.

19 THE COURT: -- so just pick up the phone or send an
20 email to Traci, my courtroom deputy, --

21 MR. POMERANTZ: Yes.

22 THE COURT: -- so she can tell me, "It's in your
23 queue to sign."

24 MR. POMERANTZ: She has been extremely helpful and
25 responsive.

1 THE COURT: Good. I'm glad to hear that.

2 MR. POMERANTZ: Yes.

3 THE COURT: Now, as far as future scheduling, I did
4 have her sitting by, listening, in case we needed to discuss
5 anything. Obviously, we're going to have a kind of a
6 carryover placeholder on the 21st as part of the trustee
7 motion hearing for any remaining issues with the CLO Issuer.
8 And, you know, that's just a placeholder if necessary to hear
9 language controversies.

10 My courtroom deputy was concerned, because you have a lot
11 of pending motions that have just sort of sat there pending
12 because this was the big issue, right? She wants to make sure
13 she sets anything you need a setting on. And I don't know if
14 you want to discuss that today or go back as a group and --

15 MR. POMERANTZ: We're happy to -- I think, you know,
16 I think that's appropriate to do. We had the motion to
17 appoint the CRO.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: That was pending. That gets resolved
20 by this motion. We will submit an order --

21 THE COURT: Okay.

22 MR. POMERANTZ: -- with the new agreement that was
23 attached to the term sheet.

24 We had the cash management order which Judge Sontchi had
25 issued an interim order. We will have a final order with

1 respect to that.

2 THE COURT: Okay.

3 MR. POMERANTZ: We will be withdrawing the motion to
4 approve ordinary course protocols which was originally on for
5 hearing.

6 THE COURT: Uh-huh.

7 MR. POMERANTZ: I think on the 21st we have currently
8 set a motion to approve the retention or Mercer, which is the
9 Debtor's compensation consultant, --

10 THE COURT: Uh-huh.

11 MR. POMERANTZ: -- and an analog motion that was
12 originally set for today with respect to insiders, non-
13 insiders, but is on for non-insiders and insiders on the 21st,
14 --

15 THE COURT: Uh-huh.

16 MR. POMERANTZ: -- which is the motion to approve
17 bonuses.

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: Of course, the Debtor's new board is
20 going to be wanting to very carefully review that. And we are
21 going back and today having our first new board meeting with
22 the board to start bringing them up to speed. But we
23 presently intend, subject to, obviously, their direction, to
24 go forward on the 21st.

25 We also have the retention of Lynn Pinker and Foley

1 Gardere, which had been filed and was brought on for hearing
2 previously. It had been delayed, again, for the board to look
3 at the issues. We expect to have that on for the 21st. And I
4 believe, I believe that would be it.

5 MS. LAMBERT: No, Your Honor, the --

6 MR. POMERANTZ: No?

7 MS. LAMBERT: -- U.S. Trustee has objected to the
8 motion to seal, which was the second item on the Wilmington
9 Court's docket that got -- and it got transferred here. The
10 U.S. Trustee has also objected to the motion for protective
11 order. The issues overlap. We request that they be set as
12 quickly as possible.

13 MR. POMERANTZ: We're happy to set both of those for
14 the 21st as well.

15 THE COURT: All right. So I think what I'm going to
16 ask you to do is just get on the phone, one of you, with Traci
17 and just make sure she's clear on everything you need set on
18 the 21st, and then you can do a big notice of hearing, just
19 kind of listing all of these matters.

20 MR. POMERANTZ: Your Honor, with respect to the CRO
21 motion -- order and the cash management order, I was wondering
22 if it would be helpful for my colleague Mr. Demo to go over
23 the amendments to those orders -- we would like those to be
24 entered today -- to see if Your Honor has any questions.

25 THE COURT: All right. That would be good. Mr.

1 Clemente, did you have something first?

2 MR. CLEMENTE: Just very quickly, Your Honor. We had
3 filed our retention applications for the Committee
4 professionals and filed CNOs, and your office had indicated
5 you wanted to get through today, which I totally understand,
6 but I just wanted to make sure that Your Honor didn't lose
7 sight of those. I don't believe there were any objections to
8 those, but I think your intent was probably to deal with them
9 after today, but I just wanted to --

10 THE COURT: All right. Yes, it was to get through
11 today.

12 MR. CLEMENTE: Yes.

13 THE COURT: So, since you've had plenty of time run
14 on those, you can submit orders and I'll get them signed in
15 chambers.

16 MR. CLEMENTE: Thank you very much, Your Honor.
17 Appreciate it.

18 THE COURT: Okay. Thank you. Counsel?

19 MR. DEMO: Good afternoon, Your Honor. Greg Demo,
20 Pachulski Stang, on behalf of the Debtor. I'm happy to keep
21 this as brief as possible, but I think walking through the
22 cash management motion has the most changes.

23 THE COURT: Okay.

24 MR. DEMO: The biggest change there, and we had
25 discussed this with the United Stated Trustee in Delaware, is

1 that in our initial motion we disclosed that the Debtor had
2 bank accounts at BBVA and then also at NexBank. Those
3 accounts have been moved to East West Bank, --

4 THE COURT: Okay.

5 MR. DEMO: -- which is a party to a depository
6 agreement with the United Stated Trustee.

7 THE COURT: Okay.

8 MR. DEMO: The only exception to that is a
9 certificate of deposit that is at NexBank. It's a relatively
10 small amount of money. It's \$135,000. But it also is pledged
11 as collateral on a lease. So that has been -- proven
12 problematic to move. The Trustee for Delaware did say that
13 was okay. I would hope that the Trustee for Texas would agree
14 with that. We did disclose it in the initial debtor
15 interview.

16 But those are the bank accounts. The bank accounts at
17 BBVA and NexBank, with the exception of that CD, were all
18 closed as of yesterday.

19 THE COURT: Okay.

20 MR. DEMO: So now we are going to be using East West
21 Bank for all operating accounts, all cash, going forward.

22 The other two accounts are the account at Jefferies, which
23 is the prime brokerage account.

24 THE COURT: Uh-huh.

25 MR. DEMO: That account, we are keeping open.

1 Obviously, there have been conversations with Jefferies that
2 are going to be reflected in the proposed order on the
3 settlement, but we do propose to keep the Jefferies prime
4 brokerage account open as well.

5 And then we filed a supplement for another prime brokerage
6 account that we have at a prime broker called Maxim Group.
7 That account has \$30 million in securities in it, give or
8 take, and then literally like \$100 in cash. The Debtor
9 considers that account more an investment than actual
10 operating account, but we would like to keep that account open
11 as well, just so it can continue holding those securities.

12 Jefferies and Maxim, neither of them are on the depository
13 list, so we are requesting a waiver of 345(b) for those two
14 accounts, and then also requesting a waiver of 345(b) with
15 respect to the certificate of deposit at NexBank.

16 THE COURT: Okay.

17 MR. DEMO: That's where we're at at cash management.
18 And I guess, sorry, one more thing. In the original cash
19 management motion, we had a series of intercompany
20 transactions that we disclosed, and we had gotten interim
21 relief from the Delaware court to make those payments up to a
22 hundred -- or, \$1.7 million. We are below that account, and
23 on a go-forward basis, all of those intercompany transactions
24 are getting subsumed into the settlement motion and the
25 operating protocols and all of that. But we are asking for

1 final relief on the intercompany transactions that we made
2 under the interim order.

3 THE COURT: Okay. All right. Who wishes to be heard
4 on this? I don't know how much discussion we've had outside
5 the courtroom on this.

6 MS. LAMBERT: We haven't -- normally, a bond would be
7 appropriate for the Jefferies and the other small account.
8 The estate is at risk on the CD, but it's not that much money.
9 It's not worth bonding. It'll be more expensive to bond it.

10 NexBank, as you know, Your Honor, is a bank where Mr.
11 Dondero is the CEO. So that was part of the reason that
12 NexBank was carved out. But the -- so I would like them to
13 bid bonds on the Jefferies and the other account. And if we
14 -- let's carry it on those issues so that we can see how
15 expensive bonding it would be, and if it's cost-prohibitive,
16 maybe we reconsider. But in the past, the bonds haven't been
17 very expensive, relatively.

18 MR. DEMO: We're happy to discuss that with the U.S.
19 Trustee. I mean, just for the record, the Jefferies account,
20 you know, does support a margin loan. It's \$80 million in
21 securities. It's \$30 million at Maxim. They're SIPC. I
22 mean, it's Jefferies and, you know, another large prime
23 broker. Again, we're happy to discuss it with the Trustee. I
24 don't know that it's necessary, but we will discuss it.

25 THE COURT: Okay. Well, you all can discuss it, and

1 if you have an unopposed order, an agreed order, --

2 MR. DEMO: Uh-huh.

3 THE COURT: -- you can upload it and I'll sign it.

4 Otherwise, if you need hearing time on the 21st, --

5 MR. DEMO: Okay.

6 THE COURT: -- we'll get it all figured out then and

7 --

8 MR. DEMO: Okay. All right.

9 THE COURT: -- resolve it then.

10 MR. DEMO: Thank you, Your Honor. And then I guess
11 the other motion is the CRO retention. This one should
12 hopefully be pretty brief. We are just filing a new proposed
13 order that attaches the engagement letter, as has been
14 modified by all of the settlement discussions. I believe the
15 Committee is on board with that, and it's consistent. It was
16 one of the attachments that you approved this morning in
17 connection with the settlement.

18 THE COURT: All right. Comments on that?

19 A VOICE: None, Your Honor.

20 THE COURT: Committee, you're good?

21 MS. LAMBERT: The U.S. Trustee had also objected to
22 the CRO motion, but it's some of the same issues that the
23 Committee raised. And the CRO, my understanding, is now not
24 an employee of the board but totally overseen by the board,
25 and with that, we can withdraw our objection.

1 THE COURT: All right. Very good. I'll sign your
2 order on the CRO, then.

3 MR. DEMO: Okay. Thank you, Your Honor.

4 THE COURT: All right. Well, if there's nothing
5 else, I'll be on the lookout for your orders. And, again, if
6 you could coordinate with Traci to make sure she's clear on
7 everything you need set on the 21st.

8 MR. POMERANTZ: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTE: Thank you, Your Honor.

11 MR. DEMO: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 11:54 a.m.)

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CERTIFICATE

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

23

/s/ Kathy Rehling

12/10/2020

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

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

In Re: Highland Capital Management, LP	§	Case No. 19-34054-SGJ-11
The Charitable DAF Fund, L.P, et al	§	
Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:21-CV-01585-S
Appellee	§	

[2506] Order denying motion for modification of order authorizing retention of James P. Seery, Jr. Entered on 6/30/2021.

**APPELLEE RECORD
VOLUME 24**

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

_____)
In re:) Chapter 11
_____)
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹) Case No. 19-34054-sgj11
_____)
Debtor.)
_____)

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APPELLEE’S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Charitable DAF Fund, L.P. and CLO Holdco Ltd

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

(“Appellants”) from the *Order Denying Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Filed By Charitable DAF Fund L.P. and CLO Holdco, Ltd.* [Docket No. 2506] entered by the United States Bankruptcy Court for the Northern District of Texas on June 30, 2021 in the above-styled bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

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

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/07/2020	321	Witness and Exhibit List for January 9, 2020 Hearing
01/09/2020	335	Court Admitted Exhibits: Date of Hearing January 9, 2020
07/10/2020	822	Debtor’s Witness and Exhibit List with Respect to (A) the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Developmental Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services <i>Nunc Pro Tunc</i> to March 15
07/16/2020	836	Court Admitted Exhibits: Date of Hearing July 14, 2020
07/17/2020	864	Transcript Regarding Hearing Held on July 14, 2020 re: Applications to Employ
07/20/20	881	Certificate of Service of Vincent Trang re: Documents Served on July 16, 2020
12/11/2020	1543	Transcript Regarding Hearing Held on January 9, 2020 re: Motion to Compromise Controversy
06/10/2021	2440	Transcript Regarding Hearing Held June 8, 2021 re: 1) Show Cause Hearing; 2) Motion to Modify Order; and 3) Motion to Extend Time

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

Dated: July 30, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, June 8, 2021
) 9:30 a.m. Docket
Debtor.)
) - SHOW CAUSE HEARING (2255)
) - MOTION TO MODIFY ORDER
) AUTHORIZING RETENTION OF
) JAMES SEERY (2248)
) - MOTION FOR ORDER FURTHER
) EXTENDING THE PERIOD WITHIN
) WHICH DEBTOR MAY REMOVE
) ACTIONS (2304)
)

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

APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Debtor: Zachery Z. Annable
HAYWARD & ASSOCIATES, PLLC
10501 N. Central Expressway,
Suite 106
Dallas, TX 75231
(972) 755-7104

1 APPEARANCES, cont'd.:

2 For the Charitable DAF, Mazin A. Sbaiti
3 CLO Holdco, Show Cause Jonathan E. Bridges
4 Respondents, Movants, SBAITI & COMPANY, PLLC
5 and Sbaiti & Company: Chase Tower
2200 Ross Avenue, Suite 4900W
Dallas, TX 75201
(214) 432-2899

6 For Mark Patrick: Louis M. Phillips
7 KELLY, HART & HALLMAN, LLP
8 301 Main Street, Suite 1600
Baton Rouge, LA 70801
(225) 338-5308

9 For Mark Patrick: Michael D. Anderson
10 KELLY, HART & HALLMAN, LLP
11 201 Main Street, Suite 2500
Fort Worth, TX 76102
(817) 332-2500

12 For James Dondero: Clay M. Taylor
13 Will Howell
14 BONDS ELLIS EPPICH SCHAFFER
15 JONES, LLP
420 Throckmorton Street,
Suite 1000
Fort Worth, TX 76102
(817) 405-6900

16 For the Official Committee Matthew A. Clemente
17 of Unsecured Creditors: SIDLEY AUSTIN, LLP
18 One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

19 For the Official Committee Paige Holden Montgomery
20 of Unsecured Creditors: SIDLEY AUSTIN, LLP
21 2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
(214) 981-3300

22 Recorded by: Michael F. Edmond, Sr.
23 UNITED STATES BANKRUPTCY COURT
24 1100 Commerce Street, 12th Floor
Dallas, TX 75242
25 (214) 753-2062

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Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JUNE 8, 2021 - 9:30 A.M.

2 THE COURT: All right. We have settings in Highland
3 this morning. We have three settings. We have the show cause
4 hearing with regard to a lawsuit filed in the District Court.
5 We have a couple of more, I would say, ministerial matters,
6 although I think we do have objections. I know we have
7 objections. We have a motion to extend the removal period in
8 this case as well as a motion to modify the order authorizing
9 Mr. Seery's retention.

10 So let's go ahead and start out by getting appearances
11 from the lawyers who are participating today. I'll get those
12 now.

13 MR. MORRIS: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. MORRIS: John Morris from Pachulski, Stang, Ziehl
16 & Jones for the Debtor. I'm joined with me this morning by my
17 colleagues, Jeffrey Pomerantz, Greg Demo, and Zachery Annable.

18 THE COURT: Okay.

19 MR. MORRIS: We do have a proposal on how to proceed
20 today, a substantial portion of which is in agreement with the
21 Respondents.

22 THE COURT: Okay.

23 MR. MORRIS: So, at the appropriate time, I'd be
24 happy to present that to the Court.

25 THE COURT: All right. Well, let's get all the

1 appearances and then I'll hear from you on that.

2 MR. SBAITI: Your Honor, my name is -- would you like
3 me to approach, Your Honor?

4 THE COURT: Yes, please.

5 MR. SBAITI: It's my first time appearing in
6 Bankruptcy Court, Your Honor. My name is Mazin Sbaiti. I'm
7 here on behalf of the charitable DAF Fund, CLO Holdco, and the
8 Respondents to the show cause hearing. We are also
9 representing them as the Movants on the motion to modify the
10 Court's order appointing Mr. Seery.

11 THE COURT: All right. Thank you.

12 MR. BRIDGES: Jonathan Bridges, Your Honor, with Mr.
13 Sbaiti, also representing the Charitable DAF and CLO Holdco,
14 as well as our firm that is named in the show cause order.

15 THE COURT: Okay.

16 MR. BRIDGES: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. PHILLIPS: Good morning, Your Honor. Louis M.
19 Phillips from Kelly Hart Hallman here on behalf of Mark
20 Patrick in the show cause matter. I'm joined with my
21 colleague Michael Anderson from the Kelly Hart firm here in
22 Fort Worth. And that's the matter that we're involved in, the
23 show cause auction.

24 THE COURT: All right. Thank you, Mr. Phillips.

25 MR. TAYLOR: Good morning, Your Honor. Clay Taylor

1 of Bonds Ellis Eppich Schafer Jones here on behalf of Jim
2 Dondero. I have Mr. Will Howell here with me from my firm.

3 THE COURT: All right. Thank you.

4 MR. CLEMENTE: Good morning, Your Honor. Matthew
5 Clemente from Sidley Austin on behalf of the Committee. I'm
6 here with my partner, Paige Montgomery.

7 THE COURT: Okay. Thank you.

8 MR. CLEMENTE: Good morning.

9 THE COURT: All right. Just to remind people, we do
10 have participants on the WebEx, but in setting the hearing I
11 made clear that participants today needed to be here live in
12 the courtroom. So the WebEx participants are going to be only
13 observers.

14 We have a camera on the screen here that is poised to
15 capture both the lawyer podium as well as the witness box, and
16 then another camera on the bench.

17 So, please be mindful. We want the lawyers to speak from
18 the podium so that they are captured and heard by the WebEx.
19 And so hopefully we don't have any cords you will trip over.
20 We've worked hard to make it easy to maneuver around the
21 courtroom.

22 All right. So, Mr. Morris, you had a proposal on how we
23 would approach this today?

24 MR. MORRIS: I do, Your Honor. And it's rather
25 brief, but I think it makes a lot of sense.

1 There are three motions on the calendar for today, --

2 THE COURT: Uh-huh.

3 MR. MORRIS: -- only one of which required the
4 personal appearance of certain parties.

5 THE COURT: Uh-huh.

6 MR. MORRIS: And for that reason, and because,
7 frankly, it was the first of the three motions filed, we
8 believe that that ought to go first.

9 THE COURT: Okay.

10 MR. MORRIS: And then it can be followed by the
11 motion for reconsideration of the July order, assuming time
12 permits, and then the motion to extend the removal deadline.

13 And with respect to the contempt motion, Your Honor, the
14 parties have agreed that each side shall have a maximum of
15 three hours to make opening statements, closing arguments,
16 direct and cross-examination of witnesses.

17 You know, I did point out to them that from time to time
18 Your Honor has used the Court's discretion to adjust the time
19 --

20 THE COURT: Uh-huh.

21 MR. MORRIS: -- if the Court is making inquiries, and
22 I guess we'll deal with that matter as it comes. But as a
23 general matter, that is what we've agreed to. And I would
24 propose that, unless anybody has any objections, that we just
25 proceed on that basis.

1 THE COURT: Okay.

2 MR. MORRIS: And I could -- I could go right forward.

3 THE COURT: So, three hours in the aggregate?

4 MR. MORRIS: Uh-huh.

5 THE COURT: It doesn't matter how people spend it --
6 with argument, examination, cross -- three hours in the
7 aggregate?

8 MR. MORRIS: Correct.

9 THE COURT: Okay. So, Nate, you'll be the timer on
10 that.

11 MR. MORRIS: Yeah. We thought it was very important
12 to get this done today, with people coming in from out of
13 town.

14 THE COURT: Okay. Sounds fine.

15 MR. MORRIS: So does the Court want to inquire if
16 anybody has any questions or comments?

17 THE COURT: I do. Well, I see Mr. Bridges getting
18 up. You confirm that that's agreeable?

19 MR. BRIDGES: Thank you, Your Honor. Yes, that's
20 agreeable. We have one slight difference in our proposal. We
21 would suggest to Your Honor that the motion for modification,
22 if Your Honor decides our way, would moot the entire motion
23 for contempt. And we'd suggest, if that possibility is
24 realistic, that we would go first with that motion, perhaps
25 obviate having to have the evidence presented and the lengthy

1 hearing.

2 The motion for modification, Your Honor, asks the Court to
3 reconsider -- to modify that order because of jurisdictional
4 and other shortcomings in it that make the order
5 unenforceable. And because that's the order that is the
6 subject of the contempt motion, we'd ask Your Honor to
7 consider putting that motion first.

8 THE COURT: Okay. Or second? Ahead of the contempt
9 matter?

10 MR. BRIDGES: Ahead of the contempt matter, --

11 THE COURT: Uh-huh.

12 MR. BRIDGES: -- because it has a possibility --

13 THE COURT: We have the removal matter, which I think
14 is the shortest. All right.

15 MR. BRIDGES: No objection to that, Your Honor.
16 That's correct.

17 THE COURT: Okay. So, Mr. Morris, that's fine by
18 you?

19 MR. MORRIS: Your Honor, that doesn't make a lot of
20 sense to us. We don't believe there's any basis for the Court
21 to reconsider, modify, or amend in any way the July order.
22 But even if we were wrong about that, that would not
23 retroactively validate conduct which was otherwise wrongful at
24 the time it was committed.

25 The contempt motion needs to go first. The other motion

1 will have no impact on whether or not there is a finding of
2 contempt of court.

3 THE COURT: All right. And update me on this. There
4 was something filed yesterday, a notice of a proposed form of
5 order that the Debtor had proposed, that I think was not
6 agreed to, where there would be a change about any action that
7 goes forward, the cause of action would be in the sole
8 jurisdiction of the Court, and you all agreed to change that
9 part of the order, correct?

10 MR. MORRIS: So, just as a division of labor for Your
11 Honor, I'm doing the contempt motion.

12 THE COURT: Okay. That's Mr. Pomerantz's?

13 MR. MORRIS: Mr. Pomerantz is going to take care of
14 that.

15 MR. POMERANTZ: Yes, Your Honor. Good morning. Good
16 to see you again.

17 THE COURT: Good to see you.

18 MR. POMERANTZ: Yes, Your Honor, that's correct. If
19 Your Honor recalls, there's really three aspects of the
20 January 9th and the July 16th order. First, requiring people
21 to come to Bankruptcy Court before commencing or pursuing an
22 action. Second, for the Bankruptcy Court to have the sole and
23 exclusive authority to determine whether the claim is a
24 colorable claim of willful negligence or gross misconduct.
25 And then third, if Your Honor passed the claim through the

1 gate, whether you would have jurisdiction.

2 In Your Honor's January 9th and July 16th orders, you said
3 you would have exclusive jurisdiction. In the motion for
4 reconsideration, and particularly the reply, Movants said, if
5 you just change that and say that if passes through the gate
6 that you'd have jurisdiction only to the extent you would
7 otherwise have it, that would resolve the motion, in the same
8 way that the plan of reorganization was amended.

9 We proposed that. They rejected it. We put it before
10 Your Honor. So we believe that it moots out a good portion --
11 actually, we think it should moot out the entire motion. They
12 obviously disagree. But we definitely agree it moots out the
13 most significant portion of their motion, which is that Your
14 Honor would take jurisdiction to adjudicate a matter on an
15 exclusive basis when you might not otherwise have jurisdiction
16 on an exclusive basis.

17 THE COURT: Okay. Well, --

18 MR. BRIDGES: Your Honor, may I respond to that?

19 THE COURT: You may. And --

20 MR. BRIDGES: Thank you, Your Honor.

21 THE COURT: -- why -- could you clarify why you think
22 it would moot out the entire show cause matter? I wouldn't be
23 retroactively changing my order. Is that what you're
24 proposing?

25 MR. BRIDGES: Your Honor, with all respect, we

1 believe the order is defective and unenforceable and has to be
2 modified in order to fix it. And because of the defects,
3 we're -- we're actually arguing, Your Honor, that it is
4 unenforceable in a contempt proceeding. That is exactly what
5 our argument is.

6 THE COURT: Okay. I think I'm getting way farther
7 down this road than maybe I want to right now. But I guess
8 here's the elephant in the room, I feel like: *Republic Supply*
9 *versus Shoaf*.

10 MR. BRIDGES: Uh-huh.

11 THE COURT: The U.S. Supreme Court *Espinosa* case, for
12 that matter. If I accept your argument that maybe there was a
13 flaw in those orders, that maybe they went too far, don't you
14 have a problem with those two cases?

15 MR. BRIDGES: Your --

16 THE COURT: The orders weren't appealed.

17 MR. BRIDGES: I understand completely, Your Honor.

18 THE COURT: Uh-huh.

19 MR. BRIDGES: And I think the answer is no because of
20 the *Applewood* case from the Fifth Circuit. The *Applewood* case
21 cited in our reply brief explains that in order for an order,
22 a final order of the Bankruptcy Court to have exculpatory
23 effect, in order for it to release claims, for example, that
24 the claims at issue must be enumerated in the order. It's not
25 enough to have a blanket statement like the order, the July

1 order has, like the January order has, saying that Mr. Seery's
2 claims -- claims cannot be brought against him for ordinary
3 negligence at all. The -- Your Honor, we're delving into my
4 argument.

5 THE COURT: Okay.

6 MR. BRIDGES: And I was hoping to do this on a
7 preliminary basis.

8 THE COURT: Right.

9 MR. BRIDGES: I don't mean to bog you down with that.
10 But Your Honor, no, mandatory authority from the Fifth Circuit
11 after *Shoaf* limits *Shoaf's* application and says that it does
12 not extinguish the claims that are not specifically enumerated
13 in the order. And the reason for that is because it doesn't
14 give the kind of notice to the parties that they would need to
15 make an appearance and object to those orders at the time. It
16 actually helps to stem the amount of litigation at the time
17 rather than to encourage it.

18 THE COURT: All right. Well, you'll get your
19 opportunity to make your full argument on this. But I'm not
20 convinced, preliminarily, at least, to affect my decision on
21 the sequence, okay? So even if it potentially wastes time
22 under your view of the law, I am going to do the removal
23 matter first -- the extension of time request, I should say --
24 and then the show cause and then the motion to modify. And I
25 realize, those last two matters, everything is kind of

1 interrelated. All right?

2 MR. BRIDGES: Yes, Your Honor.

3 THE COURT: All right. So, with that decided, is
4 there a desire on the part of the lawyers to make opening
5 statements, or shall we just go to the motions? And, of
6 course, people can use their three hours for oral argument,
7 however much they want to use for oral argument.

8 MR. MORRIS: Your Honor, the -- to be clear, the six-
9 hour time limit only applies to the contempt proceeding.

10 THE COURT: Oh, yes. Yes. Uh-huh.

11 MR. MORRIS: And I do want to make an opening
12 statement.

13 THE COURT: Okay.

14 MR. MORRIS: So, as the Movant, I'd like to go first.

15 THE COURT: You want to make opening statements?

16 MR. BRIDGES: Yes. Yes, Your Honor.

17 THE COURT: Okay. Okay.

18 MR. BRIDGES: I believe we've got a PowerPoint
19 prepared that I think can lay out our side of it.

20 THE COURT: Okay.

21 MR. BRIDGES: I don't think we're participating in
22 the motion to extend the removal time.

23 THE COURT: Okay.

24 MR. BRIDGES: That's going first.

25 THE COURT: All right.

1 MR. BRIDGES: So we'll wait until that is --

2 THE COURT: Well, so we don't get confused on the
3 timing, let's just do the motion to extend right now. And I
4 think we only had one objection. As Mr. Sbaiti just pointed
5 out, they're not objecting on that one. We have a Dondero
6 objection. So let's, without starting the timer, hear that
7 one. Okay?

8 MR. DEMO: Good morning, Your Honor. Greg Demo;
9 Pachulski, Stang, Ziehl & Jones.

10 THE COURT: Good morning.

11 MR. DEMO: I'll be arguing the removal motion and
12 then turn it over.

13 It's fairly basic and straightforward, Your Honor. We're
14 asking for a further extension of the statutory deadline to
15 remove cases until December 14th, 2021. The deadline is
16 procedural only. As Your Honor is well aware, there's a lot
17 of moving parts in this case. You know, we don't know to this
18 date, really, the full universe of what could actually be out
19 there. So we're just asking for a short extension of the
20 removal period to cover through December.

21 I know that there was an objection from Mr. Dondero. I
22 know that he argues that 9006 does not allow us to extend that
23 deadline past the effective date of the plan, and he cites one
24 case for that purpose, which is *Health Support*. I think it's
25 out of Florida. That case dealt with the extension of the

1 two-year extension of the statute of limitations and was very
2 clear that you can't use 9 --

3 THE COURT: You mean the 546 deadline?

4 MR. BRIDGES: Yes. Yes.

5 THE COURT: Okay.

6 MR. BRIDGES: That you can't use 9006 to extend non-
7 bankruptcy deadlines. That's not what we're doing here, Your
8 Honor. We're using 9006 to extend the bankruptcy deadline to
9 remove the cases.

10 THE COURT: Uh-huh.

11 MR. DEMO: And we'd just ask Your Honor for the
12 extension through December.

13 THE COURT: Okay. I'll hear Mr. Dondero's counsel.

14 MR. HOWELL: Good morning, Judge. Will Howell for
15 Mr. Dondero.

16 So, the argument here is not that the Court can't do this.
17 I was just pointing that there is an outside limit to what
18 we're doing. And so if you look at the cases that the Debtor
19 cites in support of this motion, the one that is most apt was
20 when Judge Nelms did a fourth extension of time. But those
21 were all 90-day extensions. Here, we're in a situation where
22 the Debtor is asking for a fourth 180-day extension of time,
23 and this is really where the, you know, objection came -- or,
24 the response in opposition came from. They specifically asked
25 that it be without prejudice to further extensions.

1 And so, at some point, you know, does 9006 have an outside
2 limit? You know, do we need to see some sort of a light at
3 the end of the tunnel here?

4 So we would ask that the motion, at a minimum, be denied
5 in part with respect to this open-ended request for extension
6 beyond two years for a 90-day period. The other cases that
7 they cite, they have one extension here, one extension there,
8 120 days here, but not 180 days after 180 days after 180 days,
9 and then asking specifically for without prejudice to further
10 extensions beyond two years. So that's -- that's where this
11 comes from.

12 THE COURT: All right. Do you think it matters that
13 this is a very complex case?

14 MR. BRIDGES: I --

15 THE COURT: There's litigation here, there, and
16 everywhere.

17 MR. HOWELL: I also think, you know, *Mirant* was
18 complex. I think *Pilgrim's Pride* was complex. I think, you
19 know, it is not out of bounds for the Court to grant a fourth
20 extension.

21 THE COURT: Uh-huh.

22 MR. BRIDGES: But to -- you know, at some point --
23 you know, maybe the Court could grant a 90-day extension and
24 make them come back a little more frequently to kind of corral
25 this thing, rather than just saying "This grant of 180 days,

1 the fourth time, is going to be without prejudice to further
2 extensions." It just gets kind of large.

3 THE COURT: Okay. Mr. Demo, your motion. You get
4 the last word.

5 MR. DEMO: Your Honor, I mean, it is without
6 prejudice for further extensions, but that doesn't mean that
7 Your Honor is granting the further extensions now. It means
8 we'll have to come back. We'll have to make our case for why
9 an extension is necessary. And, you know, if Your Honor
10 doesn't want to give us another extension past December 2021,
11 Your Honor doesn't have to. This is not an order saying that
12 it's a limitless grant.

13 You know, I'd also ask, you know, quite honestly, why Mr.
14 Dondero has such an issue with this. He hasn't said that any
15 of these cases involve him. He hasn't given any reasons why
16 this affects him. He hasn't given any reason why this damages
17 him at all. So I do, I guess, wonder as an initial matter
18 kind of why we're here, you know, why we're responding to Mr.
19 Dondero's request, when that request really has no impact on
20 him.

21 And then, Your Honor, to the extent that you are inclined
22 to limit this, I would say, you know, we would ask for a
23 reasonable extension of time. We do think an extension of
24 time, because of the complexity of this case, through December
25 is warranted. But if Your Honor for some reason does agree

1 that a shorter extension is necessary under 9006 -- I don't
2 think it is -- we'd just ask that Your Honor grant us leave to
3 come back for further extensions of time.

4 THE COURT: Okay. All right. I will -- I'll grant a
5 90-day extension, without prejudice for further extensions.

6 MR. DEMO: Thank you, Your Honor.

7 THE COURT: Maybe in 90 days we'll be farther down
8 the road and we won't need any more extensions, but you'll
9 have the ability to argue for more if you think it's really
10 necessary. All right. So that will bring us to around
11 September 14th, I guess.

12 All right. Well, let's go ahead and hear opening
13 statements with regard to the show cause matter. And again,
14 if you want to roll in arguments about the -- well, no, you
15 said the six hours only applies to show cause, so we'll not
16 hear opening statements with regard to the Seery retention
17 modification, just show cause.

18 MR. MORRIS: All right. Before I begin, Your Honor,
19 I have a small deck to guide --

20 THE COURT: Okay.

21 MR. MORRIS: -- to guide my opening statement.

22 THE COURT: All right.

23 MR. MORRIS: Can I approach the bench?

24 THE COURT: You may. And is your legal assistant
25 going to share her content --

1 MR. MORRIS: Yes.

2 THE COURT: -- so people on the WebEx will see?

3 Okay.

4 MR. MORRIS: That's the intention, Your Honor.

5 THE COURT: Okay.

6 MR. MORRIS: All right. Are you ready for me to
7 proceed?

8 THE COURT: I am. And obviously, everyone has a
9 copy?

10 MR. MORRIS: Yes.

11 THE COURT: Your opponents have a copy of this?

12 MR. MORRIS: Yep.

13 THE COURT: Okay. Although we hope to see it on the
14 screen.

15 OPENING STATEMENT ON BEHALF OF THE DEBTOR

16 MR. MORRIS: Good morning, Your Honor. John Morris;
17 Pachulski, Stang, Ziehl & Jones; for the Debtor.

18 We're here today on the Debtor's motion to hold certain
19 entities and individuals in contempt of court for violating a
20 very clear and specific court order. I hope to be relatively
21 brief in my opening here, Your Honor, and I'd like to begin
22 where I think we must, and that is, how do we -- how do we
23 prove this and what do we have to prove?

24 The elements of a claim for contempt of court are really
25 rather straightforward. The Movant must establish by clear

1 and convincing evidence three things.

2 THE COURT: Let me stop you and stop the clock.

3 We're not seeing the shared content.

4 MR. MORRIS: Uh-huh.

5 THE COURT: Did you want her to go ahead and share
6 her content?

7 MR. MORRIS: I did.

8 THE COURT: Okay.

9 MR. MORRIS: I was hoping that she'd do that.

10 THE COURT: All right. It says it's receiving
11 content.

12 MR. MORRIS: There we go. It's on my screen, anyway.

13 THE COURT: Oh, here it is. I don't know why it's
14 not on my Polycom. Can you all see it out there?

15 (Chorus of affirmative replies.)

16 THE COURT: Okay. Very good.

17 MR. MORRIS: Okay.

18 THE COURT: You may proceed.

19 MR. MORRIS: Thank you, Your Honor.

20 So, there's three elements to the cause of action for
21 contempt, for civil contempt. We have to prove by clear and
22 convincing evidence that a court order was in effect; that the
23 order required certain conduct by the Respondents; and that
24 the Respondent failed to comply with the Court's order.

25 We've cited in the footnote the applicable case law from

1 the Fifth Circuit, and I don't believe that there's any
2 dispute that is indeed the legal standard.

3 The intent of the Respondents as to liability is
4 completely irrelevant. It doesn't matter if they thought they
5 were doing the right thing. It doesn't matter if they
6 believed in their heart of hearts that the court order was
7 invalid. These are the three elements, and we will be able to
8 establish these elements not by clear and convincing evidence,
9 but if we ever had to, beyond reasonable doubt.

10 If we can go to the next slide, please.

11 We begin with the Court's order, the Court's July 9 order.
12 And that order states very clearly what conduct was required.
13 And the conduct that was required was that no entity could
14 commence or pursue -- those are really the magic words --
15 commence or pursue a claim against Mr. Seery without the
16 Bankruptcy Court doing certain things. And we've referred to
17 this as the gatekeeper. And the only question I believe the
18 Court has to ask today is whether the Respondents commenced or
19 pursued a claim against Mr. Seery without seeking Bankruptcy
20 Court approval, as set forth in this order.

21 I'll dispute that there's anything ambiguous about this.
22 I'll dispute that it could not be clearer what conduct was
23 prohibited. It could not be clearer. The only question is
24 whether the conduct constitutes the pursuit of a claim.

25 Let's see what they did. If we could go to the next

1 slide. There will be no dispute about what they did. And
2 what they did is, a week after filing a lawsuit against the
3 Debtor and two others arising out of the HarbourVest
4 settlement, a settlement that this Court approved, after
5 notice and a hearing and participation by the Respondents,
6 after they had the opportunity to take discovery, after they
7 had the opportunity to examine Mr. Seery about the value of
8 HarbourVest's interest in HCLOF, after all of that, they
9 brought a lawsuit after Mr. Patrick took control of the DAF
10 and CLO Holdco. And that lawsuit related to nothing but the
11 HarbourVest suit, and it named in Paragraph 2, right up above,
12 Mr. Seery as a potential party. And a week later, Your Honor,
13 they filed what we call the Seery Motion, and it was a motion
14 for leave to amend their complaint to add Mr. Seery as a
15 defendant.

16 We believe that that clearly violates the Court's July 7
17 order. And indeed, again, these are facts. They're not --
18 they're not in dispute. Just look at the first sentence of
19 their motion. The purpose of the motion was to name James
20 Seery as a defendant. That was the purpose of the motion.
21 And the way that they made the motion, Your Honor -- and these
22 are undisputed facts -- the way they made the motion, Your
23 Honor, shows contemptuous intent. We don't have to prove
24 intent, but I think it might be relevant when you get to
25 remedies. Okay?

1 And so how do I -- why do I say that? Because they made
2 this motion, Your Honor, and they didn't have to. Everybody
3 knows that under Rule 15 they could have amended the complaint
4 if they wanted to. If they wanted to, they didn't need the
5 Court's permission. What they wanted to do was try to get the
6 District Court to do what they knew they couldn't. And that's
7 contemptuous.

8 And they did it, Your Honor, without notice to the Debtor.
9 Even after the Debtor had accepted service of the complaint,
10 even after we told them, if you go down this path, we're going
11 to file a motion for contempt, they did it anyway. They
12 didn't serve the Debtor. They didn't give the Debtor a
13 courtesy copy. They didn't notify the Debtor. The only thing
14 that happened was the next day, when the District Court
15 dismissed it without prejudice, they sent us a copy of that
16 notice. And within three days, we were here.

17 A court order was in effect. Mr. Patrick is going to
18 admit to that. There's not going to be any dispute about
19 that. The order required that the Respondents come to this
20 Court before they pursue a claim against Mr. Seery, and they
21 failed to comply with that order. The facts, again -- if we
22 can go to the next slide. We can look at some of the detail,
23 because the timeline is mindboggling.

24 Mr. Patrick became the Plaintiffs' authorized
25 representative on March 24th. And folks, when I took their

1 depositions, weren't specific about dates, and that's why some
2 of the entries here refer to sometime after, but there's no
3 question that the order of events is as presented here and as
4 the evidence will show today.

5 The evidence will show that sometime after Patrick became
6 the Plaintiffs' authorized representative, Mr. Dondero
7 informed Mr. Patrick that Highland had usurped an investment
8 opportunity from the Plaintiffs. Mr. Patrick is going to
9 testify to that. Mr. Patrick is also going to testify that,
10 without prompting, without making a request, D.C. Sauter, the
11 general counsel of NexPoint Advisors, recommended the Sbaiti
12 firm to Mr. Patrick. Mr. Patrick considered nobody else.

13 Mr. Patrick retained the Sbaiti firm in April. In other
14 words, within 12 days of the filing of the complaint. They're
15 retained and they conduct an investigation. You're going to
16 hear the assertion of the attorney-client and the common
17 interest privilege every time I ask Mr. Dondero what he and
18 Mr. Sbaiti talked about and whether they talked about naming
19 Jim Seery as a defendant. But with Patrick's authorization,
20 the Sbaiti firm filed the complaint on April 12th, just days
21 after they were retained.

22 It's like a -- it's an enormous complaint. I don't know
23 how they did that so quickly. But in any event, the important
24 point is that they all worked together. None of this happened
25 until Mr. Patrick became the authorized representative.

1 Mr. Patrick is going to tell you, Your Honor, he's going
2 to tell you that he had no knowledge of any wrongdoing by Mr.
3 Seery prior to the time he assumed the rein of the DAF and the
4 CLO Holdco. He had no knowledge, Your Honor, of any claims
5 that the DAF and CLO Holdco had against the Debtor until he
6 became the Plaintiffs' authorized representative and Mr.
7 Dondero spoke to him.

8 If we can flip to the next page. Mr. Dondero has
9 effective control of the DAF. He has effective control of CLO
10 Holdco. You're going to be bombarded with corporate documents
11 today, because they're going to show you -- and they want you
12 to respect the corporate form, they really want you to follow
13 the rules and respect the corporate form, because only Mr.
14 Scott was responsible for the DAF and CLO Holdco until he
15 handed the reins on March 24th to Mr. Patrick. Mr. Dondero
16 has nothing to do with this. He's going to tell you. He's
17 going to tell you he had nothing to do with the selection of
18 Mr. Patrick as Mr. Scott's replacement.

19 The facts are going to show otherwise, Your Honor. The
20 DAF is a \$200 million charitable organization that is funded
21 almost exclusively with assets derived from Highland or Mr.
22 Dondero or the Get Good Trust or the Dugaboy Trust. The
23 evidence is going to show that at all times these entities had
24 shared services agreements and investment advisory agreements
25 with HCMLP. The evidence will show that HCMLP at all times

1 was controlled by Mr. Dondero.

2 And it made sense. The guy put in an awful lot of money
3 for charitable usage. Is he really just going to say, I don't
4 really care who runs it? The evidence is going to show that
5 between October 2020 and January 2021, Grant Scott actually
6 exercised independence. Grant Scott was Mr. Dondero's
7 childhood friend. They went to UVA together. They were
8 roommates. Mr. Scott was the best man at Mr. Dondero's
9 wedding. But we were now in bankruptcy court. We're now in
10 the fishbowl. And I will -- this may be a little argument,
11 but there's no disputing the facts that Mr. Scott acted
12 independently, and he paid the price for it. Mr. Scott did it
13 three times.

14 He did it when he amended CLO Holdco's proof of claim to
15 take it down to zero. He did it again after he withdrew the
16 objection to the HarbourVest settlement motion. And he did it
17 again when he settled the lawsuit that the Debtors had brought
18 against CLO Holdco. And that -- and on each of those three
19 occasions, the evidence will show that Mr. Scott did not
20 communicate with Mr. Dondero in advance, that Mr. Dondero
21 found out about these acts of independence after the fact, and
22 that each time he found out about it he had a little
23 conversation with Mr. Scott.

24 Mr. Dondero is going to tell you about it, and he's going
25 to tell you that he told Mr. Scott each act was inappropriate.

1 You may have heard that word before. Each act was not in the
2 best interests of the DAF.

3 The last of those conversations happened either on or just
4 after January 26th. And by January 31st, Mr. Scott gave
5 notice of his resignation. And you're going to see that
6 notice of resignation. And he asks for releases.

7 Mr. Patrick becomes, almost two months later, the
8 successor to Mr. Scott. Mr. Dondero is going to say he has no
9 idea how that happened. He was just told after the fact that
10 Mr. Patrick and Mr. Scott had an agreement. He's going to
11 tell you they had an agreement and he just heard about it
12 afterwards. He didn't really -- for two months, I guess, he
13 sat there after Mr. Scott told him that he wanted out and did
14 nothing to try to find out who's going to take control of my
15 charitable foundation with \$200 million. He wasn't
16 interested.

17 But here's the thing, Your Honor. If we go to the next
18 slide. Let's see what Mr. Scott said at his deposition last
19 week. Question, "Do you know who selected Mark?" Answer, "I
20 do not." Question, "Do you know how Mark was selected?" Mark
21 is a reference to Mark Patrick. "I do not." "Did you ever
22 ask Mark how he was selected?" "I did not." "Did you ever
23 ask Mark who selected him?" "I did not." "Did you ever ask
24 anybody at any time how Mr. Patrick was selected to succeed
25 you?" "No, I did not." "Did you ever ask anybody at any time

1 as to who made the decision to select Mr. Patrick to succeed
2 you?" "No, I did not."

3 So I don't know what happened between Mr. Patrick and Mr.
4 Dondero when Mr. Patrick supposedly told Mr. Dondero that
5 there was an agreement with Mr. Scott, but that is news to Mr.
6 Scott. He had no idea.

7 Your Honor, we are going to prove by clear and convincing
8 evidence that each of the Respondents violated a very clear
9 and specific court order. And unless the Court has any other
10 questions, I'll stop for now.

11 THE COURT: No questions.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: All right. Who is making the argument
14 for the Respondents?

15 MR. SBAITI: Your Honor, I am. I'm just trying to
16 put the PowerPoint up on the WebEx.

17 THE COURT: Okay.

18 MR. SBAITI: Sorry about that.

19 MR. MORRIS: Your Honor, I'll try not to make this a
20 practice, but can I inquire as to how much time I used?

21 THE COURT: Oh. Nate?

22 THE CLERK: About thirteen minutes.

23 THE COURT: Thirteen minutes?

24 MR. MORRIS: Thank you very much.

25 THE COURT: Okay. All right.

1 MR. SBAITI: Your Honor, our PowerPoint is a little
2 bit longer than that one. May I approach with a copy?

3 THE COURT: You may. Uh-huh.

4 (Pause.)

5 MR. SBAITI: Your Honor, it does feel good to be back
6 in the courtroom.

7 THE COURT: Okay.

8 MR. SBAITI: It's been a long time.

9 THE COURT: Yes. For us, too.

10 MR. SBAITI: Jut wish it wasn't under a circumstance
11 where someone is trying to sanction me.

12 But we're going to be dividing up this oral argument a
13 little bit. Also, to just kind of break up a little bit of
14 the monotony, because I think we have a lot to cover at the
15 opening stage of this. And I'll try to be as expeditious as I
16 can be.

17 OPENING STATEMENT ON BEHALF OF THE SHOW CAUSE RESPONDENTS

18 MR. SBAITI: Your Honor, the thing we -- the thing we
19 open with is the due process issue that we raised in our
20 brief. And where this really arises from is the Court's show
21 cause order calls us violators before we've had a chance to
22 respond to the allegations and before we've obviously been
23 able to approach this hearing. And the word violators means
24 something to us, Your Honor, because I've been a lawyer for a
25 long time, my partner has been a lawyer for a long time, our

1 clients have never been sanctioned, we've never been
2 sanctioned, and for us to be labeled violators first by
3 counsel and then in a court order makes us wonder whether or
4 not this process is already prejudged or predetermined.

5 THE COURT: I actually want to address that. Turn
6 off the clock.

7 Just so you know, I looked this up a while back, because
8 we gave a bankruptcy judges panel at some CLE. The average
9 bankruptcy judge in our district, back when I looked, signs
10 over 200 orders a week.

11 MR. SBAITI: Sure.

12 THE COURT: Many of those -- in fact, most of them --
13 are submitted by lawyers. So, you know, a big chunk of my
14 week is signing orders. And I obviously give more scrutiny to
15 those that are substantive in nature. Okay? If someone
16 submits to me a 50-page debtor-in-possession financing order,
17 I will look at that much more carefully than what I consider a
18 mere procedural order setting a hearing.

19 So I regret that that word was used, but I can assure you
20 I fairly quickly set that -- signed that, I should say --
21 regarding it as a merely procedural order setting a hearing.
22 Okay? So it's as simple as that. There was no hmm, I like
23 that word, violator. I had a stack, if you will, an
24 electronic stack of probably 200 orders in front of me the day
25 I signed that. Okay?

1 So, if that makes anyone feel any better, I don't know,
2 but that's the reality.

3 Okay. You can start the clock again.

4 MR. SBAITI: And I appreciate Your Honor saying that.
5 It does make us feel better, both about where the -- the
6 genesis of the order and the impact and its reflection on what
7 Your Honor thinks in terms of going into this.

8 The other thing that obviously raised concerns, and I
9 assume this comes from the same place, was four days ahead of
10 that order counsel told us the Court was going to order
11 everyone to be in person, and they had advance notice of that,
12 and we weren't sure how they had advance notice of that. I
13 guess they assumed --

14 THE COURT: I can assure you right here on the record
15 I never had ex parte communications with any lawyer in this
16 case, on this matter or any other matter. Okay? Again, those
17 are pretty strong words to venture out there with, which your
18 pleading did venture out there with those words.

19 My courtroom deputy, Traci, I think answers her phone 24
20 hours a day. So I'm quite sure she had communications with
21 the lawyers about this, just like she probably had
22 communications with you and your firm and every other firm in
23 this case. Okay?

24 MR. SBAITI: Like I said, Your Honor, we appreciated
25 what Your Honor -- appreciate what Your Honor said, but that

1 issue obviously stuck out -- stuck out to us, in combination.
2 So I'll move on from that issue.

3 This has to do with the lawsuit that was filed, and the
4 lawsuit, the genesis of the lawsuit, I think it's important to
5 say, because the argument has been raised in the briefing and
6 we wanted to address it upfront, why the lawsuit comes about.
7 And it comes about because of the Advisers Act and the
8 responsibilities that the Debtor has to the assets of the
9 funds that it manages. And the Advisers Act imposes a duty
10 not only on Highland but obviously on its control people and
11 its supervised people. And the lawsuit has to do with HCLOF,
12 which is what HarbourVest owned a piece of. And Highland, as
13 the advisor to HCLOF and the advisor to the DAF, owed
14 fiduciary duties to CLO Holdco, which is the DAF's holding
15 entity of its assets in HCLOF, but Highland Capital was also
16 an advisor, a registered investment advisor to the DAF
17 directly at the time. And so those federally-imposed
18 fiduciary duties lie at the crux of that lawsuit.

19 Moving on, Mr. Seery testified at the hearing that was in
20 this Court to be -- to get him appointed, and this was Exhibit
21 2 that was presented by the Debtor, and on Page 16 at the
22 bottom he says -- of the transcript, he says, I think, from a
23 high level, the best way to think about the Debtor is that
24 it's a registered investment advisor. As a registered
25 investment advisor, which is really any advisor of third-party

1 money over \$25 million, it has to register with the SEC, and
2 it manages funds in many different ways.

3 In the middle of the next page he says, In addition, the
4 Debtor manages about \$2 billion, \$2 billion in total managed
5 assets, around \$2 billion in CLO assets, and then other
6 securities, which are hedge funds -- other entities, rather,
7 which are hedge funds or PE style. Private equity style.

8 On Page 23 towards the bottom he says, As I said, the
9 Investment Advisers Act puts a fiduciary duty on Highland
10 Capital to discharge its duty to the investors. So while we
11 have duties to the estate, we also have duties, as I mentioned
12 in my last testimony, to each of the investors in the funds.
13 CLO Holdco would be an investor in one of those funds, HCLOF.

14 He goes on to say, Some of them are related parties, and
15 those are a little bit easier. Some of them are owned by
16 Highland. HCLOF was not owned by Highland. But there are
17 third-party investors in these funds who have no relation
18 whatsoever to Highland, and we owe them a fiduciary duty both
19 to manage their assets prudently but also to seek to maximize
20 value.

21 Now, the lawsuit alleges that Seery testified that the
22 HarbourVest portion of Highland CLO Funding was worth \$22-1/2
23 million. Now, Mr. Morris wants the Court to hinge on the fact
24 that, well, no one asked him whether he was lying. But that's
25 not really the standard, and it certainly isn't the standard

1 when someone's an investment advisor and owes fiduciary
2 duties, which include fiduciary duties to be transparent with
3 your investors.

4 It also includes fiduciary duties not to self-deal.

5 The lawsuit also alleges that, in reality, those assets
6 were worth double that -- double that amount at the time. We
7 found out just, you know, in late March/early April that a
8 third -- from a third party who had access to the underlying
9 valuations at the time that those values were actually double
10 and that there was a misrepresentation, giving rise to the
11 lawsuit. That change in circumstance is the key issue behind
12 the lawsuit.

13 We allege that Mr. Seery and the Debtor, as RIAs, had a
14 duty to not self-deal and be fully transparent with that
15 information, and we think both of those things were violated
16 under the Advisers Act.

17 We don't allege that the HarbourVest settlement should be
18 undone or unwound. We can't unscramble that egg. We do seek
19 damages, as I believe is our right, arising out of the
20 wrongdoing and the process of pushing forth the settlement.

21 I think one of the allegations in the actual motion for
22 the show cause order was that this was going to undo all of
23 the hard work that Court had done and basically unwind and try
24 to re-piece Humpty Dumpty back together again. But that's
25 simply not the case. Nowhere in our allegations or in the

1 relief that we request are we trying to undo the HarbourVest
2 settlement as such.

3 Now, whether the lawsuit should be dismissed under the
4 affirmative defenses that they bring up -- res judicata,
5 waiver, release -- all of those are questionable under the
6 Advisers Act, given the change of circumstance, and therefore
7 are also questions on the merits. They don't go to the
8 colorability of the underlying claims in and of themselves,
9 which I think is important.

10 So we asked for leave to amend from the Court. And what
11 they want us to do, Your Honor, is they want to sanction us
12 for asking. They're saying asking for leave to amend is the
13 same thing as pursuing a claim. And I'll get to the specifics
14 on that in a little bit. But that's the frame. Can we be
15 sanctioned for asking a court, any court, even if it's the
16 wrong court, for permission to bring the lawsuit? They don't
17 cite a single case that says that that, in and of itself, is
18 sanctionable conduct, us asking.

19 So I'd like to introduce some of the Respondents.

20 Your Honor, may I have one of these waters?

21 THE COURT: Certainly.

22 MR. SBAITI: Thank you.

23 THE COURT: That's why they're there, by the way.

24 MR. SBAITI: I didn't know if they belonged to
25 somebody else.

1 THE COURT: We've scattered water bottles around for
2 people.

3 MR. SBAITI: I appreciate it. Thank you, Your Honor.

4 THE COURT: So if you see these little ones, that's
5 for anyone.

6 MR. SBAITI: So, this is an org chart, and you'll see
7 it as -- the exhibits that the Debtor's going to bring up.
8 And when we talk about the DAF, Your Honor -- I don't know if
9 that's visible to you. We're on Slide 19, if you're looking
10 at it on paper. There's a little number at the lower right-
11 hand corner. The charitable DAF GP, LLP and then the
12 Charitable DAF Holdco, Ltd. together are the principles of the
13 Charitable DAF Fund, LP. And so when we refer to the DAF or
14 the Charitable DAF, that's really the entity structure that
15 we're referring to. And then the GP and Holdco Ltd. have a
16 managing member. It used to be Grant Scott at the time this
17 was done. Today, it's Mr. Mark Patrick, who's in the room,
18 sitting next to Mr. Bridges.

19 The DAF is a charitable fund. It's funded over \$32
20 million, as the evidence will show, including Dallas-Fort
21 Worth organizations, The Family Place, Dallas Children's
22 Advocacy, Center for Brain Health, the Crystal Ray Initiative,
23 Friends of the Dallas Police, Snowball Express, various
24 community and education initiatives, Dallas Arts, museums, the
25 Perot Museum, Dallas Zoo. That evidence is undisputed, Your

1 Honor. The DAF is a real fund. It is a real charitable fund.
2 It does real good in the community.

3 Now, Respondents -- Holdco, which you will see at the
4 bottom of that chart, is essentially the investment arm.
5 There are assets that the DAF owns in various pots, and Holdco
6 is the actual business engine that generates the money from
7 those assets that then -- that then gets passed up to the
8 charitable -- the four charitable foundations at the top.

9 I'll go back to Slide 21. And if you look at the top,
10 Your Honor, the Dallas Foundation, Greater Kansas City
11 Community, Santa Barbara Foundation, The Community Foundation
12 of North Texas: Those are the charities that then themselves
13 bestow the funds onto the actual recipients. So the money
14 flows up as dividends or distributions, and then gets
15 contributed.

16 CLO Holdco invests those assets, and it's an important
17 part of the business model, so that you're not sending out
18 principal. It's the money that CLO makes, the profits, if you
19 will, that it is able to generate that gets donated and makes
20 its way into the community.

21 So there's an important feature to the structure in that
22 it has to be able to generate money. It's not just money that
23 sits there and waits to be distributed. There's active
24 investing going on.

25 Mr. Mark Patrick owns the control shares of the entities

1 comprising the DAF and CLO Holdco, as I showed you, and the
2 beneficiary charitable foundations hold what we call
3 beneficial interests, where they just get money. They don't
4 have a vote.

5 Mr. Patrick cares about the public service the DAF engages
6 in. He's been an advisor to the DAF, CLO Holdco, and its
7 predecessor, Mr. Scott, since its inception. He receives no
8 compensation for the job he's doing today. And you'll hear
9 how he became -- how he inured to the control position of the
10 DAF and CLO Holdco from him, but it doesn't involve Mr.
11 Dondero, and the absence of someone saying that it did, I
12 think, is going to be striking by the end of the presentation
13 of evidence.

14 Their only argument against you, Your Honor, is going to
15 be you just can't believe them. But not believing witnesses
16 is not a substitute for the lack of affirmative evidence.

17 Mr. Patrick has said all along he authorized the filing of
18 the motion for leave to add Mr. Seery to the lawsuit in
19 District Court. He doesn't believe the motion to amend
20 violated this Court's orders, for the reasons stated in our
21 responsive filings to the motions for contempt and show cause
22 order. That's why he authorized it.

23 My firm, Sbaiti & Company, we're a small Dallas litigation
24 boutique retained by the DAF and CLO Holdco to file the
25 lawsuit. We did an investigation. I'm tickled to death that

1 Mr. Morris loved our complaint so much and gave us the
2 compliment that we got it done in a short amount of time, but
3 we did get it done in a short amount of time, because, in the
4 end, it's a rather simple issue, as I was able to lay it out
5 in about three or four bullet points in a previous slide.

6 The written aspect of that doesn't take that long, as Your
7 Honor knows, but the idea that there's a suspicion that we
8 didn't write it or someone else wrote it and ghost-wrote it
9 and gave it to us, which I think is the insinuation he was
10 making, is completely unfounded. There's no evidence of that.

11 We carefully read Your Honor's orders. We developed a
12 good-faith basis, as required by Rule 11, that the lawsuit and
13 the motion to add Mr. Seery were not filed in bad faith or for
14 an improper purpose. We don't think they're frivolous. We
15 don't think they're in violation of Your Honor's orders, given
16 the current state of the law.

17 Mr. Dondero is one of the settlors of the CRT, of the
18 Charitable Remainder Trust that ultimately provided assets to
19 CLO Holdco and the DAF. He does care about the DAF's mission.
20 I think Mr. Morris hit the nail on the head. Of course Mr.
21 Dondero cares about what happens to it. He's one of the
22 settlors, and it was his funds that initially were put into
23 it, so he's allowed to care. And I don't think him caring is
24 insidious, and him caring doesn't mean he has control and
25 doesn't mean he's the driving force behind some insidious

1 conspiracy that they're trying to insinuate exists.

2 He is an advisor to the DAF and CLO Holdco. It is a lot
3 of money and it needs advice, and he's an advisor to Mr.
4 Patrick. We don't run away from any of those facts, Your
5 Honor.

6 We also don't run away from the fact that he was the
7 source of some of the information that came in to that
8 complaint and that he relayed some of that information. The
9 content, we do claim work product privilege and attorney-
10 client privilege, because he's an agent of our client, and as
11 lawyers doing an investigation, the content of our
12 communications is protected under the attorney-client and work
13 product privileges, as well as the joint interest privilege.
14 But the fact that we admit that those communications happened,
15 we're not running away from that fact.

16 So, what does he have to do with this? It's interesting
17 that that opening argument you just heard spent about three
18 minutes on contempt and the other fourteen or fifteen minutes
19 or so on Mr. Dondero. And only on Mr. Dondero. There's a
20 negative halo effect, I believe, that they're trying to get
21 this Court to abide by. They want to inflame Your Honor and
22 hopefully capture -- cultivate and then capitalize on whatever
23 antipathy you might have for Mr. Dondero, and then sweep us
24 all in under that umbrella and sanction everybody just because
25 he had some involvement.

1 But whatever involvement he has, which we admit he had
2 some involvement in helping us marshal the facts, that's not a
3 basis for us to be sanctioned if there isn't an actual
4 sanctionable conduct that -- as we say there isn't.

5 We think there's an ulterior motive. That's why Mr.
6 Morris just announced to Your Honor, Mr. Dondero controls it
7 all. The ulterior motive, I believe, is, down the line, when
8 they want to argue some kind of alter ego theory, they want to
9 lay that foundation here. I don't think this is the
10 appropriate time for that foundation, and I don't think any of
11 the information and the evidence they're trying to marshal in
12 front of you is really going to be relevant to the very
13 specific question that's before Your Honor: Does our motion
14 asking the District Court to add Mr. Seery violate your order,
15 or violate it in a way that can be -- that we can be
16 sanctioned for? We don't believe it violates it.

17 So, the three core standards that have to be met. First
18 of all, civil contempt requires a valid, enforceable order.
19 It's not debatable and it's not -- I don't think that's a
20 shocking statement. Then they have to have clear and
21 convincing evidence of a violation of a specific unambiguous
22 term therein. Mr. Morris wants his version of the word pursue
23 to be unambiguous, and I think the word pursue is unambiguous.
24 But the way he wants you to construe it makes it completely
25 ambiguous, and we'll -- I'll get to that in a moment.

1 Now, for sanctioning counsel, the Fifth Circuit has held
2 you have to find bad faith. We're adjudged under a slightly
3 separate standard under the Fifth Circuit law. So the
4 contempt motion, though, to the extent it seeks to impose
5 double and treble attorney's fees, those are in punitive
6 fines. They are not compensatory. So criminal contempt
7 standards are raised, and so they have to show a violation in
8 bad faith. In other words, our arguments that we're making
9 have to be bad faith, not simply that we're wrong, and they
10 have to show beyond a reasonable doubt, usually in front of a
11 jury. The U.S. Supreme Court explained the difference and the
12 different procedural protections that have to be involved if
13 they're really going to seek double and treble compensatory
14 damages.

15 Now, he's right. Saying we intended -- saying that we
16 didn't mean to violate it isn't necessarily a defense. But
17 what you're actually going to hear from him is the opposite
18 argument, that even though we didn't violate it, we wanted to.
19 That's what he says. That's why he quoted you the opening
20 section of our motion asking for permission to sue Mr. Seery,
21 because that's a statement of purpose. And he says you should
22 sanction them right there. That's literally what he said.
23 It's right there, their purpose. If intent is irrelevant to
24 them, it's irrelevant as to us. The fact that we wanted to
25 sue Seery is fully admitted. We don't deny the fact that we

1 believe Mr. Seery should be a defendant in this lawsuit. But
2 the fact that we didn't sue him is why we didn't violate the
3 order. And they can't say that the fact that we eventually
4 wanted to sue him means we did violate the order. That door
5 swings both ways, Your Honor.

6 We don't think any element is met. The order, while writ
7 large, prohibits suing Mr. Seery without permission, and we
8 did not sue James Seery, pure and simple. The July 12 --
9 14th, 2020 order purports to reserve exclusively to this Court
10 that which, according to the statutes and the case law, we
11 believe the Court can't exclusively reserve to itself. And
12 Your Honor, the order prohibits commencing and pursuing a
13 claim against Jim Seery without coming here first to decide
14 the colorability of such a claim.

15 They, I believe, admit that we didn't commence a claim
16 against Jim Seery. I think they've admitted that now. So now
17 we're talking about what does pursue mean? We didn't pursue a
18 claim against Jim Seery. Is asking for leave to bring suit
19 the same thing as pursuing a claim? That's the question
20 that's really before Your Honor. Lawyers never talk of
21 pursuing a claim that hasn't been filed. We don't say, I'm
22 pursuing a claim and I'm going to file it next week or next
23 year. Usually, that type of language is in an order, because
24 when the order happens, there may already be claims against
25 Mr. Seery. And so the pursuit of claim is supposed to attack

1 those cases, to come here and show colorability, presumably,
2 before they continue on with those lawsuits. It doesn't mean
3 asking for permission.

4 If it did mean asking for permission, then complying with
5 Your Honor's order would be a violation. If the motion for
6 leave is a violation because it is pursuing a claim, if I had
7 filed that motion in this Court, it would still be pursuing a
8 claim without Your Honor's permission. I'd have to get
9 permission just to ask for permission. It puts us in this
10 endless loop of, well, if asking for permission is pursuing a
11 claim, and pursuing a claim is without permission violates the
12 Court's order, we'd always be in violation of the Court's
13 order just for asking, just for following Your Honor's edict.

14 THE COURT: I'm just, I'm going to interject. You
15 were supposed to, under the order, file a motion in this
16 Court.

17 MR. SBAITI: I understand that, Your Honor, and I
18 think that we can get to the specifics on why we disagree with
19 how the motion went, Your Honor. We hadn't sued Mr. Seery.
20 So as long as we dealt with the order, which is what our
21 position is, then we don't believe we violated the order.

22 THE COURT: You think the order was ambiguous,
23 requiring a motion to be filed in the Bankruptcy Court?

24 MR. SBAITI: Your Honor, what we believe is that the
25 order was ambiguous in terms of whether us asking for

1 permission in the District Court was in and of itself a
2 violation of the order. We don't think it was. Actually, we
3 don't think the order's ambiguous to that extent. The second
4 we file a suit against Mr. Seery and we don't have some
5 resolution of the issue, then I think the question of
6 sanctionability comes in. But we never filed suit, Your
7 Honor.

8 The Court doesn't say I can't seek permission in the
9 District Court or that we can't go to the District Court with
10 -- which has general jurisdiction over this case, and has
11 jurisdiction, we believe, over the actual case and controversy
12 that's being raised. But the idea of pursuit being a
13 violation of the order, of the letter of that order, is
14 nonsensical under that, it leads to an absurd result, and it's
15 plainly vague and ambiguous, Your Honor.

16 Asking Judge Boyle or asking a District Court for
17 permission is not a violation of this Court's order, not the
18 way it was written and not -- and I don't even believe it was
19 a violation necessarily of the Court's -- of the language that
20 the Court has. We -- it doesn't unambiguously prevent us from
21 asking the District Court for leave.

22 The Court's order yesterday, Your Honor, applied this very
23 rule. The TRO -- you said the TRO did not specifically state,
24 Turn your cell phone over. And you denied motion for
25 sanctions on that. That's basically the argument we're making

1 here, Your Honor. We think that was the correct ruling, and
2 we think the same type of ruling applies here.

3 Your order yesterday also determined that the Court
4 ultimately believes that hiring lawyers to file motions should
5 not be viewed as having crossed the line into contemptuous
6 behavior. That's essentially the argument they want you to
7 buy, that there's somehow a vindictiveness behind this and an
8 insidious plan to violate court orders, Your Honor. We don't
9 have any evidence of that.

10 THE COURT: Okay. Take the words vindictiveness and
11 insidious out of the equation. That's making things personal,
12 and I don't like that. The key is the literal wording of the
13 order, is it not?

14 MR. SBAITI: Your Honor, the key, I believe, is the
15 --

16 THE COURT: No entity may commence or pursue a cause
17 of action of any kind against Mr. Seery relating in any way to
18 his role as the chief executive officer and chief
19 restructuring officer of the Debtor without the Bankruptcy
20 Court first determining, after notice, that such claim or
21 cause of action represents a colorable claim of willful
22 misconduct or gross negligence against Mr. Seery and
23 specifically authorizing such entity to bring such a claim.
24 So I'm trying to understand why you argue that filing a motion
25 asking the District Court for permission is not inconsistent

1 with this order.

2 MR. SBAITI: Because it's not commencing a claim,
3 Your Honor. It's not commencing a claim against him.

4 THE COURT: Okay. So is your argument that if Judge
5 Boyle authorizes amendment of the pleading to add Mr. Seery
6 and then you do it, at that point they may have grounds for a
7 motion for contempt, but not yet, because she has not actually
8 granted your motion?

9 MR. SBAITI: Correct, Your Honor. I mean, in a
10 nutshell. In fact, that's one of -- I think that's probably
11 our next argument. We think, in a sense, this argument is
12 incredibly premature. There is three ways that this -- well,
13 I'd like to address this, so I've got -- I've got a diagram
14 that I think will actually help elucidate what our thought
15 process was.

16 There's three things she could have done. She could have
17 referred -- referred it to Your Honor, which is what we
18 expected was likely to happen.

19 THE COURT: But you didn't file a motion for referral
20 of the motion before her.

21 MR. SBAITI: Well, no, I don't mean in respect of
22 enforcing the reference. The referral we thought was most
23 likely going to happen because it's an associated case, and we
24 actually put those orders in front of her, so we expected that
25 those orders would end up -- that the question would

1 ultimately end up in front of Your Honor on that basis.

2 She could have denied our motion outright, in which case
3 we haven't filed a claim, we haven't violated it, or she could
4 have granted our motion and done one of two things. She could
5 have granted it to the extent that she thought leave would be
6 proper but then referred it down, or she could have decided --
7 taken the decision as the court with general jurisdiction and
8 simply decided it all on her own. She had all of those
9 options, Your Honor, and none of them results in a claim being
10 commenced or pursued without the leave of this Court, if leave
11 is absolutely necessary, Your Honor. And that's the point
12 that we were trying to make.

13 Your Honor, the -- there's -- you know, there's no
14 evidence that, absent an order from a court with jurisdiction,
15 that we were going to file a claim against Mr. Seery, that we
16 were going to commence or pursue a claim against Mr. Seery.
17 We were cognizant of Your Honor's order. We considered that.
18 And the reason we filed them the way we did is because,
19 according to the statutes and the case law, this is the type
20 of case that would be subject to a mandatory withdrawal of the
21 reference.

22 And so there's this paradox that arises, Your Honor. And
23 the paradox that arises is that we show up and immediately go,
24 well, we need to be back in the District Court. So we filed
25 our motion there, and I don't think that was contemptuous, it

1 wasn't intended to be contemptuous of the Court, but we showed
2 the orders to the Court, made the same arguments that we have
3 been making here, that we believe that there's problems with
4 the order, we believe the order oversteps its jurisdiction and
5 maybe is unenforceable, and it's up to that District Court, as
6 it has been in almost all of these other gatekeeper order
7 cases that get filed. None of them result in sanctions, Your
8 Honor. What they result in is a District Court deciding,
9 well, either they refer it or they decide I don't need to
10 refer it. But I don't think that that is the same thing as
11 commencing or pursuing a claim in the end, Your Honor, because
12 all we did was ask for permission, and permission could have
13 been denied or granted or granted in part.

14 Your Honor, they haven't cited an injury. You've heard
15 the testimony, Your Honor, that they -- the first time they
16 knew we had filed a motion -- which I don't understand why
17 that's the first time they knew we had filed a motion; we told
18 them we were going to file the motion -- was when I forwarded
19 an email saying that it's been denied without prejudice, Your
20 Honor. Well, that means they didn't have to do any work to
21 respond to the motion. They didn't have to do any work to do
22 any of the other things.

23 And one hundred percent of the damages that they're going
24 to say they incurred is the litigation of this contempt
25 hearing or this sanction motion, as opposed to some other

1 simpler remedy, like going in to Judge Boyle and saying, Your
2 Honor, all that needs to go, which is what they eventually
3 did. But they would have had to incur those costs anyway
4 because they're now moving to enforce the reference. They
5 filed a 12(b)(6). That briefing would have existed regardless
6 of whether or not we had filed our motion, regardless of
7 whether the sanctions hearing had commenced.

8 Your Honor, I'm going to let my partner, Mr. Bridges,
9 address this part of it, if I could. I think that gets into
10 more of the questions that you asked, and I think he can
11 answer them a lot better than I can.

12 THE COURT: Okay.

13 MR. SBAITI: Thank you.

14 THE COURT: That's fine.

15 MR. BRIDGES: Thank you, Your Honor. And I do want
16 to address pointedly the questions that you're asking. First,
17 though, I was hoping to back up to some preliminary remarks
18 that you made and say that I find the 200 orders a week just
19 mindboggling. It amazes me, and puts the entire hearing in a
20 different perspective for me. I'm grateful that you shared
21 that with us.

22 Your expression of regret about naming us violators was
23 very meaningful to me. It causes me -- well, the strong words
24 in our brief were mine. I wrote them. And your expression of
25 regret causes me to regret some of those words. I'm hopeful

1 that you can understand, at least in part, our reaction out of
2 concern.

3 And Your Honor, it's awkward for me to talk about problems
4 with your order, and that's the task that's come to me, to
5 list and talk through four of them and why we think they put
6 us in a really awkward position in deciding what to do in this
7 case, in the filing of it, in where we filed it, and in how we
8 sought leave to go forward against Mr. Seery. That was
9 awkward and difficult for us, and I'm hopeful that I can
10 explain that and that you'll understand, if I'm blunt about
11 problems with the order, that I mean it very respectfully.
12 Two hundred orders a week is still very difficult for me to
13 get my mind around.

14 The four issues in the order start with the gatekeeping.
15 Then, secondly, in the preliminary remarks, I made mention of
16 the *Applewood* case and the notice that the order releases some
17 claims. Its effect of --

18 THE COURT: And by the way, I mean, you might
19 elaborate on the facts and holding of *Applewood*, because I
20 came into this thinking *Republic Supply v. Shoaf*, and for that
21 matter, as I said, *Espinosa*, were much more germane. And so,
22 you know, you'll have to elaborate on *Applewood*. I remember
23 that case, but it's just not one people cite as frequently as
24 those two.

25 MR. BRIDGES: Yes, Your Honor. And our reply brief

1 devotes a page to the case, and I'm hopeful that I can
2 remember it well enough to give you what you're looking for
3 about it, but I would point you to our reply brief on that
4 topic as well.

5 The *Shoaf* case that *Applewood* quotes from and
6 distinguishes and expressly limits, the *Shoaf* case actually
7 has been cautioned and limited and distinguished numerous
8 times, if you Shepardize it, and the *Applewood* case is the
9 leading case, and it also is from the Fifth Circuit, that
10 describes and cabins the effects of *Shoaf*. And in *Applewood*,
11 what happened is a bankruptcy confirmation order became final
12 with releases in it, and the court held that exculpatory
13 orders in a final order from the Bankruptcy Court do not have
14 res judicata effect and do not release claims unless those
15 claims are enumerated in the exculpatory order. And --

16 THE COURT: Okay. So it was about specificity more
17 than anything else, right?

18 MR. BRIDGES: Yes, Your Honor. It was a --

19 THE COURT: Okay.

20 MR. BRIDGES: -- a blanket release, a blanket --

21 THE COURT: Okay.

22 MR. BRIDGES: -- exculpatory order that didn't
23 specify what claims were released by what parties, and
24 therefore the parties didn't have the requisite notice.

25 In my mind, Your Honor, it's comparable to the Texas

1 Supreme Court's holdings on what's required in a settlement
2 release in terms of a disclaimer of reliance, --

3 THE COURT: Okay. But, again, --

4 MR. BRIDGES: -- that if you aren't --

5 THE COURT: -- it's about specificity --

6 MR. BRIDGES: Yes, Your Honor.

7 THE COURT: -- more than anything else? And then
8 we've got the U.S. Supreme Court *Espinosa* case subsequent.

9 MR. BRIDGES: Okay. Your Honor, I'm not sure what
10 *Espinosa* you're referring to. Can you tell me why that
11 applies?

12 THE COURT: Well, it was a confirmation order. It
13 was in a Chapter 13 context. And there were provisions that
14 operated to discharge student loan debt, --

15 MR. BRIDGES: Uh-huh.

16 THE COURT: -- which, of course, cannot be discharged
17 without a 523 action, a separate adversary proceeding.
18 Nevertheless, the confirmation order operated to do what 523
19 suggests you cannot do, discharge student loan debt through a
20 plan confirmation order.

21 The U.S. Supreme Court says, well, that's unfortunate that
22 the confirmation order did something which it doesn't look
23 like you can do, but no one ever objected or appealed. That's
24 my recollection of *Espinosa*. So it seems to be the same
25 holding as *Republic Supply v. Shoaf*. And what I -- why I

1 asked you to elaborate on *Applewood* is because it does seem to
2 deal with the specificity of the order versus the
3 enforceability, no?

4 MR. BRIDGES: Your Honor, if it's not obvious
5 already, I'm not prepared to argue *Espinosa*. And your
6 explanation of it is very helpful to me. I think you're right
7 that the specificity issue from *Applewood* is what we're
8 relying on. And it sounds like --

9 THE COURT: Okay. So, that being the case, how was
10 this order not specific? Okay?

11 MR. BRIDGES: That's easy, Your Honor, because it
12 doesn't say which parties are releasing which claims. And
13 what we're talking specifically about there -- as we go
14 through the order, I can show you the language -- but what
15 we're talking about specifically are the ordinary negligence
16 and breach of fiduciary duty claims that your order doesn't
17 provide for at all. Rather, it says colorability of gross
18 negligence or willful wrongdoing, if I remember the words
19 precisely, that's what must be shown to pursue a case -- a
20 cause of action against Mr. Seery, thereby -- thereby
21 indicating that claims for mere negligence, not gross
22 negligence, or breach of fiduciary duty, which is an even
23 lesser standard, that those claims are prohibited entirely.

24 And by having that kind of general all-encompassing
25 release or exculpation for potential liability involving

1 negligence, and most importantly, fiduciary duty breach under
2 the Advisers Act, that that kind of exculpation under
3 *Applewood* is not enforceable and has no res judicata effect
4 because it wasn't -- those claims weren't enumerated in the
5 order.

6 That for it to have the intended exculpatory effect, if
7 that was what was intended, that the fiduciary duty claims and
8 the parties who those claims may belong to would have to have
9 been enumerated.

10 And indeed, that kind of specificity, what was required in
11 *Applewood*, isn't even possible for a claim that hasn't yet
12 occurred for future conduct. It's not possible to enumerate
13 the details, any details, of a future claim, because the
14 underlying act -- if the underlying basis, facts for that
15 claim, haven't yet happened. It's something to happen in the
16 future.

17 And here, that's what we're dealing with. We're dealing
18 with conduct that took place well after the January and July
19 2020 orders that had that exculpatory effect. Is -- is that
20 clear?

21 THE COURT: Understood.

22 MR. BRIDGES: Thank you, Your Honor. So, the four
23 areas of the order, the four functions that the order does
24 that are problematic to us that led us to do what we have done
25 are the gatekeeping function; the release; the fact that by

1 stating sole jurisdiction, that it had a jurisdiction-
2 stripping effect; and then, finally, jurisdiction asserting,
3 where, respectfully, Your Honor, we think to some extent the
4 order goes beyond what this Court's jurisdiction is. And so
5 that not only claiming exclusive jurisdiction, but claiming
6 jurisdiction over all actions against Mr. Seery, as described
7 in the order, is going too far.

8 And those are the four issues I want to talk about one at
9 a time, and here -- I went two screens instead of one. There
10 we go. And here's the order. I have numbered the highlights
11 here out of sequence because this is the sequence that I wish
12 to talk about them and that I think their significance to our
13 decision applies.

14 Before we get into the words of this July 16, 2020 order,
15 I want to mention the January order as well. Although the
16 motion for contempt recites both orders, we don't actually
17 think the January order applies to us, because our lawsuit
18 against Mr. Seery is not about his role as a director at
19 Strand in any way. We didn't make an issue of that, other
20 than in a footnote in our brief, because we don't think that
21 distinction matters much since the orders essentially say the
22 same things.

23 I'm not sure that it matters whether we have potentially
24 violated one order or two. If Your Honor finds we've violated
25 one, I think we're on the hook regardless. If Your Honor

1 finds that we didn't violate the July order, I don't think you
2 will find that we violated the January order, either. So my
3 focus is on the July order.

4 The gatekeeping function comes from the preliminary
5 language about commencing or pursuing a claim or cause of
6 action against Mr. Seery. And it says what you want us to do
7 first before bringing such a claim.

8 The second issue of the release comes a little bit later.
9 It's the colorable claim of willful misconduct or gross
10 negligence language. In other words, because only claims of
11 willful misconduct or gross negligence can pass the bar, can
12 pass muster under this order, that lesser claims -- ordinary
13 negligence and breach of fiduciary duty -- that those claims
14 are released by this order. That's the second argument.

15 Third is your reference to sole jurisdiction and the
16 effect that that has of attempting to say that other courts,
17 courts of original jurisdiction, do not have jurisdiction
18 because it solely resides here. That's the third thing I want
19 to address.

20 And then the fourth is the notion that we have to come to
21 this Court first for any action that fits the description of
22 an action against Mr. Seery, when some actions are, through
23 acts of Congress, removed from what this Court has the power
24 to address. Under 157(d) of Title 28, Your Honor, there are
25 some kinds of actions which withdrawal of the reference is

1 mandatory, and therefore this court lacks jurisdiction to
2 address those.

3 And so those are the four issues I want to tackle,
4 starting with the first, the gatekeeping. Your Honor, Section
5 28 -- Section 959 of Title 28 appears to be precisely on
6 point. It calls -- it is called by some courts an exception
7 to the Barton Doctrine, which we believe is the only basis,
8 the Barton Doctrine, for this Court to claim that it has
9 jurisdiction or sole jurisdiction and can require us to come
10 here first. We think the Barton Doctrine is the only basis
11 for that. We haven't seen anything in the briefing from
12 opposing counsel indicating there was another basis for it.
13 We think we're talking about the Barton Doctrine here as the
14 basis for that.

15 959 is exception to the Barton Doctrine, and we think it
16 explicitly authorizes what we have done.

17 Secondly, Your Honor, the order, the gatekeeping functions
18 of the order are too broad because of its incorporation of the
19 jurisdictional problems and the release problem that we'll
20 talk about later. But for problem number one, the key issue
21 that we're talking about is 959 as an exception to the Barton
22 Doctrine. And I went the wrong way.

23 THE COURT: So, we could go down a lot of rabbit
24 trails today, and I'm going to try not to do that, but are you
25 saying the very common practice of having gatekeeping

1 provisions in Chapter 11 cases is just defective law under 28
2 U.S.C. § 959(a)?

3 MR. BRIDGES: Can I say yes and no?

4 THE COURT: Okay.

5 MR. BRIDGES: Yes, to some extent, for some claims.
6 No as to other claims to another extent. We are not saying
7 gatekeeping orders are altogether wrong, --

8 THE COURT: Okay.

9 MR. BRIDGES: -- no.

10 THE COURT: Okay.

11 MR. BRIDGES: There are problems with gatekeeping
12 orders that do more than what the law, Section 959 in
13 particular, allows them to do.

14 THE COURT: Okay. Be more explicit. I'm not -- I
15 think you're saying, no, except when certain situations exist,
16 but I don't know what the certain situations are.

17 MR. BRIDGES: And Your Honor, you're exactly right.
18 It's complicated, and it takes a long explanation. Let me
19 start --

20 THE COURT: Okay. I really want to know, --

21 MR. BRIDGES: Yeah, me, too.

22 THE COURT: -- since I do these all the time, and
23 most of my colleagues do.

24 MR. BRIDGES: Thank you, Your Honor. And 959 is on
25 the screen. Managers of any property --

1 THE COURT: Uh-huh.

2 MR. BRIDGES: -- is what we're talking about,
3 including debtors in possession. Now, it starts off by saying
4 trustees, receivers. I mean, this is exactly what the Barton
5 Doctrine is about, right? We're talking about trustees and
6 receivers, but not just them. We're also talking about
7 managers of any property, including debtors in possession, --

8 THE COURT: Uh-huh.

9 MR. BRIDGES: -- may be sued without leave of the
10 court appointing that. That's contrary to the Barton Doctrine
11 so far.

12 With respect to what I've numbered five here -- these
13 numbers are mine -- the quote is directly verbatim out of the
14 U.S. Code, but the numbering one through five is mine. With
15 respect to what acts or transactions in carrying on business
16 connected with such property.

17 And so, Your Honor, what we're talking about isn't Barton
18 Doctrine is inapplicable, or you can't have a gatekeeping
19 order for any claims, but it's about managers of property.
20 And one of the hornbook examples of this is the grocery store
21 that files for bankruptcy and then, when --

22 THE COURT: Slip-and-fall.

23 MR. BRIDGES: You've got it, Your Honor.

24 THE COURT: Uh-huh.

25 MR. BRIDGES: And because they're managing property,

1 --

2 THE COURT: So your cause of action, if it went
3 forward, is the equivalent of a slip-and-fall --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- in a grocery store?

6 MR. BRIDGES: Yes, Your Honor.

7 THE COURT: Okay. Let me skip ahead. What about the
8 last sentence of 959(a)?

9 MR. BRIDGES: 959(b)? Or 959(a)?

10 THE COURT: No, of 959(a).

11 MR. BRIDGES: What we're looking at here?

12 THE COURT: That's the sentence that I have always
13 thought was one justification for a gatekeeper provision. And
14 I know, you know, a lot of others feel the same.

15 MR. BRIDGES: Are we talking about what I have listed
16 in number five here?

17 THE COURT: No. I'm talking about the last sentence
18 of 959(a). Such actions, okay, shall be subject to the
19 general equity power of such court, you know, meaning the
20 Bankruptcy Court, so far as the same may be necessary to the
21 ends of justice, but this shall not deprive a litigant of his
22 right to a trial by jury.

23 Isn't that one of the provisions that lawyers sometimes
24 rely on in arguing a gatekeeper provision is appropriate?

25 MR. BRIDGES: Certain --

1 THE COURT: You, Bankruptcy Judge, have the power,
2 the general equity power, so far as the same may be necessary
3 to the ends of justice?

4 MR. BRIDGES: Your Honor, you bet. Absolutely, there
5 is equitable power to do more. There's no doubt that there
6 are reliance -- there is reliance on that in many instances.
7 So I'm not sure -- I'm not sure I'm responding to your point.

8 THE COURT: Well, again, I think this is the third or
9 fourth argument down the line that really you start with in
10 the analytical framework here, but I guess I'm just saying I
11 always thought a gatekeeping provision was consistent,
12 entirely consistent with 28 U.S.C. § 959(a), the last
13 sentence.

14 MR. BRIDGES: When you're dealing --

15 THE COURT: You disagree with that?

16 MR. BRIDGES: I do, Your Honor.

17 THE COURT: Okay.

18 MR. BRIDGES: And it's not that the Court lacks
19 equitable powers to do more. It's that those equitable powers
20 are affected by when management of other parties, third
21 parties' property is at issue.

22 What we're talking about is similar to yesterday's
23 contempt order. When you set the basis of describing what it
24 is that Highland's business is, that they're a registered
25 investment advisor in the business of buying, selling, and

1 managing assets -- assets, of course, are property, and that
2 property is not just Highland's, but it's third-party
3 property, as if a railroad loses luggage belonging to its
4 customers. Rather than the railroad with a trustee appointed
5 having mismanaged railroad property, we're talking about
6 third-party property here, third-party property that belongs
7 to the CLOs, about a billion dollars of assets in these CLO
8 SPEs that Highland manages.

9 And again, the slide that Mr. Sbaiti showed you showing
10 Highland, yes, they manage their own assets, the assets of the
11 Debtor, but also of the third parties, including the
12 Charitable DAF and CLO Holdco, and that the Advisers Act
13 imposes fiduciary duties on them that are unwaivable when
14 they're doing that.

15 In *Anderson*, the Fifth Circuit called 959 an exception to
16 the rule requiring court's permission for leave to sue. In
17 *Hoffman v. City of San Diego* much more recently, relying on
18 this statute again, the court rejected a *Barton* challenge and
19 called it a statutory exception. And in *Barton* itself, from a
20 century ago, the U.S. Supreme Court even acknowledged there
21 that where a receiver misappropriated the property of another
22 -- not the debtor's property, the property of another -- that
23 the receiver could still be sued personally, without leave of
24 court.

25 Absent *Barton*, absent applicability of the *Barton*

1 Doctrine, Your Honor, the gatekeeper order is problematic.

2 *Barton* applies where a court has appointed a trustee, and
3 I don't think, Your Honor, under the circumstances in this
4 case, that it is fair to say Mr. Seery was appointed, as
5 opposed to approved by this Court. And it involves a
6 trustee's actions under the powers conferred on him. The
7 *Barton Doctrine* is not about a broader exculpation of the
8 trustee.

9 Here, what the Debtor asked for in its motion for
10 approval, approval of hiring Mr. Seery, what it asked for
11 specifically in the motion was that the Court not interfere
12 with corporate decisions absent a showing of bad faith, self-
13 interest, or gross negligence, and asking the Court to uphold
14 the board's decision to appoint Mr. Seery as the CEO as long
15 as they are attributable to any rationale business purpose.

16 At the hearing, Your Honor, at the hearing, we've quoted
17 your comments saying that the evidence amply shows a sound
18 business justification and reasonable business judgment on the
19 part of the Debtor in proposing that Mr. Seery be CEO and CRO.
20 Your Honor, respectfully, those words don't sound like the
21 judge using its discretion to choose -- appoint a trustee.
22 They sound like the Court exercising deference to the business
23 judgment of a business. And appropriately so. We don't have
24 trouble with application of the business judgment rule. Our
25 problem is with application of it and the *Barton Doctrine*.

1 Those two do not go together. A trustee has protection
2 because it's acting under color of the court that appointed
3 it. A court that merely deferred to someone else's
4 appointment, that's not what the Barton Doctrine is about.
5 The Barton Doctrine is about the court's function that the
6 trustee takes on, not deference to the business judgment of
7 the debtor in possession or the other fiduciary appointed by
8 the court.

9 Problem one was the gatekeeping. Problem two is about the
10 release and the *Applewood* case. Your Honor, again, ordinary
11 negligence and ordinary fiduciary duty breaches do not rise to
12 the level of gross negligence and willful misconduct. And
13 because of that, the language of this order appears to be
14 barring them entirely. No entity may bring a lawsuit against
15 Mr. Seery in certain circumstances without the Bankruptcy
16 Court doing what? Determining that the cause of action
17 represents a colorable claim of willful misconduct or gross
18 negligence against Mr. Seery.

19 A breach of fiduciary duty under the Advisers Act can be
20 unintentional, it can fall short of gross negligence by miles,
21 and to exculpate Mr. Seery from those kinds of claims entirely
22 is to make him no longer a fiduciary. A fiduciary duty that
23 is unenforceable makes someone not a fiduciary. That's
24 plainly not what Mr. Seery thinks his role is. It's
25 inconsistent with the Advisers Act. And Your Honor, the

1 notion that he would not owe his clients fiduciary duties as
2 he manages their assets would require disclosures under the
3 SEC regulations. It creates all kinds of problems to state
4 that a fiduciary under the Advisers Act does not have
5 enforceable fiduciary duties. The order appears to be
6 releasing all of those. But for *Applewood's* specificity
7 requirement, it would be doing that.

8 As an asset manager under the Advisers Act, Mr. Seery is
9 managing assets belonging to CLO Holdco and The Charitable
10 DAF. That's precisely what the District Court action is
11 about, those fiduciary duties. And Mr. Seery, in describing
12 these recently in testimony here -- forgive me for reading
13 through this, Your Honor, but it is pretty short -- Mr. Seery
14 testifies, I think, from a high level, the best way to think
15 about the Debtor is that it's a registered investment advisor.
16 As a registered investment advisor, which is really any
17 advisor of third-party money over \$25 million, it has to
18 register with the SEC and it manages funds in many different
19 ways. The Debtor manages approximately \$200 million current
20 values -- it was more than that of the start of the case -- of
21 its own assets.

22 I'm pausing there, Your Honor. \$200 million of its own
23 assets, but we're about to talk about third-party assets.

24 It doesn't have to be a registered investment advisor for
25 those assets, but it does manage its own assets, which include

1 directly-owned securities, loans, from mostly related entities
2 but not all, and investments in certain funds, which it also
3 manages.

4 And then here it comes: In addition, the manager -- the
5 Debtor manages about roughly \$2 billion, \$2 billion in total
6 managed assets, around \$2 billion in CLO assets, and then
7 other entities, which are hedge funds or PE style.

8 We also had to get a very good understanding of each of
9 the funds that we manage. And as I said, the Investment
10 Advisers Act puts a fiduciary duty on Highland Capital to
11 discharge its duty to the investors. So while we have duties
12 to the estate, we also have duties, as I mentioned in my last
13 testimony, to each of the investors in the funds.

14 Now, some of them are related parties, and those are a
15 little bit easier. Some of them are owned by Highland. But
16 there are third-party investors in these funds who have no
17 relation whatsoever to Highland, and we owe them a fiduciary
18 duty both to manage their assets prudently but also to seek to
19 manage -- maximize value.

20 Those duties do not require -- requires the opposite of
21 what I mean. They don't merely require avoiding gross
22 negligence or willful wrongdoing. When you're managing assets
23 of others, the fiduciary duties that you owe are far stricter
24 than that. The highest duty known to law is a fiduciary duty.

25 The order is inconsistent with that testimony,

1 acknowledging the fiduciary duties owed to The Charitable DAF
2 and to CLO Holdco. It appears to release the Debtor -- maybe
3 not the Debtor. My slide may be wrong about that. It appears
4 to release Seery from having to uphold these duties.

5 In addition to problems with the gatekeeping under the
6 Barton Doctrine, in addition to the release problem and
7 *Applewood* and the unwaivable fiduciary duties under the
8 Advisers Act, there's also a problem with telling other courts
9 that they lack jurisdiction. Your Honor knows bankruptcy
10 court law -- bankruptcy -- and the Bankruptcy Code far better
11 than I do, I'm certain. But a first principle, I believe, of
12 bankruptcy law is that this Court's jurisdiction is derivative
13 of the District Court's. And the only doctrine I've heard of
14 that can allow this Court to exercise exclusive jurisdiction
15 of the District Court that it sits in is the Barton Doctrine,
16 which, again, is very problematic to apply in this case, for
17 the reasons we've discussed already.

18 By claiming to have -- by stating in the order that this
19 Court has sole jurisdiction, it appears to either be inclusive
20 of the District Court, which I understand Your Honor doesn't
21 think her order can be read that way, but if it's not read
22 that way, then it results in telling the District Court that
23 it doesn't have the original jurisdiction that Congress has
24 given it. And that's problematic in the order as well.

25 THE COURT: Let me ask you. If you think the word

1 "power" had been used, or "authority," versus "jurisdiction,"
2 that would have cured it?

3 MR. BRIDGES: I think there would still have been
4 other problems. Would it have cured this? I don't think so,
5 Your Honor, because, again, I think the only basis for that
6 power is the Barton Doctrine.

7 THE COURT: Okay.

8 MR. BRIDGES: To listen to opposing counsel, you'd
9 think that our jurisdictional argument was entirely about the
10 jurisdiction stripping. It's not. Frankly, Your Honor,
11 that's maybe even a lesser point. A key problem here to is
12 the assertion of jurisdiction, not over any of the claims, but
13 over all of the claims, because of 157(d), Your Honor, because
14 some claims, some causes of action, have been put outside the
15 reach of bankruptcy, the Bankruptcy Court, and those actions
16 may in some instances fit within your description of the cases
17 that are precluded here.

18 That's a problem jurisdictionally with this Court's
19 ability to say it retains jurisdiction or that it has, that it
20 asserts jurisdiction. Over what? Any kind of claim or cause
21 of action against Mr. Seery relating in any way to his role as
22 the chief executive officer and chief restructuring officer of
23 the Debtor.

24 Some claims that fit into that bucket also fit into the
25 description in 157(d) of cases that require both consideration

1 of bankruptcy law and federal laws affecting interstate
2 commerce or regulating it. Right? Some cases must fall into
3 -- under 157(d), despite having something to do with Mr.
4 Seery's role as a chief executive officer. And Your Honor,
5 the Advisers Act fiduciary duty claims asserted by Respondents
6 in the District Court are such claims. They cannot be decided
7 without considering the Advisers Act.

8 There are also RICO claims that, of course, require
9 consideration of the RICO statute. But the Advisers Act
10 claims absolutely require consideration of both bankruptcy law
11 and this Court's order exonerating -- exculpating Mr. Seery
12 from some liability, in addition to the unwaivable fiduciary
13 duties imposed by the Advisers Act.

14 The assertion of jurisdiction here blanketed, in a blanket
15 manner, over all claims against Mr. Seery in any way related
16 to his CEO role is a 157(d) problem that the order has no --
17 has no solution for and we see no way around. 157(d) requires
18 withdrawal of the reference, makes it mandatory, when a case
19 requires considerations of federal law implicating interstate
20 commerce.

21 Your Honor, we think we had to do it the way we did,
22 filing in the District Court instead of filing here, in order
23 to preserve our jurisdictional arguments. To come to this
24 Court with a motion and then what? Immediately file a motion
25 to withdraw the reference on our own motion here? To come

1 here and ask for a decision on colorability, when first
2 colorability would exclude the claims that we're trying to
3 bring, at least some of them, the mere negligence, mere
4 fiduciary duty breaches, because they don't rise to the level
5 necessarily of gross negligence or willful wrongdoing.

6 Your Honor, coming here and asking this Court to rule on
7 that may well have waived our jurisdictional objections.
8 Coming here to this Court and doing that and immediately
9 filing a motion --

10 THE COURT: I don't get it.

11 MR. BRIDGES: The ordinary --

12 THE COURT: Subject matter jurisdiction, if it's a
13 problem, it's not waivable.

14 MR. BRIDGES: The ordinary issue -- the ordinary
15 waiver rule, Your Honor, is that when you come and ask for a
16 court to rule on something, that you waive your right to -- to
17 later -- you're estopped judicially from taking the contrary
18 position.

19 THE COURT: Okay. Well, again, I don't get it. If
20 you filed your motion and I ruled in a way you didn't like,
21 you would appeal to the District Court.

22 MR. BRIDGES: Yes, Your Honor. An appeal to the
23 District Court, we would be entitled to do. I understand, no
24 matter what happens here, we can appeal to the District Court.
25 That's different from whether or not, by coming here first,

1 have we waived or have we created an estoppel situation, in
2 terms of arguing jurisdiction.

3 THE COURT: Okay.

4 MR. BRIDGES: Because of the problems with the order,
5 we thought we were in a situation where coming here would
6 waive rights that we could avoid waiving by asking in the
7 District Court.

8 In other words, there was a jurisdictional paradox: How
9 does a party ask a court to do something it believes the court
10 lacks the power to do? That's the spot we found ourselves in.
11 What were we supposed to do?

12 Your Honor, it is definitely a complex case. And coming
13 into this matter with over 2,000 filings on the docket before
14 I had ever heard of Highland was a very daunting thing, coming
15 into this case. And whether or not there's something that we
16 missed is certainly possible, but these orders that are the
17 subject of the contempt motion, these orders are not things
18 that we overlooked. These are things that we studied
19 carefully, that we did not ignore or have disdain for, but
20 that affected and changed our actions.

21 And in the Slide #3 from Mr. Morris's -- from Mr. Morris's
22 presentation, in his third slide, he quotes from the first
23 page of our motion for leave, the motion that he says exhibits
24 our contemptuous behavior.

25 The second paragraph is kind of tiny print there, Your

1 Honor, and it's not highlighted, but I'd like to read it.
2 Seery is not named in the original complaint, but this is only
3 out of an abundance of caution due to the Bankruptcy Court in
4 HCM's pending Chapter 11 proceeding having issued an order
5 prohibiting the filing of any causes of action against Seery
6 in any way related to his role at HCM, subject to certain
7 prerequisites. In that order, the Bankruptcy Court also
8 asserts sole jurisdiction over all such causes of action.

9 Your Honor, our intent was not to violate the order. Our
10 intent was to be cautious about how we proceeded, to fully
11 disclose what we were doing, and to do it in a District Court
12 that absolutely could refer the matter here to this Court for
13 a decision, but to do it in a way that didn't waive our
14 jurisdictional arguments, that didn't waive our arguments
15 regarding the release of the very claims we were trying to
16 bring, by first having to prove that they were colorful claims
17 of willful misconduct or gross negligence, when we were trying
18 to assert claims that weren't willful negligence or gross --
19 gross negligence or willful misconduct. That was what I was
20 trying to say.

21 Your Honor, this was not disregard of your order. If
22 we're wrong on the law, we're wrong on the law, but it's not
23 that we disregarded your order or lacked respect for it. We
24 disclosed it.

25 Mr. Morris has argued in the briefs that we attempted to

1 do this on an ex parte basis. Your Honor, we did not attempt
2 to do this on an ex parte basis. And if there are errors,
3 they probably are mine. I know one error is mine. On the
4 civil cover sheet in the filing in the District Court, I noted
5 and passed on that we should check the box for related case
6 and list this case on there. I did not follow up to make sure
7 that it happened, and administratively, it didn't happen. We
8 did not check the box on the civil cover sheet. Mr. Morris is
9 correct that we failed to do that. He's incorrect that that
10 was sneaky or intentional. It was my error, having noticed it
11 but not followed up.

12 Your Honor, similarly, the argument that we didn't serve
13 them with the motion I think is disingenuous. What happened,
14 Your Honor, is that counsel for the Debtor had agreed to
15 accept service of the complaint itself against the Debtor
16 before the motion for leave, and after accepting service, I
17 was under the impression that they'd be monitoring the docket,
18 especially when I emailed them, informed them that we were
19 filing the motion for leave to amend, because I was required
20 to submit a certificate of conference on that motion. I
21 informed them in a polite email. The polite email is not
22 quoted in their brief. It is included in the record, and it's
23 quoted in full in our brief.

24 The email exchange indicates to them, Thank you for
25 pointing out the Court's orders. We've carefully studied them

1 and we don't think what we're doing is a violation of those
2 orders.

3 That we didn't serve them is because we thought they
4 already knew that the motion was coming and would be
5 monitoring the docket, and we didn't know which lawyers they
6 were going to have make an appearance in that case, so we
7 wouldn't have known who to serve. But if not serving them --
8 first, the Rules do not require that service. But if not
9 serving them out of politeness --

10 THE COURT: Mr. Morris is standing up. Did --

11 MR. MORRIS: I move to strike all of this, Your
12 Honor. If Counsel wants to take the stand and raise his hand,
13 he should testify under oath. I'm just going to leave it at
14 that. He's not on their witness list.

15 THE COURT: All right. I overrule. You can
16 continue.

17 MR. BRIDGES: Thank you, Your Honor.

18 If failure to serve them was an error, it was mine. I
19 know of no rule that requires it.

20 THE COURT: Can I ask you, you were talking about the
21 cover sheet mistake in not checking the box. What about your
22 jurisdictional statement in the actual complaint not
23 mentioning 28 U.S.C. § 1334 as a possible basis for subject
24 matter jurisdiction? Do you think that was a mistake as well,
25 or was that purposeful, not necessary?

1 MR. BRIDGES: Candidly, Your Honor, standing here
2 right now, I have no recollection whatsoever of it.

3 THE COURT: You mention 28 U.S.C. § 1331, and then
4 1367 supplemental jurisdiction, but you don't mention 1334.

5 MR. BRIDGES: I suspect it's true, but Mr. Sbaiti
6 would have written that.

7 THE COURT: Okay.

8 MR. BRIDGES: I have no recollection of --

9 THE COURT: Okay.

10 MR. BRIDGES: -- making any decision at all --

11 THE COURT: All right.

12 MR. BRIDGES: -- with regards to that.

13 THE COURT: Okay.

14 MR. BRIDGES: Your Honor, you've been very patient
15 with a very long opening argument, and I'm very grateful for
16 that. Please know that we take this Court's order seriously.
17 We voluntarily appeared here before the Court ordered us to do
18 so by filing our motion asking for a modification of the order
19 we're accused now of having been in violation of.

20 And the last thing I'd like to say, Your Honor, Mr.
21 Morris's brief claims that the first he knew of the motion,
22 the motion seeking leave to add Mr. Seery to the District
23 Court claim, the first he knew of that was when Mr. Sbaiti
24 forwarded him the District Court's order dismissing that
25 motion, denying that motion without prejudice.

1 Your Honor, in a civil contempt proceeding, where the
2 issue is compensating, not punishing, if the aggrieved party
3 didn't even know about the action until it had been denied by
4 the District Court, we submit that there can be no harm from
5 that having taken place.

6 That's all I have for opening. Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 Before we give you a time check, do we have other opening
9 statements?

10 MR. ANDERSON: Yes. Yes, Your Honor. Michael
11 Anderson on behalf of Mr. Patrick. If we need to take a
12 break, that's fine, too.

13 THE COURT: Well, how long do you plan to use?

14 MR. ANDERSON: No more than ten minutes, for sure.

15 THE COURT: Let's go ahead and do that, and then
16 we'll take a break.

17 MR. POMERANTZ: Your Honor, after, I would ask the
18 opportunity to respond to Mr. Bridges' argument. Probably
19 another ten minutes.

20 THE COURT: All right. Let's go ahead and take a
21 ten-minute break. And Mr. Taylor, you're going to have
22 something, because you --

23 MR. TAYLOR: Five.

24 THE COURT: Okay. We'll take a ten-minute break.

25 And Nate, can you give them a time?

1 THE CLERK: I'm showing it was about 59-1/2 minutes.

2 THE COURT: Fifty-nine and a half? And is that
3 subtracting some for my questioning?

4 THE CLERK: I stopped whenever you talked, maybe a
5 little over --

6 THE COURT: Okay. So he stopped it whenever I asked
7 questions and you answered, so 59 minutes has been used by the
8 Respondents.

9 All right. We'll take a ten-minute break. We'll come
10 back at 11:35.

11 THE CLERK: All rise.

12 (A recess ensued from 11:25 a.m. to 11:37 a.m.)

13 THE COURT: All right. We're going back on the
14 record in the Highland matter. We have further opening
15 statements. Counsel, you may proceed.

16 OPENING STATEMENT ON BEHALF OF MARK PATRICK, RESPONDENT

17 MR. ANDERSON: Thank you. May it please the Court,
18 Counsel. Michael Anderson on behalf of Respondent, Mark
19 Patrick.

20 Your Honor, after listening to this and looking at the
21 filings in this case, this issue of whether there's contempt
22 -- and I would argue there's not -- is ripe for decision. We
23 have no real undisputed facts for purposes of the contempt
24 issue. We have your Court's July order, the subject of Mr.
25 Bridge's arguments. We have the Plaintiffs in the underlying

1 lawsuit at issue. They commenced the lawsuit in April of this
2 year. There's absolutely nothing improper about that filing.
3 It's not subject to the contempt. A week later, there is a
4 motion for leave to add Mr. Seery. That's the issue. There's
5 no dispute over that. There's no dispute that Mr. Patrick
6 authorized the filing of the motion for leave.

7 And so then the question becomes we look at the Court's
8 July order, did a motion for leave, did that violate the terms
9 of the order? The motion for leave is not commencing a
10 lawsuit. It's also not pursuing a claim, because whether or
11 not the Court grants the motion, denies the motion, or
12 whatever the Court does, nothing happened, because the day
13 after the motion for leave was filed it was dismissed *sua*
14 *sponte* without prejudice because not all parties had been
15 served in the case.

16 It was permission asked one day. The matter was mooted
17 the following day by the District Court. And so that is
18 completely undisputed.

19 And so the question is, is asking permission, is that
20 commence? I think everybody says there's no way that's
21 commencing a lawsuit because you have asked permission. The
22 question, then, is it pursuing a claim? And the argument,
23 well, no, that's not pursuing a claim; it's asking permission.

24 And I think it's also important to note that when the
25 motion for leave was filed, there were no secrets there. I

1 mean, I'm coming in this after the fact, representing Mr.
2 Patrick. You look at a motion for leave, and right there on
3 Page 1 it talks about Your Honor's order. Page 2, it quotes
4 the order and it gives the reasons, there's arguments being
5 made as to why that order doesn't bar adding Mr. Seery as a
6 defendant in the lawsuit, many of the arguments that Mr.
7 Bridges made.

8 So that's where we are. And so when I hear, hey, we've
9 got six hours, three hours and three hours, and we're going to
10 split this up, you know, maybe too simplistic from Fort Worth,
11 but I'm like, wait a second, this is all undisputed. It's
12 totally undisputed. The -- whether or not the prior order is
13 enforceable or not enforceable, those are all legal arguments.
14 You know, no witnesses are necessary for that. And as I
15 understood, right before we broke, counsel stood up and he's
16 going to do what generally doesn't happen in opening
17 statements, which is respond to opening statements, which
18 shows that that's a legal issue.

19 And so it really does come down to undisputed facts.
20 There's no testimony. No -- nothing is necessary. And a lot
21 of what this comes down to is the old statement, you know, is
22 it better to ask forgiveness or permission? And usually that
23 statement comes up when somebody has already done something:
24 Hey, I'm going to go do it anyway and I'll ask for forgiveness
25 later. Well, what the Plaintiffs in the underlying case did

1 was ask permission. Motion for leave. That is not
2 contemptuous. And there's literally no damages. As was
3 pointed out, by the time counsel found out, it had already
4 been dismissed.

5 The last thing I want to point out, Your Honor, is that
6 the argument from opposing counsel was, well, under Rule 15 of
7 the Federal Rules of Civil Procedure, since parties hadn't
8 answered yet, the Plaintiffs in the underlying case could have
9 just simply added Mr. Seery as a defendant and moved on that
10 way, but then that would be another ball of wax and then we
11 would be addressing issues as far as whether or not there is a
12 violation of the Court's order, notwithstanding Mr. Bridge's
13 arguments. But then we would have those issues. But that's
14 not what happened. Everybody knows that's not what happened.
15 It was a motion for leave that was resolved the following day.

16 And so, Your Honor, for those reasons, and those
17 undisputed reasons, we would request that the Court at the end
18 of this hearing deny the request for sanctions and a contempt
19 finding against our client, Mr. Patrick.

20 Mr. Phillips is going to address one brief issue
21 bankruptcy-wise I believe that was raised earlier.

22 THE COURT: Okay. Mr. Phillips?

23 MR. PHILLIPS: Your Honor, thank you very much.

24 Louis M. Phillips on behalf of Mark Patrick.

25 The only thing that I would point out, Your Honor, and I'm

1 going to do -- try to simplistically, because that's about the
2 level at which I operate, boil down the questions about the
3 order.

4 This order was an employment order. The problem that Mr.
5 Bridges has elucidated to Your Honor is that the precise
6 effect, one of the precise effects of that order is to bar the
7 claims of third parties that arise into the future on the
8 basis of the employment of Mr. Seery, because the order
9 required that all claims asserting gross negligence or willful
10 misconduct need to be brought before you to determine that
11 they're colorable.

12 One question I have is, does it apply to the lawsuit that
13 was filed? Doesn't apply unless the effect of the order was
14 to release those claims and preclude any party from bringing
15 those claims at all. And while you can say correctly that
16 this Court issues gatekeeper orders all of the time, one thing
17 I cannot imagine that you would say is that in employment
18 orders you release claims of third parties existing and as may
19 arise in the future that could be brought against the party
20 employed to be a CRO of a debtor, who, by his own testimony,
21 says we do all kinds of stuff in the billions of dollars for
22 third parties that we owe fiduciary duties to.

23 There's no way, Your Honor, that you were considering your
24 July order to bar third-party claims arising from breach of
25 fiduciary duties by Mr. Seery to third parties who held third-

1 party claims that did not involve some assertion that, in his
2 capacity as CRO, he was in some way acting within the scope of
3 his authority as CRO for the Debtor and yet committed
4 negligence against the Debtor.

5 Now, if the order was asserting that you know what a lot
6 of people in this courtroom know, that the standard of
7 liability for a CRO doing work for a debtor, just like the
8 standard of liability for the president of a corporation or an
9 officer of the corporation, is as long as you're within the
10 course and scope of your employment, your actions for the
11 corporation have -- can -- the corporation takes care of you
12 because there's no personal claim unless you're outside the
13 scope, and you're outside the scope if you commit gross
14 negligence or willful misconduct.

15 That, if you're restating the standard of care and
16 standard of liability for a CRO, we have no problem with that,
17 because Mr. Patrick did not authorize a cause of action
18 arising against Mr. Seery against the Debtors for damage to
19 the Debtors. He authorized the filing of a complaint in the
20 District Court with jurisdiction for a third-party claim for
21 breach of a fiduciary duty to a third party that Mr. Seery
22 admits he owes, and then sought leave because they didn't
23 understand the order that Your Honor issued. It couldn't have
24 been to release the breach of fiduciary duty claims that
25 wouldn't rise to gross negligence or willful misconduct, it

1 couldn't be that, but it might be. But if it did, under an
2 employment order? That's very different from *Espinosa*, that's
3 very different from *Shoaf*, when you're at the end of a case in
4 a confirmation of a plan and you're talking about matters
5 arising in the past.

6 This order, if it has the effect it could be read to have,
7 precludes any third party from asserting a breach of fiduciary
8 duty against Seery for actions that violate the duty to that
9 third party, when Seery's biggest job, it looks to us like, is
10 running third-party money. That could not have been what Your
11 Honor was thinking.

12 And so all I'm pointing out is I'm trying to distill down.
13 The lawsuit doesn't involve gross negligence or willful
14 misconduct allegations. It involves breach of fiduciary duty,
15 breach of the Advisers Act, et cetera, et cetera. Mr. Patrick
16 authorized that lawsuit.

17 Now, what we're here for today is to determine whether the
18 complaint, which was not against the Debtor -- which was not
19 against Seery, the motion for leave, which did not -- all they
20 did was ask for permission, not forgiveness. And we can't
21 understand how the Debtor should be saying, all they had to do
22 was amend. Well, if they amended, would we be in hotter water
23 than we are today for asking for permission to sue? I think
24 we would have been, that should have been the prescribed
25 course, when we are more concerned and we are more risk-averse

1 by asking for leave rather than just amending by right.
2 Absolutely, that makes no sense. We can't be held to be more
3 contemptuous because we asked for permission, when we could
4 have just sued him, because they're saying asking for
5 permission was wrong. Certainly, suing him would have been
6 wrong. That would have been easier.

7 THE COURT: But Mr. Phillips, the issue is you all
8 didn't come to the Bankruptcy Court and ask permission.

9 MR. PHILLIPS: Look at your order, Your Honor.

10 THE COURT: It's right in front of me.

11 MR. PHILLIPS: Right. That order either doesn't
12 apply to the claims that were brought or it released the
13 claims that were brought. That's our point. It couldn't have
14 released them. Does it apply to them? Thank you.

15 THE COURT: Okay. Mr. Taylor?

16 MR. TAYLOR: Good morning.

17 THE COURT: Good morning.

18 OPENING STATEMENT ON BEHALF OF JAMES DONDERO

19 MR. TAYLOR: Your Honor, Clay Taylor on behalf of Jim
20 Dondero. I'll be very brief because I know we've already
21 spent a lot of time on opening argument. But I do think it is
22 appropriate to, one, first look at who brought the lawsuit,
23 CLO Holdco & DAF. That was authorized -- it's undisputed it
24 was authorized by Mr. Patrick. There is no dispute about
25 that. There's no dispute who the Plaintiffs are. But yet my

1 client is up here as an alleged violator.

2 I think it's very clear, as all the parties have said,
3 there's no dispute as to there's an order, there was a
4 complaint, and there was a motion for leave.

5 It seems to me that the rest of the evidentiary hearing
6 that you may be about to go through is going to be about pin
7 the blame on Mr. Dondero. It is undisputed that he is not a
8 control person for the DAF or CLO Holdco. The only type of
9 evidence you will hear is going to be insinuation that he
10 somehow controls Mr. Patrick and used to control Mr. Scott.
11 There will be no direct evidence that he authorized this or
12 that he's the control person and the proper corporate
13 authorized representative that signed off on the --

14 It seems to me, Your Honor, first of all, that's a
15 discrete issue that should be able to be decided separately
16 from this, and the first gating issue is, was there indeed a
17 violation of this Court's order? It would seem to me that
18 there is no disputes about those facts and that we should
19 bifurcate that, and if you then find that there is a violation
20 and find that there is any even need to move into who the
21 alleged violators are, that then we could have that
22 evidentiary portion. But there is no reason to do that now
23 before there's even been found to be a violation.

24 THE COURT: All right. Thank you.

25 All right. Well, someone made the point rebuttals in

1 opening statements are not very common, --

2 MR. POMERANTZ: Your -- Your --

3 THE COURT: -- but you can use your three hours
4 however you want.

5 OPENING STATEMENT ON BEHALF OF THE DEBTOR

6 MR. POMERANTZ: Your Honor, I didn't intend to stand
7 up.

8 THE COURT: Okay.

9 MR. POMERANTZ: I also didn't intend to have the
10 motion to modify the sealing order presented to Your Honor,
11 which it was in the course of that opening argument. And
12 despite your comments at the beginning of the hearing, the
13 Movants have taken Your Honor down a series of rabbit holes
14 that have really no relevance to the contempt motion. And
15 notwithstanding, as I said, your ruling that basically the
16 contempt would go first and the modification would go second,
17 there they were, persistent in making all the arguments why
18 this Court should modify the order.

19 They're just really trying to obfuscate the simple issue
20 that Mr. Morris presented and raised at the beginning of the
21 hearing: Did they violate the order by pursuing a claim? We
22 think the answer is undoubtedly yes.

23 I'm not going to try to address each of the issues they
24 raised in connection with the modification motion in detail.
25 I have a lengthy presentation. I'll do it at the appropriate

1 time. But there are a few issues I want to address. I want
2 to address one of the last points Mr. Bridges raised first.
3 If they thought that the order was a problem, they could have
4 filed their motion to modify that order before Your Honor.
5 They could have had that heard first. There was no statute of
6 limitations issue in connection with the HarbourVest matter.
7 They could have come to Your Honor to do that. But no, they
8 didn't. They went to the District Court first, and it was
9 only after we filed our contempt motion that they came back
10 and said, well, Your Honor, you should modify the order.
11 Their argument that if they did that there would have been
12 waiver and estoppel is just an after-the-fact justification
13 for what they did and what they tried to do, which was
14 unsuccessful. They tried to have the District Court make the
15 decision.

16 And why? Your Honor, they've filed motions to recuse
17 before Your Honor. They -- they -- it's no secret the disdain
18 they have for Your Honor's rulings as it relates to them.
19 They wanted to be out of this courtroom and in another
20 courtroom.

21 And their belated argument, Mr. Bridges falling on the
22 sword, that they failed to check the box, inadvertent, it's on
23 me, it's very curious. Because if they had done so and had
24 referred to the correct 1334 jurisdictional predicate, as Your
25 Honor had mentioned, the complaint would have been referred to

1 this Court and the entire trajectory of the proceedings would
2 have been different. They would have had the opportunity to
3 take their shot to go to District Court and argue that your
4 order didn't apply.

5 Your Honor, they say the January 9th order is not
6 relevant. It is entirely relevant. It covered the
7 independent directors and their agents. Yes, Mr. Seery is an
8 independent director, but he was also an agent of the
9 independent directors and carried out the duties. You heard
10 argument at the July 16th hearing that Mr. Seery had been
11 acting as the chief executive officer for several months. And
12 why is it important? Mr. Bridges said, well, if we violated
13 one order, we violated the other. It's important because,
14 Your Honor, number one, Mr. Dondero supported that order. We
15 would never have had an independent board in this case if Mr.
16 Dondero, the decision-making -- of the Debtor at that time,
17 supported that order and supported the exculpations that are
18 now claimed to have been invalid.

19 And also Your Honor heard testimony at the confirmation
20 hearing that the independent directors would never have taken
21 this job, would never have taken this job because of the
22 potential for litigation, litigation that we've now had to
23 endure for several months. So to come back 16 months later
24 and say, well, you know, you couldn't really exculpate them,
25 it's really an employment order: It was an employment order.

1 They know it. We know it. Your Honor knows it. It was a
2 resolution of corporate governance issues that changed the
3 whole trajectory of the case, and luckily it -- luckily, Your
4 Honor approved it.

5 The question just is whether they violated the order,
6 period. And I'll have a lot to say about res judicata, but I
7 won't go in too much in detail, but I will just briefly
8 address their arguments. They're correct and the Court is
9 correct that there's a difference between *Applewood* and *Shoaf*.
10 And Your Honor got the exact difference. In one case, a
11 release was not specific, *Applewood*. In one case it was.
12 *Shoaf* hasn't been discredited by *Applewood*. It was different
13 facts. In fact, *Shoaf* relied on two Supreme Court cases, the
14 *Stoll* case and the *Chicot* case, both for the propositions that
15 a court that enters an order, a clear order, even if it didn't
16 have jurisdiction, that cannot be attacked in res judicata.
17 So here what we have is clear, unambiguous, you come to this
18 Court before commencing or pursuing a claim. That's the
19 clarity. The focus on the releases, that's not what we're
20 here for today, that's not what we're here for on a contempt
21 motion, on whether the release covered them or it didn't cover
22 them. We're here on the clear issue of did they violate the
23 language, and we submit that they did.

24 And similarly, *Espinosa* applies. Your Honor, just to
25 quote some language, "Appellees could have moved to remand the

1 action to state court after it improperly -- after its
2 improper removal to the federal court or challenge the
3 district court's exercise in jurisdiction on direct appeal.
4 Because they did neither, they are now barred by principles of
5 res judicata."

6 Res judicata actually does apply, and I will speak about
7 it in much more detail in the modification motion.

8 With respect to *Barton*, Your Honor, we disagree with their
9 argument that Mr. Seery is not a court-appointed agent. We've
10 briefed it extensively in our motion to modify. *Barton*
11 applies to debtors in possession. *Barton* applies to general
12 partners of the debtor. *Barton* applies to chief restructuring
13 orders -- officers who are approved by the debtor. And it
14 applies to general counsel who are appointed by the chief
15 restructuring order. Officer.

16 So the argument that *Barton* is somehow inapplicable is
17 just wrong. Your Honor knows that. Your Honor has written
18 extensively on *Barton* in connection with your *Ondova* opinion.

19 Some of the argument about 959 is all wrong, as well.
20 Your Honor got it right that 959 applies to slip-and-fall
21 cases or torts, injuries to parties that are strangers to this
22 process. There is a legion of cases that I will cite to Your
23 Honor in connection with argument. 959 does not apply here.
24 There's nothing more core to this case than the transactions
25 surrounding the resolution of the HarbourVest claims.

1 We also disagree, Your Honor, that the complaint is
2 subject to mandatory withdrawal of the reference. We've --
3 one of our exhibits in the motion to modify is our motion to
4 enforce the reference. We think Movants have it completely
5 wrong. This is not the type of case that will be subject to
6 withdrawal -- mandatory withdrawal of the reference, and in
7 any event, for this contempt motion, it's irrelevant.

8 And they argue -- one of the other points Mr. Bridges
9 raises is that, because this Court would not have had
10 jurisdiction under 157 because of the mandatory withdrawal,
11 then Your Honor could not legally act as a gatekeeper. But
12 they haven't addressed *Villegas v. Schmidt*. We've raised it
13 throughout this case. And again, in these series of
14 pleadings, they don't even address it. And *Villegas v.*
15 *Schmidt* was a *Barton* case. It was a *Barton* case where the --
16 where the argument was that *Barton* does not apply because it's
17 a *Stern* claim and the Bankruptcy Court would not have
18 jurisdiction. And *Villegas* said no, it does apply. And Your
19 Honor even cited that in your *Ondova* case. And why does it
20 apply? Because there's nothing inconsistent with a Bankruptcy
21 Court having exclusive decision to make a *Barton*
22 determination.

23 In fact, in that case *Villegas* said, you can't go to the
24 District Court for that decision, it is the Bankruptcy Court's
25 decision.

1 So, again, it's a red herring, Your Honor. Your Honor had
2 the ability to act as an exclusive gatekeeper for these types
3 of actions.

4 With that, Your Honor, I'll leave the rest of my argument
5 for the next motion.

6 THE COURT: All right. Thanks.

7 All right. Nate, let's give everyone their time.

8 THE CLERK: That was just about eight and a half
9 additional from the Debtor, and then altogether the other ones
10 were just shy of fourteen minutes. Thirteen minutes and fifty
11 seconds for the other three combined. Do you want me to --

12 THE COURT: Yes, I meant for Debtor combined versus
13 --

14 THE CLERK: Oh. Oh.

15 THE COURT: Respondents combined.

16 THE CLERK: So that would be twenty one and a half
17 the Debtor. Let me do the math on the other one. Be an hour
18 twelve minutes and fifty seconds for --

19 THE COURT: Okay. All right. Got that? Debtors
20 used a total of twenty one and a half minutes; Responders have
21 used an hour twelve minutes and fifty seconds.

22 All right. Mr. Morris, you may call your first witness.

23 MR. MORRIS: Thank you very much, Your Honor. The
24 Debtor calls Mark Patrick.

25 THE COURT: All right. Mr. Patrick? Please approach

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1 our witness stand and I'll swear you in. Please raise your
2 right hand.

3 (The witness is sworn.)

4 THE COURT: All right. Please take a seat.

5 MARK PATRICK, DEBTOR'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. MORRIS:

8 Q Good afternoon, Mr. Patrick.

9 A Good afternoon.

10 Q Can you hear me okay?

11 A Yes, I can.

12 Q Okay. You have before you several sets of binders.
13 They're rather large. But when I deposed you on Friday, we
14 did that virtually. Now, I may direct you specifically to one
15 of the binders or one of the documents from time to time, so I
16 just wanted you to know that those were in front of you and
17 that I may be doing that.

18 Mr. Patrick, since March 1st, 2001 [sic], you've been
19 employed by Highland Consultants, right?

20 A I believe the name is Highgate Consultants doing business
21 as Skyview Group.

22 Q Okay. And that's an entity that was created by certain
23 former Highland employees, correct?

24 A That is my understanding, correct.

25 Q And your understanding is that Mr. Dondero doesn't have an

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1 ownership interest in that entity, correct?

2 A That he does not. That is correct.

3 Q And your understanding is that he's not an employee of
4 that -- of Skyview, correct?

5 A That is correct.

6 Q Prior to joining Skyview on March 1st, you had worked at
7 Highland Capital Management, LP for about 13 years, correct?

8 A Correct.

9 Q Joining in, I believe, early 2008?

10 A Correct.

11 Q Okay. I'm going to refer to Highland Capital Management,
12 LP from time to time as HCMLP. Is that okay?

13 A Yes.

14 Q While at HCMLP, you served as a tax counselor, correct?

15 A No, I would like to distinguish that. I did have the
16 title tax counsel. However, essentially all my activities
17 were in a non-lawyer capacity, being the client
18 representative. I would engage other outside law firms to
19 provide legal advice.

20 Q Okay. So you are an attorney, correct?

21 A Yes, I am.

22 Q But essentially everything you did at Highland during your
23 13 years was in a non-lawyer capacity, correct?

24 A Correct.

25 Q In fact, you didn't even work in the legal department; is

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1 that right?

2 A That is correct. I worked for the tax department.

3 Q Okay. Let's talk about how you became the authorized
4 representative of the Plaintiffs. You are, in fact,
5 authorized representative today of CLO Holdco, Ltd. and
6 Charitable DAF, LP, correct?

7 A Charitable DAF Fund, LP. Correct.

8 Q And those are the two entities that filed the complaint in
9 the United States District Court against the Debtor and two
10 other entities, correct?

11 A Correct.

12 Q And may I refer to those two entities going forward as the
13 Plaintiffs?

14 A Yes.

15 Q You became the authorized representative of the Plaintiffs
16 on March 24th, 2021, the day you and Mr. Scott executed
17 certain transfer documents, correct?

18 A Correct.

19 Q And you had no authority to act on behalf of either of the
20 Plaintiffs before March 24th, correct?

21 A Correct.

22 Q The DAF controls about \$200 million in assets, correct?

23 A The Plaintiffs, you mean? CLO Holdco and Charitable DAF
24 Fund, LP.

25 Q Yes.

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1 A Around there.

2 Q Okay. Let me try and just ask that again, and thank you
3 for correcting me. To the best of your knowledge, the
4 Plaintiffs control about \$200 million in assets, correct?

5 A Net assets, correct.

6 Q Okay. And that asset base is derived largely from HCMLP,
7 Mr. Dondero, or Mr. Dondero's trusts, correct?

8 A Can you restate that question again, Mr. Morris?

9 Q Sure. The asset base that you just referred to is derived
10 largely from HCMLP, Mr. Dondero, or donor trusts?

11 A The way I would characterize it -- you're using the word
12 derived. I would characterize it with respect to certain
13 charitable donations --

14 Q Uh-huh.

15 A -- that were -- that were made at certain time periods,
16 where the donors gave up complete dominion and control over
17 the respective assets and at that time claimed a federal
18 income tax deduction for that.

19 I do -- I do believe that, as far as the donor group, as
20 you specified, Highland Capital Management, I recall, provided
21 a donation to a Charitable Remainder Trust that eventually had
22 expired and that eventually such assets went into the
23 supporting organizations. And then I do believe Mr. Dondero
24 also contributed to the Charitable Remainder Trust No. 2,
25 which seeded substantial amounts of the original assets that

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1 were eventually composed of the \$200 million. And then from
2 time to time I do believe that Mr. Dondero's trusts made
3 charitable donations to their respective supporting
4 organizations.

5 Q Okay. Thank you.

6 A Is that responsive?

7 Q It is. It's very responsive. Thank you very much. So,
8 to the best of your knowledge, the charitable donations that
9 were made that form the bases of the assets came from those
10 three -- primarily from those three sources, correct?

11 A Well, you know, there's two different trusts. There's the
12 Dugaboy Trust and the Get Good Trust.

13 Q Okay.

14 A Then you have Mr. Dondero and Highland Capital Management.
15 So I would say four sources.

16 Q Okay. All right. Thank you. Prior to assuming your role
17 as the authorized representative of the Plaintiff, you had
18 never had meaningful responsibility for making investment
19 decisions, correct?

20 A I'm sorry. You kind of talk a little bit fast. Please
21 slow it down --

22 Q That's okay.

23 A -- and restate it. Thank you.

24 Q And I appreciate that. And any time you don't understand
25 what I'm saying or I speak too fast, please do exactly what

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1 you're doing. You're doing fine.

2 Prior to assuming your role as the authorized
3 representative of the Plaintiffs, you never had any meaningful
4 responsibility making investment decisions. Is that correct?

5 A To whom?

6 Q For anybody.

7 A Well, during my deposition, I believe I testified that I
8 make investment decisions with respect to my family. Family
9 and friends come to me and they ask me for investment
10 decisions. I was -- in my deposition, I indicated to you that
11 I was a board member of a nonprofit called the 500, Inc. They
12 had received a donation of stock in Yahoo!, and the members
13 there looked to me for financial guidance. As an undergrad at
14 the University of Miami, I was a -- I was a finance major, and
15 so I do have a variety of background with respect to
16 investments.

17 Q Okay. So you told me that from time to time friends and
18 family members come to you for investing advice. Is that
19 right?

20 A That is correct.

21 Q And when you were a young lawyer you were on the board of
22 a nonprofit that received a donation of Yahoo! stock and the
23 board looked to you for guidance. Is that correct?

24 THE COURT: Just a moment. I think there's an
25 objection.

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1 MR. MORRIS: Uh-huh.

2 THE COURT: Go ahead.

3 MR. ANDERSON: So far -- relevance, Your Honor. This
4 is way out of the bounds of the contempt proceeding. You
5 know, what he did as a young person with Yahoo! stock. We're
6 here to -- he authorized the lawsuit. They filed the lawsuit.
7 That's it. Getting into all this peripheral stuff is
8 completely irrelevant.

9 THE COURT: Your response?

10 MR. MORRIS: My response, Your Honor, is very simple.
11 Mr. Patrick assumed responsibility, and you're going to be
12 told that he exercised full and complete authority over a \$200
13 million fund that was created by Mr. Dondero, --

14 THE COURT: Okay.

15 MR. MORRIS: -- that funds -- that is funded
16 virtually by Mr. Dondero, and for which -- Mr. Patrick is a
17 lovely man, and I don't mean to disparage him at all -- but he
18 has no meaningful experience in investing at all.

19 THE COURT: All right. Counsel, I overrule. I think
20 there's potential relevance.

21 And may I remind people that when you're back at counsel
22 table, please make sure you speak your objections into the
23 microphone. Thank you.

24 BY MR. MORRIS:

25 Q When you were a young lawyer, sir, you were on the board

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1 of a nonprofit that received a donation of Yahoo! stock and
2 the board looked to you for guidance, correct?

3 A Yes, correct.

4 Q And -- but during your 13 years at Highland, you never had
5 formal responsibility for making investment decisions,
6 correct?

7 A That is correct.

8 Q Yeah. In fact, other than investment opportunities that
9 you personally presented where you served as a co-decider, you
10 never had any responsibility or authority to make investment
11 decisions on behalf of HCMLP or any of its affiliated
12 entities, correct?

13 A That is correct.

14 Q And at least during your deposition, you couldn't identify
15 a single opportunity where you actually had the authority and
16 did authorize the execution of a transaction on behalf of
17 HCMLP or any of its affiliates, correct?

18 A Correct.

19 Q And yet today you are now solely responsible for making
20 all investment decisions with respect to a \$200 million
21 charitable fund, correct?

22 A Yes, but I get some help. I've engaged an outside third
23 party called ValueScope, and they have been as -- effectively
24 working as a "gatekeeper" for me, and I look to them for
25 investment guidance and advice, and I informally look to Mr.

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1 Dondero since the time period of when I took control on March
2 24th for any questions I may have with respect to the
3 portfolio. So I don't feel like I'm all by myself in making
4 decisions.

5 Q Okay. I didn't mean to suggest that you were, sir, and I
6 apologize if you took it that way. I was just asking the
7 question, you are the person now solely responsible for making
8 the investment decisions, correct?

9 A Yes.

10 Q Okay. Let's talk about the circumstances that led to the
11 filing of the complaint for a bit. On April 12, 2021, you
12 caused the Plaintiffs to commence an action against HCMLP and
13 two other entities, correct?

14 A Correct.

15 Q Okay. One of the binders -- you've got a couple of
16 binders in front of you. If you look at the bottom, one of
17 them says Volume 1 of 2, Exhibits 1 through 18. And if you
18 could grab that one and turn to Exhibit 12. Do you have that,
19 sir?

20 A It says -- it says the original complaint. Is that the
21 right one?

22 Q That is the right one. And just as I said when we were
23 doing this virtually last Friday, if I ask you a question
24 about a particular document, you should always feel free to
25 review as much of the document as you think you need to

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1 competently and fully answer the question. Okay?

2 A Okay. Thank you.

3 Q All right. You instructed the Sbaiti firm to file that
4 complaint on behalf of the Plaintiffs, correct?

5 A Correct.

6 Q And to the best of your recollection, the Plaintiffs
7 returned -- retained the Sbaiti firm in April, correct?

8 A Correct.

9 Q So the Sbaiti firm was retained no more than twelve days
10 before the complaint was filed, correct?

11 A Correct.

12 Q You personally retained the Sbaiti firm, correct?

13 A Correct.

14 Q And the idea of filing this complaint originated with the
15 Sbaiti firm, correct?

16 A Correct.

17 Q Before filing -- withdrawn. Before becoming the
18 Plaintiffs' authorized representative, you hadn't had any
19 communications with anyone about potential claims that might
20 be brought against the Debtor arising out of the HarbourVest
21 settlement, correct?

22 A That is correct.

23 Q Now, after you became the Plaintiffs' authorized
24 representative, Mr. Dondero communicated with the Sbaiti firm
25 about the complaint that's marked as Exhibit 12, correct?

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1 A Yes. After he brought certain information to myself and
2 then that I engaged the Sbaiti firm to launch an
3 investigation, I also wanted Mr. Dondero to work with the
4 Sbaiti firm with respect to their investigation of the
5 underlying facts.

6 Q Okay. Mr. Dondero did not discuss the complaint with you,
7 but he did communicate with the Sbaiti firm about the
8 complaint, correct?

9 A I believe -- yeah. I heard you slip in at the end "the
10 complaint." I know he communicated with the Sbaiti firm. I
11 can't -- I can't say what he said or didn't say with respect
12 to the -- the actual complaint.

13 Q Okay. But Mr. Dondero got involved in the process
14 initially when he brought some information to your attention
15 concerning the HarbourVest transaction, correct?

16 A Correct.

17 Q And he came to you with the HarbourVest information after
18 you assumed your role as the authorized representative of the
19 Plaintiffs on March 24th, correct?

20 A That is correct.

21 Q At the time he came to you, you did not have any specific
22 knowledge about the HarbourVest transaction, correct?

23 A I did not have specific knowledge with respect to the
24 allegations that were laid out and the facts with respect to
25 the original complaint. I think I had just had a general

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Patrick - Direct

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1 awareness that there was a HarbourVest something or other, but
2 the specific aspects of it, I was unaware.

3 Q Okay. And you had no reason to believe that Mr. Seery had
4 done anything wrong with respect to the HarbourVest
5 transaction at the time you became the Plaintiffs' authorized
6 representative, correct?

7 A That is correct.

8 Q But you recall very specifically that some time after
9 March 24th Mr. Dondero told you that an investment opportunity
10 was essentially usurped or taken away, to the Plaintiffs' harm
11 and for the benefit of HCMLP, correct?

12 A That is correct.

13 Q And after Mr. Dondero brought this information to your
14 attention, you hired the Sbaiti firm to launch an
15 investigation into the facts, correct?

16 A Correct.

17 Q You had never worked with the Sbaiti firm before, correct?

18 A That is correct.

19 Q And you had hired many firms as a tax counselor at HCMLP,
20 but not the Sbaiti firm until now. Correct?

21 A That is correct.

22 Q You got to the Sbaiti firm through a recommendation from
23 D.C. Sauter, correct?

24 A Correct.

25 Q Mr. Sauter is the in-house counsel, the in-house general

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1 counsel at NexPoint Advisors, correct?

2 A Correct.

3 Q You didn't ask Mr. Sauter for a recommendation for a
4 lawyer; he just volunteered that you should use the Sbaiti
5 firm. Correct?

6 A That is correct.

7 Q And you never used -- considered using another firm, did
8 you?

9 A When they were presented to me, they appeared to have all
10 the sufficient skills necessary to undertake this action, and
11 so I don't recall interviewing any other firms.

12 Q Okay. Now, after bringing the matter to your attention, Mr.
13 Dondero communicated directly with the Sbaiti firm in relation
14 to the investigation that was being undertaken. Correct?

15 A That is correct.

16 Q But you weren't privy to the communications between Mr.
17 Dondero and the Sbaiti firm, correct?

18 A I did not participate in those conversations as the --
19 what I, again, considered Mr. Dondero as the investment
20 advisor to the portfolio, and he was very versant in the
21 assets. I wanted him to participate in the investigation that
22 the Sbaiti firm was undertaking prior to the filing of this
23 complaint.

24 Q Let's talk for a minute about the notion of Mr. Dondero
25 being the investment advisor. Until recently, the entity

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Patrick - Direct

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1 known as the DAF had an investment advisory committee with HC
2 -- an investment advisory agreement with HCMLP. Correct?

3 A It's my understanding that the investment advisory
4 agreement existed with the Plaintiffs, CLO Holdco, as well as
5 Charitable DAF Fund, LP, up and to the end of February,
6 throughout the HarbourVest transaction.

7 Q Okay. And since February, the Plaintiffs do not have an
8 investment advisory agreement with anybody, correct?

9 A That is correct.

10 Q Okay. So Mr. Dondero, if he serves as an investment
11 advisor, it's on an informal basis. Is that fair?

12 A After I took control, he serves as an informal investment
13 advisor.

14 Q Okay. So there's no contract that you're aware of between
15 either of the Plaintiffs and Mr. Dondero pursuant to which he
16 is authorized to act as the investment advisor for the
17 Plaintiffs, correct?

18 A That is correct.

19 Q Okay. When you communicated with Grant Scott --
20 withdrawn. You know who Grant Scott is, right?

21 A Yes, I do.

22 Q He's the gentleman who preceded you as the authorized
23 representative of the Plaintiffs, correct?

24 A Yes.

25 Q Okay. You communicated with Mr. Scott from time to time

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Patrick - Direct

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1 during February and March 2021, correct?

2 A February and March are the dates? Yes.

3 Q Yeah. And from February 1st until March 21st -- well,
4 withdrawn. Prior to March 24th, 2021, Mr. Scott was the
5 Plaintiffs' authorized representative, correct?

6 A Correct.

7 Q And you have no recollection of discussing with Mr. Scott
8 at any time prior to March 24th any aspect of the HarbourVest
9 settlement with Mr. Scott. Correct?

10 A Correct.

11 Q And you have no recollection of discussing whether the
12 Plaintiffs had potential claims that might be brought against
13 the Debtor. Correct? Withdrawn. Let me ask a better
14 question.

15 You have no recollection of discussing with Mr. Scott at
16 any time prior to March 24th whether the Plaintiffs had
17 potential claims against the Debtor. Correct?

18 A That is correct.

19 Q You and Mr. Scott never discussed whether either of --
20 either of the Plaintiffs had potential claims against Mr.
21 Seery. Correct?

22 A Correct.

23 Q Okay. At the time that you became their authorized
24 representative, you had no knowledge that the Plaintiffs would
25 be filing a complaint against the Debtors relating to the

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Patrick - Direct

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1 HarbourVest settlement less than three weeks later, correct?

2 A That is correct.

3 Q Okay. Now, if you look at Page 2 of the complaint, you'll
4 see at the top it refers to Mr. Seery as a potential party.

5 Do you see that?

6 A Yes, I do.

7 Q Okay. You don't know why Mr. Seery was named --
8 withdrawn. You don't know why Mr. Seery was not named as a
9 defendant in the complaint, correct?

10 A No, I -- that's correct. I do not know why he was not
11 named. That's in the purview of the Sbaiti firm.

12 Q Okay. And the Sbaiti firm also made the decision to name
13 Mr. Seery on Page 2 there as a potential party when drafting
14 the complaint, correct?

15 A That's what the document says.

16 Q And you weren't involved in the decision to identify Mr.
17 Seery as a potential party, correct?

18 A That is correct. Again, I rely on the law firm to decide
19 what parties to bring a suit to -- against.

20 Q Okay. Okay. Do you recall the other day we talked about
21 a document called the July order?

22 A Yes.

23 Q Okay. That's in -- that's in Tab 16 in your binder, if
24 you can turn to that. And take a moment to look at it, if
25 you'd like. And my first question is simply whether this is

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Patrick - Direct

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1 the July order, as you understand it.

2 (Pause.)

3 A Yes, it is. I was just looking for the gatekeeper
4 provision. It looks like it's Paragraph 5. So, --

5 Q Okay. Thank you for that. About a week after the
6 complaint was filed, you authorized the Plaintiffs to file a
7 motion in the District Court for leave to amend the
8 Plaintiffs' complaint to add Mr. Seery as a defendant.

9 Correct?

10 A I authorized the filing of a motion in Federal District
11 Court that would ask the Federal District Court whether or not
12 Jim Seery could be named in the original complaint with
13 respect to the gatekeeper provision cited in that motion and
14 with respect to the arguments that were made in that motion.

15 Q Okay. Just to be clear, if you turn to Exhibit 17, the
16 next tab, --

17 A I'm here.

18 Q -- do you see that document is called Plaintiffs' Motion
19 for Leave to File First Amended Complaint?

20 A Yes.

21 Q And that's the document that you authorized the Plaintiffs
22 to file on or about April 19th, correct?

23 A Correct.

24 Q Okay. And can we refer to that document as the motion to
25 amend?

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1 A Yes.

2 Q Okay. You were aware of the July order at Tab 16 before
3 you authorized the filing of the motion to amend. Correct?

4 A Yes, because it's cited in the motion itself.

5 Q Okay. And at the time that you authorized the filing of
6 the motion to amend, you understood that the July order was
7 still in effect. Correct?

8 A Yes, because it was referenced in the motion, so my
9 assumption would be it would still be in effect.

10 Q Okay. Before the motion to amend was filed, you're -- you
11 are aware that my firm and the Sbaiti firm communicated by
12 email about the propriety of filing the motion to amend?

13 A Before it was filed? Communications between your firm and
14 the Sbaiti firm? I would have to have my recollection
15 refreshed.

16 Q I'll just ask the question a different way. Did you know
17 before you authorized the filing of the motion to amend that
18 my firm and the Sbaiti firm had engaged in an email exchange
19 about the propriety of filing the motion to amend in the
20 District Court?

21 A It's my recollection -- and again, I could be wrong here
22 -- but I thought the email exchange occurred after the fact,
23 not before. But again, I -- I just --

24 Q Okay. In any event, on April 19th, the motion to amend
25 was filed. Correct?

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Patrick - Direct

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1 A Correct.

2 Q That's the document that is Exhibit 17. And you
3 personally authorized the Sbaiti firm to file the motion to
4 amend on behalf of the Plaintiffs, correct?

5 A Correct.

6 Q And you authorized the filing of the motion to amend with
7 knowledge -- withdrawn.

8 Can you read the first sentence of the motion to amend out
9 loud, please?

10 A Yeah. (reading) Plaintiffs submit this motion under Rule
11 15 of the Federal Rules of Civil Procedure for one purpose:
12 to name as defendant one James P. Seery, Jr., the CEO of
13 defendant Highland Capital Management, LP (HCM) and the chief
14 perpetrator of the wrongdoing that forms the basis of the
15 Plaintiffs' causes of action.

16 Q And does that fairly state the purpose of the motion?

17 MR. SBAITI: Objection, Your Honor. Asks him to make
18 a legal conclusion about the purpose of the legal motion filed
19 in court that he didn't draft.

20 THE COURT: Okay. I overrule. You can answer if you
21 have an answer.

22 THE WITNESS: It's always been my general
23 understanding that the purpose of filing this motion was to go
24 to the Federal District Court and ask that Court of reference
25 to this Court whether or not Mr. Seery could be named with

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1 respect to the original complaint, citing again the gatekeeper
2 provisions and citing the various arguments that we've heard
3 much earlier.

4 BY MR. MORRIS:

5 Q Okay. You personally didn't learn anything between April
6 9th, when the complaint was filed, and April 19th, when the
7 motion to amend was filed, that caused you to authorize the
8 filing of the motion to amend, correct?

9 A That is correct.

10 Q In fact, you relied on the Sbaiti firm with respect to
11 decisions concerning the timing of the motion to amend.
12 Correct?

13 A Correct.

14 Q And you had no knowledge of whether anyone acting on
15 behalf of the Plaintiffs ever served the Debtor with a copy of
16 the motion to amend. Correct?

17 A Yes. I have no knowledge.

18 Q Okay. And you have no knowledge that the Sbaiti firm ever
19 provided my firm with a copy of the motion to amend. Correct?

20 A I cannot recall one way or another.

21 Q Okay. You never instructed anyone on behalf -- acting on
22 behalf of the Plaintiffs to inform the Debtor that the motion
23 to amend had been filed, correct?

24 A That is correct.

25 Q And that's because you relied on the Sbaiti firm on

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Patrick - Direct

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1 procedural issues, correct?

2 A That is correct.

3 Q You didn't consider waiting until the Debtor --

4 (Interruption.)

5 Q -- had appeared in the action before authorizing the

6 filing of the motion --

7 A Yeah, --

8 THE COURT: Yes. Y'all are being a little bit loud.

9 Okay.

10 A VOICE: Sorry.

11 MR. MORRIS: No problem.

12 MR. PHILLIPS: I've heard that before, Your Honor,

13 and I apologize.

14 THE COURT: I bet you have. Thank you.

15 MR. MORRIS: Admonish Mr. Phillips, please.

16 THE COURT: Okay.

17 MR. MORRIS: He's always the wild card.

18 MR. PHILLIPS: I admonish --

19 MR. MORRIS: He's always the wild card.

20 MR. PHILLIPS: I admonish myself.

21 THE COURT: All right. I think he got the message.

22 Continue.

23 BY MR. MORRIS:

24 Q You didn't consider waiting until the Debtor had appeared

25 in the action before filing the motion to amend, correct?

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Patrick - Direct

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1 A Again, I am the client and I rely upon the law firm that's
2 engaged with respect to making legal decisions as to the
3 timing and notice and appearance and what have you. I'm a tax
4 lawyer.

5 Q Okay. You wanted the District Court to grant the relief
6 that the Plaintiffs were seeking. Correct?

7 A I wanted the District Court to consider, under the
8 gatekeeper provisions of this Court, whether or not Mr. Seery
9 could be named in the original complaint. That's -- that,
10 from my perspective, is what was desired.

11 Q All right. You wanted the District Court to grant the
12 relief that the Plaintiffs were seeking, correct?

13 MR. SBAITI: Objection, Your Honor. Asked and
14 answered.

15 THE COURT: Overruled.

16 THE WITNESS: Again, I would characterize this motion
17 as not necessarily asking for specific relief, but asking the
18 Federal District Court whether or not, under the gatekeeper
19 provision, that Mr. Seery could be named on there. What
20 happens after that would be a second step. So I kind of -- I
21 dispute that characterization.

22 BY MR. MORRIS:

23 Q All right. I'm going to cross my fingers and hope that
24 Ms. Canty is on the line, and I would ask her to put up Page
25 57 from Mr. Patrick's deposition transcript.

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Patrick - Direct

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1 THE COURT: There it is.

2 MR. MORRIS: There it is. It's like magic. Can we
3 go down to Lines 18 through 20?

4 BY MR. MORRIS:

5 Q Mr. Patrick, during the deposition on Friday, did I ask
6 you this question and did you give me this answer? Question,
7 "Did you want the Court to grant the relief you were seeking?"
8 Answer, "Yes."

9 A I -- and it was qualified with respect to Lines 12 through
10 17. In my view, when I answered yes, I was simply restating
11 what I stated in Line 12. I wanted the District Court to
12 consider this motion as to whether or not Mr. Seery could be
13 named in the original complaint or the amended complaint
14 pursuant to the existing gatekeeper rules and the arguments
15 that were made in that motion. That's -- that's what I
16 wanted. And so then when I was asked, did you want the Court
17 to grant the relief that you were seeking, when I answered
18 yes, it was from that perspective.

19 Q Okay. Thank you very much. If the District Court had
20 granted the relief that you were seeking, you would have
21 authorized the Sbaiti firm to file the amended complaint
22 naming Mr. Seery as a defendant if the Sbaiti firm recommended
23 that you do so. Correct?

24 A If the Sbaiti firm recommended that I do so. That is
25 correct.

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Patrick - Direct

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1 Q Okay. Let's talk for a little bit about the line of
2 succession for the DAF and CLO Holdco. Can we please go to
3 Exhibit 25, which is in the other binder? It's in the other
4 binder, sir.

5 (Pause.)

6 Q I guess you could look on the screen or you can look in
7 the binder, whatever's easier for you.

8 A Yeah. I prefer the screen. I prefer the screen.

9 Q Okay.

10 A It's much easier.

11 Q All right. We've got it in both spots. But do you have
12 Exhibit 25 in front of you, sir?

13 A Yes, I do.

14 Q All right. Do you know what it is?

15 A This is the organizational chart depicting a variety of
16 charitable entities as well as entities that are commonly
17 referred to the DAF. However, when I look at this chart, I do
18 not look at and see just boxes, what I see is the humanitarian
19 effort that these boxes represent.

20 MR. MORRIS: Your Honor, may I interrupt?

21 THE COURT: You may.

22 MR. MORRIS: Okay.

23 BY MR. MORRIS:

24 Q I appreciate that, and when your lawyers get up to ask you
25 questions, I bet they'll want to know just what you were about

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Patrick - Direct

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1 to tell me. But I just want to understand what this chart is.
2 This chart is the DAF, CLO Holdco, structure chart. Correct?

3 A Correct.

4 Q Okay. And you were personally involved in creating this
5 organizational structure, correct?

6 A I -- yes.

7 Q Okay. And from time to time, the Charitable DAF Holdco
8 Limited distributes cash to the foundations that are above it.
9 Correct?

10 A Correct.

11 Q All right. I want to talk a little bit more specifically
12 about how this happens. The source of the cash distributed by
13 Charitable DAF Holdco Limited is CLO Holdco, Ltd., that
14 entity, the Cayman Islands entity near the bottom. Correct?

15 MR. ANDERSON: Your Honor, I have an objection.
16 Completely irrelevant. I'm objecting on relevance grounds.
17 This has nothing to do with the contempt proceeding. We've
18 already gone over that he authorized the filing of the
19 complaint, that he authorized the filing of the motion to
20 amend. It's all in the record. This is completely irrelevant
21 at this point.

22 THE COURT: Okay. Relevance objection. Your
23 response?

24 MR. MORRIS: I believe that it's relevant to the
25 Debtor's motion to hold Mr. Dondero in contempt for pursuing

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Patrick - Direct

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1 claims against Mr. Seery, in violation of the July 7 order. I
2 think an understanding of what the Plaintiffs are, how they're
3 funded, and Mr. Dondero's interest in pursuing claims on
4 behalf of those entities is relevant to the -- to the -- just
5 -- it's just against him. It's not against their clients,
6 frankly. It's just against Mr. Dondero.

7 THE COURT: I overrule.

8 MR. MORRIS: I'll try and -- I'll try and make this
9 quick, though.

10 BY MR. MORRIS:

11 Q CLO Holdco had two primary sources of capital. Is that
12 right?

13 A Two primary sources of capital?

14 Q Let me ask it differently. There was a Charitable
15 Remainder Trust that was going to expire in 2011, correct?

16 A That is correct.

17 Q And that Charitable Remainder Trust had certain CLO equity
18 assets, correct?

19 A Correct.

20 Q And the donor to that Charitable Remainder Trust was
21 Highland Capital Management, LP. Correct?

22 A Not correct. After my deposition, I refreshed my memory.
23 There were two Charitable Remainder Trusts that existed, which
24 I think in my mind caused a little bit of confusion. The
25 Charitable Remainder Trust No. 2, which is the one that

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Patrick - Direct

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1 expired in 2011, was originally funded by Mr. Dondero.

2 Q Okay. So, so the Charitable Remainder Trust that we were
3 talking about on Friday wasn't seeded with capital from
4 Highland Capital Management, it came from Mr. Dondero
5 personally?

6 A That is correct.

7 Q Okay. Thank you. And the other primary source of capital
8 was the Dallas Foundation, the entity that's in the upper
9 left-hand corner of the chart. Is that correct?

10 A No.

11 Q The -- you didn't tell me that the other day?

12 A You said -- you're pointing to the Dallas Foundation.
13 That's a 501(c)(3) organization.

14 Q I apologize. Did you tell me the other day that the
15 Dallas Foundation was the second source of capital for HCLCO
16 Hold Company?

17 A No, I did not. You --
18 (Pause.)

19 Q Maybe I know the source of the confusion. Is the Highland
20 Dallas Foundation something different?

21 A Yes. On this organizational chart, you'll see that it has
22 an indication, it's a supporting organization.

23 Q Ah, okay. So, so let me restate the question, then. The
24 second primary source of capital for CLO Holdco, Ltd. is the
25 Highland Dallas Foundation. Do I have that right?

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1 A Yes.

2 Q Okay. And the sources of that entity's capital were
3 grantor trusts and possibly Mr. Dondero personally. Correct?

4 A In addition -- per my refreshing my recollection from our
5 deposition, the other Charitable Remainder Trust, I believe
6 Charitable Remainder Trust No. 1, which expired later, also
7 sent a donation, if you will, or assets to -- and I cannot
8 recall specifically whether it was just the Highland Dallas
9 Foundation or the other supporting organizations that you see
10 on this chart.

11 Q But the source of that -- the source of the assets that
12 became the second Charitable Remainder Trust was Highland
13 Capital Management, LP. Is that right?

14 A I think that is accurate from my recollection. And again,
15 I'm talking about Charitable Remainder Trust No. 1.

16 Q Okay. So is it fair to say -- I'm just going to try and
17 summarize, if I can. Is it fair to say that CLO Holdco, Ltd.
18 is the investment arm of the organizational structure on this
19 page?

20 A Yes.

21 Q And is it fair to say that nearly all of the assets that
22 are in there derived from either Mr. Dondero, one of his
23 trusts, or Highland Capital Management, LP?

24 A Yes. It's like the Bill Gates Foundation or the
25 Rockefeller Foundation. These come from the folks that make

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Patrick - Direct

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1 their donations and put their name on it.

2 Q Okay.

3 MR. MORRIS: Now, now, Your Honor, I'm going to go
4 back just for a few minutes to how Mr. Scott got appointed,
5 because I think that lays kind of the groundwork for his
6 replacement. It won't take long.

7 THE COURT: Okay. I have a question either --

8 MR. MORRIS: Sure.

9 THE COURT: -- for you or the witness. I'm sorry,
10 but --

11 MR. MORRIS: Sure. Yeah.

12 THE COURT: -- the organizational chart, it's not
13 meant to show everything that might be connected to this
14 substructure, right? Because doesn't CLO Holdco, Ltd. own
15 49.02 percent of HCLOF, --

16 MR. MORRIS: That --

17 THE COURT: -- which gets us into the whole
18 HarbourVest transaction issue?

19 MR. MORRIS: You're exactly right, Your Honor.

20 THE COURT: Okay.

21 MR. MORRIS: But that's just an investment that HCLO
22 Holdco made.

23 THE COURT: Right.

24 MR. MORRIS: Right? And so I -- let me ask the
25 witness, actually.

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1 THE COURT: Okay. Thank you. Thank you.

2 MR. MORRIS: Let me ask the witness. Yeah.

3 THE COURT: I just want my brain --

4 MR. MORRIS: Right.

5 THE COURT: -- to be complete on this chart.

6 BY MR. MORRIS:

7 Q Mr. Patrick, there are three entities under CLO Holdco,
8 Ltd. Do you see that?

9 A Yes.

10 Q And does CLO Holdco, Ltd. own one hundred percent of the
11 interests in each of those three entities?

12 A Yes.

13 Q Do you know why those three entities are depicted on this
14 particular chart? Is it because they're wholly-owned
15 subsidiaries?

16 A Correct.

17 Q Okay. And CLO Holdco, Ltd. has interests in other
18 companies. Isn't that right?

19 A It has other investments. That is correct.

20 Q And the reason that they're not depicted on here is
21 because they're not wholly-owned subsidiaries, they're just
22 investments; is that fair?

23 A That is fair.

24 MR. MORRIS: Does that--?

25 THE COURT: Yes.

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Patrick - Direct

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1 MR. MORRIS: Okay.

2 THE COURT: Uh-huh.

3 BY MR. MORRIS:

4 Q So, so let's go back to Mr. Grant for a moment. Mr.
5 Scott, rather. Mr. Dondero was actually the original general
6 partner. If you look at this chart, while it's still up here,
7 you see on the left there's Charitable DAF GP, LLC?

8 A Yes.

9 Q And the Charitable DAF GP, LLC is the general partner of
10 the Charitable DAF Fund, LP. Correct?

11 A Correct.

12 Q And on this chart, Grant Scott was the managing member of
13 Charitable DAF GP, LLC. Right?

14 A Correct.

15 Q Okay. But Mr. Dondero was the original general partner of
16 that entity, correct?

17 A That is correct. But I do want to point out, I just note
18 that the GP interest is indicating a one percent interest and
19 the 99 interest to Charitable DAF Holdco. I believe that's
20 incorrect. It's a hundred percent by Charitable DAF Holdco,
21 Ltd., and the Charitable DAF GP interest is a noneconomic
22 interest. So that should actually reflect a zero percent to
23 the extent it may indicate some sort of profits or otherwise.

24 Q Okay. Thank you for the clarification. Can you turn to
25 Exhibit 26, please, in your binder? And is it your

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1 understanding that that is the amended and restated LLC
2 agreement for the DAF GP, LLC?

3 A Yes.

4 Q Okay. And this was amended and restated effective as of
5 January 1st, 2012, correct?

6 A Yes.

7 Q And if you go to the last page, you'll see there are
8 signatures for Mr. Scott and Mr. Dondero, correct?

9 A Yes.

10 Q And Mr. Dondero is identified as the forming -- former
11 managing member and Mr. Scott is identified as the new
12 managing member. Correct?

13 A Correct. That's what the document says.

14 Q And it's your understanding that Mr. Dondero had the
15 authority to select his successor. Correct?

16 A Correct.

17 Q In fact, it's based on your understanding of documents and
18 your recollection that Mr. Dondero personally selected Mr.
19 Scott as the person he was going to transfer control to,
20 correct?

21 A Upon advice of Highland Capital Management's tax
22 compliance officer, Mr. Tom Surgent.

23 Q What advice did Mr. Surgent give?

24 A He gave advice that, because Mr. Dondero -- and this is
25 what I came to an understanding after the fact of this

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1 transaction, because I was not a part of it -- that by Mr.
2 Dondero holding that GP interest, that it would be -- the
3 Plaintiffs, if you will, would be an affiliate entity for
4 regulatory purposes, and so he advised that if he -- if Mr.
5 Dondero transferred his GP interest to Mr. Scott, it would no
6 longer be an affiliate, is my recollection.

7 Q Okay. You didn't appoint Mr. Scott, did you?

8 A No.

9 Q That was Mr. Dondero. Is that right?

10 A Yes.

11 Q Okay. Let's go to 2021. Let's come back to the current
12 time. Sometime in February, Mr. Scott called you to ask about
13 the mechanics of how he could resign. Correct?

14 A That is correct.

15 Q But the decision to have you replace Mr. Scott was not
16 made until March 24th, the day you sent an email to Mr. Scott
17 with the transfer documents. Correct?

18 A That is correct.

19 Q And it's your understanding that he could have transferred
20 the management shares and control of the DAF to anyone in the
21 world. Correct?

22 A Correct.

23 Q That's what the docu... that he had the authority under
24 the documentation, as you understood it, to freely trade or
25 transfer the management shares. Correct?

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1 A Wait. Now, let's be precise here.

2 Q Okay.

3 A Are you talking about the GP interests or the management
4 shares held by Charitable DAF Holdco, Ltd.?

5 Q Let's start with the management shares. Can you explain
6 to the Court what the management shares are?

7 MR. ANDERSON: Your Honor? Hang on one second. Your
8 Honor, I want to object again on relevance. We're going way
9 beyond the scope of the contempt issue, whether or not --

10 MR. MORRIS: This is about control.

11 MR. ANDERSON: -- the motion to amend somehow
12 violated the prior order of this Court. Getting into the
13 management structure, transfer of shares, that's way outside
14 the bounds. I object on relevance.

15 THE COURT: Okay. Relevance objection?

16 MR. MORRIS: Your Honor, they have probably 30
17 documents, maybe 20 documents, on their exhibit list that
18 relate to management and control. I'm asking questions about
19 management and control. Okay? This is important, again, to
20 (a) establish his authority, but (b) the circumstances under
21 which he came to be the purported control person.

22 THE COURT: Okay. Overruled. Go ahead.

23 THE WITNESS: It might be helpful to look at the
24 organizational chart, but if not -- but I'll describe it to
25 you again. With respect to the entity called --

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1 MR. MORRIS: Hold on one second. Can we put up the
2 organizational chart again, Ms. Canty, if you can? There you
3 go.

4 THE WITNESS: Okay. So with respect to the
5 Charitable DAF Holdco, Ltd., it is my understanding that Mr.
6 Scott, he organized that entity when he was the independent
7 director of the Charitable Remainder Trust, and he caused the
8 issuance of the management shares to be issued to himself.
9 And then those are, again, noneconomic shares, but they are
10 control shares over that entity.

11 And I think, to answer your question, is -- it -- he alone
12 decides who he can transfer those shares to.

13 BY MR. MORRIS:

14 Q Do I have this right, that whoever holds the noneconomic
15 management shares has the sole authority to appoint the
16 representatives for each of the Charitable DAF entities and
17 CLO Holdco? It's kind of a magic ticket, if you will?

18 A It -- I think there's a -- the answer really is no from a
19 legal standpoint, because Charitable DAF Holdco is a limited
20 partner in Charitable DAF Fund, LP, so it does not have
21 authority -- authority under all -- the respective entities
22 underneath that. It could cause a redemption, if you will, of
23 Charitable DAF Fund. And so, really, the authority -- the
24 trickle-down authority that you're referencing is with respect
25 to his holding of the Charitable DAF GP, LLC interest. It's a

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1 member-managed Delaware limited liability company. And from
2 that, he -- that authority kind of trickles down to where he
3 can appoint directorships.

4 Q All right. I think I want to just follow up on that a
5 bit. Which entity is the issuer of the manager shares, the
6 management shares?

7 A Yeah, the -- per the organizational chart, it is accurate,
8 it's the Charitable DAF Holdco, Ltd. which issued the
9 management shares to Mr. Scott.

10 Q Okay. And that's why you have the arrow from Mr. Scott
11 into that entity?

12 A Correct.

13 Q And do those -- does the holder of the management shares
14 have the authority to control the Charitable DAF Holdco, Ltd.?

15 A Yes.

16 Q Okay. And as the control person for the Charitable DAF
17 Holdco, Ltd., they own a hundred -- withdrawn. Charitable DAF
18 Holdco Limited owns a hundred percent of the limited
19 partnership interests of the Charitable DAF Fund, LP.

20 Correct?

21 A Correct.

22 Q And so does the holder of that hundred percent limited
23 partnership interest have the authority to decide who acts on
24 behalf of the Charitable DAF Fund, LP?

25 A I would say no. I mean, you know, just -- I would love to

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1 read the partnership agreement again. But I, conceptually,
2 what I know with partnerships, I would say the limited partner
3 would not. It would be through the Charitable DAF GP, LLC
4 interest.

5 Q The one on the left, the general partner?

6 A The general partner.

7 Q I see. So when Mr. Scott transferred to you the one
8 hundred percent of the management shares as well as the title
9 of the managing member of the Charitable DAF GP, LLC, did
10 those two events give you the authority to control the
11 entities below it?

12 A Yes.

13 Q Thank you. And so prior to the time that he transferred
14 those interests to you, is it your understanding that Mr.
15 Scott had the unilateral right to transfer those interests to
16 anybody in the world?

17 A Yes.

18 Q Okay. And you have that right today, don't you?

19 A Yes, I do.

20 Q If you wanted, you could transfer it to me, right?

21 A Yes, I could.

22 Q Okay. But of all the people in the world, Mr. Scott
23 decided to transfer the management shares and the managing
24 member title of the DAF GP to you, correct?

25 A Restate that question again?

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1 Q Of all the people in the world, Mr. Scott decided to
2 transfer it to you, correct?

3 A Yeah. Mr. Scott transferred those interests to me.

4 Q Okay. And you accepted them, right?

5 A Yes.

6 Q You're not getting paid anything for taking on this
7 responsibility, correct?

8 A I am not paid by any of the entities depicted on this
9 chart.

10 Q And Mr. Scott used to get \$5,000 a month, didn't he?

11 A I believe that's what he testified to.

12 Q Yeah. But you don't get anything, right?

13 A Correct.

14 Q In fact, you get the exact same salary and compensation
15 from Skyview that you had before you became the authorized
16 representative of the DAF entities and CLO Holdco. Correct?

17 A Correct.

18 MR. MORRIS: Okay. Your Honor, if I may just take a
19 moment, I may be done.

20 THE COURT: Okay.

21 (Pause.)

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

23 THE COURT: All right. Pass the witness. Any
24 examination of the witness?

25 CROSS-EXAMINATION

005378

1 BY MR. ANDERSON:

2 Q Mr. Patrick, I just had a few follow-up questions. When
3 you authorized the filing of the lawsuit against Highland
4 Capital Management, LP, Highland HCF Advisor Limited, and
5 Highland CLO Funding, Limited, when that lawsuit was filed in
6 April of this year, was Mr. Seery included as a defendant?

7 A No.

8 Q Have the two Plaintiffs in that lawsuit, have they
9 commenced any lawsuit against Mr. Seery?

10 A No.

11 Q Have they pursued any lawsuit against Mr. Seery?

12 A No.

13 Q Have they pursued a claim or cause of action against Mr.
14 Seery?

15 A No.

16 Q At most, did the Plaintiffs file a motion for leave to add
17 Mr. Seery as a defendant?

18 MR. MORRIS: Objection, Your Honor. To the extent
19 that any of these questions are legal conclusions, I object.
20 He's using the word pursue. If he's trying -- if he's then
21 going to argue that, But the witness testified that he didn't
22 pursue and that's somehow a finding of fact, I object.

23 THE COURT: Okay. I understand.

24 MR. MORRIS: Yeah.

25 THE COURT: But I overrule. He can answer.

1 MR. MORRIS: That's fine.

2 THE WITNESS: Can you restate the question again?

3 BY MR. ANDERSON:

4 Q Sure. On behalf of the Plaintiffs -- well, strike that.
5 Did the Plaintiffs pursue a claim or cause of action against
6 Mr. Seery?

7 A No.

8 Q At most, did the Plaintiffs file a motion for leave to
9 file an amended complaint regarding Mr. Seery?

10 A Yes. But, again, I viewed the motion as simply asking the
11 Federal District Court whether Mr. Seery could or could not be
12 named in a complaint, and then the next step might be how the
13 Federal District Court might rule with respect to that.

14 Q And we have -- it's Tab 17 in the binders in front of you.
15 That is Plaintiffs' motion for leave. If you could turn to
16 that, please.

17 A Yes. I've got it open.

18 Q Is the Court's July order, the Bankruptcy Court's July
19 order, is it mentioned on the first page and then throughout
20 the motion for leave to amend?

21 A Yes, it is. I see it quoted verbatim on Page 2 under
22 Background.

23 Q Was the Court's order hidden at all from the District
24 Court?

25 A The document speaks for itself. It's very transparent.

1 Q Was there any effort whatsoever to hide the prior order of
2 the Bankruptcy Court?

3 A No.

4 MR. ANDERSON: Pass the witness.

5 THE COURT: Okay. Other examination?

6 MR. SBAITI: Yes, Your Honor. Just a couple of
7 questions.

8 CROSS-EXAMINATION

9 BY MR. SBAITI:

10 Q Do you mind flipping to Exhibit 25, which I believe is the
11 org chart, the one that you were looking at before?

12 A Okay.

13 Q It'll still be in --

14 A Okay. Yeah.

15 Q -- the defense binder. No reason to swap out right now.

16 A I've got the right binders. Some of them are repeatable
17 exhibits, so --

18 Q Yeah.

19 A -- I have to grab the right binder. Yes.

20 Q As this org chart would sit today, is the only difference
21 that Grant Scott's name would instead be Mark Patrick?

22 A Yes.

23 Q Was there ever a period of time where Jim Dondero's name
24 would sit instead of Grant Scott's name prior?

25 A Yes, originally, when this -- yes.

1 Q So did Mr. Dondero both have the control shares of the GP,
2 LLC and DAF Holdco Limited?

3 A No, I believe not. I believe he only held the Charitable
4 DAF GP interest and that Mr. Scott at all times held the
5 Charitable DAF Holdco, LTD interest, until he decided to
6 transfer it to me.

7 Q Can you just tell us how Mr. Scott came to hold the
8 control shares of the Charitable DAF Holdco, LTD?

9 A When he was the independent trustee of the Charitable
10 Remainder Trust, he caused that -- the creation of that
11 entity, and that's how he became in receipt of those
12 management shares.

13 Q And does the Charitable DAF GP, LLC have any control over
14 Charitable DAF Fund, LP's actions or activities?

15 A Yes, it does.

16 Q What kind of control is that?

17 A I would describe complete control. It's the managing
18 member of that entity and can -- and effectively owns, you
19 know, the hundred percent interest in the respective
20 subsidiaries, and so the control follows down.

21 Q And when did Mr. Scott replace Mr. Dondero as the GP --
22 managing member of the GP?

23 A Well, I think as the -- and Mr. Morris had shown me with
24 respect to that transfer occurring on March 2012.

25 Q So nine years ago?

1 A Yes.

2 Q Does Mr. Dondero today exercise any control over the
3 activities of the DAF Charitable -- the Charitable DAF, GP or
4 the Charitable DAF Holdco, LTD?

5 A No.

6 Q Is he a board member of sorts for either of those
7 entities?

8 A No.

9 Q Is he a board members of CLO Holdco?

10 A No.

11 Q Does he have any decision-making authority at CLO Holdco?

12 A None.

13 Q The decision to authorize the lawsuit and the decision to
14 authorize the motion that you've been asked about, who made
15 that authorization?

16 A I did.

17 Q Did you have to ask for anyone's permission?

18 A No.

19 MR. SBAITI: No more questions, Your Honor.

20 THE COURT: Okay. Any -- I guess Mr. Taylor, no.

21 All right. Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. MORRIS:

24 Q Since becoming the authorized representative of the
25 Plaintiffs, have you ever made a decision on behalf of those

1 entities that Mr. Dondero disagreed with?

2 A I have made decisions that were adverse to Mr. Dondero's
3 financial -- financial decision. I mean, financial interests.
4 Whether he disagreed with them or not, I don't -- he has not
5 communicated them to me. But they have been adverse, at least
6 two very strong instances.

7 Q Have you ever -- have you ever talked to him about making
8 a decision that would be adverse to his interests? Did he
9 tell -- did --

10 A I didn't -- I don't -- I did not discuss with him prior to
11 making the decisions that I made that were adverse to his
12 economic interests.

13 MR. MORRIS: Okay. No further questions, Your Honor.

14 THE COURT: Any further examination? Recross on that
15 redirect?

16 MR. ANDERSON: No further questions.

17 MR. SBAITI: No further questions, Your Honor.

18 MR. ANDERSON: Sorry.

19 THE COURT: Nothing?

20 MR. ANDERSON: I think we're good.

21 THE COURT: Okay. I have one question, Mr. Patrick.
22 My brain sometimes goes in weird directions.

23 EXAMINATION BY THE COURT

24 THE COURT: I'm just curious. What are these Cayman
25 Island entities, charitable organizations formed in the Cayman

1 Islands?

2 THE WITNESS: Yeah. I'll keep it as simple as I can,
3 even though I'm a tax lawyer, so I won't get into the tax
4 rules, but the Cayman structure is modeled after what you
5 typically see in the investment management industry, and so I
6 -- and I won't reference specific entities here with respect
7 to the Highland case, but I think you'll note some
8 similarities, if you think about it. They're -- it's
9 described as an offshore master fund structure where you have
10 a-- and that would be the Charitable DAF Fund that's
11 organized offshore, usually in the Cayman or Bermuda Islands,
12 where the general partner, typically, in the industry, holds
13 the management --

14 THE COURT: Yeah. Let --

15 THE WITNESS: Okay.

16 THE COURT: -- me just stop you. I've seen this
17 enough --

18 THE WITNESS: Yeah, it's

19 THE COURT: -- to know that it happens in the
20 investment world. But in --

21 THE WITNESS: Yeah.

22 THE COURT: You know, usually, I see 501(c)(3), you
23 know, domestically-created entities for charitable purposes,
24 so I'm just curious.

25 THE WITNESS: Yes.

1 THE COURT: Uh-huh.

2 THE WITNESS: The offshore master fund structure
3 typically will have two different types of -- they call it
4 foreign feeder funds. One foreign feeder fund is meant to
5 accommodate foreign investors; the other foreign feeder fund
6 is meant to accommodate U.S. tax-exempt investors.

7 Why, why is it structured that way? In order to avoid
8 something called -- I was trying not to be wonkish -- UBTI.
9 That's, let's see, Un -- Unrelated Trader Business Income. I
10 probably have that slightly wrong. But it's essentially,
11 it's a means to avoid active business income, which includes
12 debt finance income, which is what these CLOs tend to be, that
13 would throw off income that would be taxable normally if the
14 exempts did not go through this foreign blocker, and it
15 converts that UBTI income -- it's called (inaudible) income --
16 into passive income that flows -- that flows up to the
17 charities.

18 And so it's very typical that you'll have a U.S. tax-
19 exempt investor, when they make an investment in a fund,
20 prefer to go through an offshore feeder fund, which is
21 actually Charitable DAF Holdco, LTD. That's essentially what,
22 from a tax perspective, represents as a UBTI blocker entity.
23 And then you have the offshore investments being held offshore
24 because there's a variety of safe harbors where the receipt of
25 interest, the portfolio interest exception, is not taxable.

1 The creation of capital gains or losses under the -- they call
2 it the trading, 864(b) trading safe harbor, is not taxable.
3 So that's why you'll find these structures operating offshore
4 to rely on those safe harbor provisions as well as -- as well
5 as what I indicated with respect to the two type blocker
6 entities. It's very typical and industry practice to organize
7 these way. And so when this was set --

8 THE COURT: It's very typical in the charitable world
9 to --

10 THE WITNESS: In the investment management --

11 THE COURT: -- form this way?

12 THE WITNESS: In the investment management world,
13 when you have charitable entities that are taking some
14 exposure to assets that are levered, to set this structure up
15 in this way. It was modeled after -- they just call them
16 offshore master fund structures. They're known as Mickey
17 Mouse structures, where you'll have U.S. investors --

18 THE COURT: Yes. I -- yes, I --

19 THE WITNESS: -- enter through a U.S. partnership,
20 and the foreign investors enter through a blocker.

21 THE COURT: It was really just the charitable aspect
22 of this that I was --

23 THE WITNESS: Yeah. Yeah.

24 THE COURT: -- getting at.

25 THE WITNESS: Yeah. No, but I'm just trying to

1 emphasize if --

2 THE COURT: All right. It's --

3 THE WITNESS: Yeah.

4 THE COURT: -- neither here nor there. All right.

5 MR. SBAITI: Your Honor, may I ask a slightly

6 clarifying leading question on that, because I think I

7 understand what he was trying to say, just for the record?

8 THE COURT: Well, --

9 MR. MORRIS: I object.

10 THE COURT: -- I tell you what. Anyone who wants to

11 ask one follow-up question on the judge's question can do so.

12 Okay? You can go first.

13 MR. SBAITI: I'll approach, Your Honor.

14 THE COURT: Okay.

15 RECCROSS-EXAMINATION

16 BY MR. SBAITI:

17 Q Would it be a fair summary of what you were saying a
18 minute ago that the reason the bottom end of that structure is
19 offshore is so that it doesn't get taxed before the money
20 reaches the charities on the U.S. side?

21 A Tax -- it converts the nature of the income that is being
22 thrown off by the investments so that it becomes a tax
23 friendly income to the tax-exempt entity. Passive income.
24 That's --

25 Q So, essentially, --

1 THE COURT: Okay. Okay.

2 MR. SBAITI: -- so it doesn't get taxed before it
3 hits the --

4 THE COURT: I said one question.

5 MR. SBAITI: Sorry, Your Honor.

6 THE COURT: Okay. He answered it.

7 MR. PHILLIPS: And I have one question, Your Honor

8 THE COURT: Okay.

9 MR. PHILLIPS: I don't know if I need to ask this
10 question, but I'd rather not ask you if I need to ask it.

11 THE COURT: Go ahead.

12 MR. PHILLIPS: But if I do, you know, I could --

13 THE COURT: Go ahead.

14 MR. PHILLIPS: Well, okay.

15 RECCROSS-EXAMINATION

16 BY MR. PHILLIPS:

17 Q We've talked about the offshore structure. Are the
18 foundations in the top two tiers of the organizational chart
19 offshore entities?

20 A No.

21 Q They're --

22 A They're onshore entities. They're tax-exempt entities.

23 Q Thank you.

24 A The investments are offshore.

25 Q Thank you.

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1 THE COURT: Mr. Morris? One question.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. MORRIS:

4 Q Do you hold yourself out as an expert on the
5 organizational structures in the Caribbean for charitable
6 organizations?

7 A I hold myself out as a tax professional versant on setting
8 up offshore master fund structures. It's sort of a bread-and-
9 butter thing. But there are plenty of people that can testify
10 that this is very typical.

11 Q Uh-huh. Okay.

12 THE COURT: Okay. Thank you.

13 All right. You are excused, Mr. Patrick. I suppose
14 you'll want to stay around. I don't know if you'll
15 potentially be recalled today.

16 (The witness steps down.)

17 THE COURT: All right. We should take a lunch break.
18 I'm going to put this out for a democratic vote. Forty-five
19 minutes? Is that good with everyone?

20 MR. SBAITI: Do we have to leave the building to eat,
21 Your Honor, or is there food in the building?

22 THE COURT: I think --

23 MR. SBAITI: I'm sorry to ask that question, but --

24 THE COURT: Yes. You know what, there used to be a
25 very bad cafeteria, but I think it closed. Right, Mike? So,

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1 you know, --

2 MR. SBAITI: Sorry I asked that.

3 A VOICE: Hate to miss that one.

4 THE COURT: Is 45 minutes not enough since you have
5 to go off campus? I'll give you an hour. It just means we
6 stay later tonight.

7 A VOICE: Can we just say 2:00 o'clock?

8 MR. SBAITI: That's fine with us, Your Honor.

9 THE COURT: 2:00 o'clock. That's 50 minutes. See
10 you then.

11 MR. SBAITI: Thank you.

12 A VOICE: Your Honor, can we just get a time check?

13 THE COURT: Okay.

14 THE CLERK: Yeah. The Debtors are at an hour and
15 eleven minutes. Respondents at an hour nineteen.

16 THE COURT: And hour and eleven and an hour and
17 nineteen.

18 A VOICE: Wait, that's not right.

19 A VOICE: That can't be right.

20 A VOICE: Two hours? We started at --

21 THE COURT: Okay. So, again, their side, the
22 collective Respondents?

23 THE CLERK: An hour and eleven, responding to your
24 questions, --

25 A VOICE: Yeah, he's not recording --

1 THE CLERK: So an hour and eleven and an hour and
2 nineteen.

3 THE COURT: But they were already over an hour --

4 A VOICE: Yeah. It's been over three hours.

5 THE COURT: -- with opening statements.

6 THE CLERK: An hour and twelve. Yes. They were very
7 short with the questioning. It was only like --

8 THE COURT: Okay. We'll double-check that over the
9 break with the court reporter.

10 A VOICE: All right. Thank you, Your Honor.

11 THE COURT: We'll double-check and let you know.

12 THE COURT: All rise.

13 (A luncheon recess ensued from 1:09 p.m. until 2:03 p.m.)

14 THE COURT: All right. Please be seated. We're
15 going back on the record in Highland after our lunch break.
16 I'm going to confirm time. We've had the Debtor an aggregate
17 of an hour and eleven minutes. The Respondents, an aggregate
18 of an hour and twenty minutes. Okay? So we've gone two hours
19 and thirty-one minutes.

20 If it seems like we've been going longer, it's because we
21 did not do the clock on the opening matters regarding removal,
22 extension of time. And then when I interjected with
23 questions, we stopped the clock. All right? So let's go.

24 You may call your next witness, Mr. Morris.

25 MR. MORRIS: Thank you, Your Honor. The Debtor calls

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1 James Dondero.

2 THE COURT: All right.

3 A VOICE: He had to step down the hall. We had a
4 little trouble getting through security. Let me --

5 THE COURT: All right. Mr. Dondero, you've been
6 called as the next witness. So if you'll approach our witness
7 stand, please. All right. Please raise your right hand.

8 (The witness is sworn.)

9 THE COURT: All right. Please be seated.

10 JAMES D. DONDERO, DEBTOR'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. MORRIS:

13 Q Good afternoon, Mr. Dondero.

14 A Good afternoon.

15 Q Can you hear me?

16 A Yes.

17 Q Okay. So, you were here this morning, correct?

18 A Yes.

19 Q All right. So, we're going to put up -- we'll put it up
20 on the screen, but if you'd prefer to look at a hard copy in
21 the binder that's marked Volume 1 of -- 2 of 2, I'd ask you to
22 turn to Exhibit 25. Or you could just follow on the screen.
23 And this is a one-page document, so maybe that's easier.

24 A Sure.

25 Q Do you have it? All right.

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1 A Yes.

2 Q This is the organizational chart for what's known as the
3 DAF, correct?

4 A Yes.

5 Q And Mark Patrick set up this structure, correct?

6 A I believe he coordinated. I believe it was set up by
7 third-party law firms. I believe it was Hutton or a firm like
8 that.

9 Q Mr. Patrick participated in the creation of this structure
10 because you gave him the task of setting up a charitable
11 entity for Highland at that time, correct?

12 A Yes.

13 Q And you approved of this organizational structure,
14 correct?

15 A Yes.

16 Q And Grant Scott was the Trustee of the DAF for a number of
17 years, correct?

18 A I often use that word, trustee, but technically I think
19 it's managing member.

20 Q That's right. I appreciate that. I was using your word
21 from the deposition. But is it fair to say that, to the best
22 of your knowledge, Grant Scott was the sole authorized
23 representative of the entity known as the DAF from 2011 until
24 just recently?

25 A Sole -- I would describe it more he was in a trustee

1 function.

2 Q Uh-huh.

3 A Advice was being provided by Highland on the investment
4 side. He wasn't expected to be a financial or an investment
5 expert. And then accounting, tax, portfolio, tracking, you
6 know, compliance with all the offshore formation documents,
7 that was all done by Highland as part of a shared services
8 agreement.

9 Q Okay. I appreciate that, but listen carefully to my
10 question. All I asked you was whether he was the authorized
11 representative, the sole authorized representative for the
12 ten-year period from 2011 until recently.

13 A Yes.

14 Q Okay.

15 A I believe so.

16 Q Thank you. You served as the managing member of the DAF
17 GP, LLC before Mr. Scott, correct?

18 A Yes.

19 Q Okay. And if you turn to Exhibit 26 in your binder,
20 that's the amended and restated limited liability company
21 agreement for the DAF GP, LLC, correct?

22 A Yes.

23 Q And on the last page, that's your signature line, right?

24 A Yes.

25 Q And you stepped down as the managing member on March 12,

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1 2012, and were replaced by Mr. Scott, correct?

2 A Yes.

3 Q And as you recall it, Mr. Scott came to be appointed the
4 trustee of the DAF based on your recommendation, right?

5 A Based on my recommendation? Yes, I would say that's fair.

6 Q And you made that recommendation to Mr. Patrick, right?

7 A I -- I don't remember who I made the recommendation to.
8 But I would echo the testimony of Mark Patrick earlier that
9 the purpose of stepping down was to make the DAF unaffiliated
10 or independent versus being in any way affiliated.

11 MR. MORRIS: I move to strike.

12 BY MR. MORRIS:

13 Q And I'd ask you to listen carefully to my question.

14 THE COURT: Sustained.

15 BY MR. MORRIS:

16 Q You made the recommendation to Mr. Patrick, correct?

17 A I would give the same answer again.

18 Q Okay.

19 MR. MORRIS: Can we please put up Mr. Dondero's
20 deposition transcript from last Friday at Page 297?

21 I believe, Your Honor, that the court reporter thought
22 that this was a continuation of a prior deposition, and that's
23 why the pages begin in the, you know, high in the 200s and not
24 at Page 1. Just to avoid any confusion.

25 BY MR. MORRIS:

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1 Q Mr. Dondero, do you see the transcript in front of you?

2 A Yes.

3 Q Okay. Were you asked this question and did you give this
4 answer? "Who did you make the" -- question, "Who did you make
5 the recommendation to?" Answer, "It would have been Mark
6 Patrick."

7 A I don't recall right now as I sit here, and it seems like
8 I was speculating when I answered, but it -- it probably would
9 have been Mark Patrick. I just don't have a specific
10 recollection.

11 Q You made the recommendation to Mr. Patrick because he was
12 responsible for setting up the overall structure, correct?

13 A I -- I can't testify to why I did something I don't
14 remember. I think that would be --

15 Q Can we --

16 A -- speculative.

17 Q Are you finished, sir?

18 A Yeah.

19 Q Okay.

20 MR. MORRIS: Can we go to Page 299, please?

21 BY MR. MORRIS:

22 Q Lines 6 through 10. Did I ask this question and did you
23 give me this answer? Question, "But why did you select Mr.

24 Patrick as the person to whom to make your recommendation?"

25 Answer, "Because he was responsible for setting up the overall

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1 structure."

2 Were you asked that question and did you give that answer
3 last Friday?

4 A Yes.

5 Q Thank you. But it's your testimony that you don't really
6 know what process led to Mr. Scott's appointment, correct?

7 A No, I -- I said I was refreshed by Mark Patrick's
8 testimony earlier.

9 Q Yeah. Were you refreshed that, in fact, you specifically
10 had the authority to and did appoint Grant Scott as the
11 managing member of the DAF GP, LLC?

12 A I -- I don't know.

13 Q Well, you're referring to Mr. Patrick's testimony and I'm
14 asking you a very specific question. Did you agree -- is your
15 memory refreshed now that you're the person who put Grant
16 Scott in the position in the DAF?

17 A I -- I don't know if I owned those secret shares that --
18 well, they're not secret, but shares that could appoint
19 anybody on the planet. I guess if I was in that box at that
20 time before Grant, then I would have had that ability. I'm
21 not denying at all that I recommended Grant. I'm just saying
22 I don't -- I don't remember if I went specifically to him or
23 if it was Thomas Surgent that was orchestrating it at the
24 time. I don't remember.

25 Q Do you deny that you had the authority to and that you did

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1 appoint Grant Scott as your successor?

2 MR. TAYLOR: Your Honor, objection to the extent it
3 calls for a legal conclusion. I can't get close to a mic, so
4 --

5 THE COURT: I overrule the objection.

6 THE WITNESS: Can you repeat the question for me?

7 BY MR. MORRIS:

8 Q Do you deny that you had the authority to and that you
9 did, in fact, appoint Grant Scott as your successor?

10 A It'd be better to say I don't -- I don't -- no, I don't
11 remember or I didn't know the details at the time. But,
12 again, I -- I assume I owned those shares. And, again, I do
13 remember recommending Grant and -- but exactly how it
14 happened, I don't remember.

15 Q Did you hear Mark Patrick say just an hour ago that you
16 appointed Grant Scott as your successor?

17 MR. SBAITI: Objection, Your Honor. Misstates
18 testimony. The witness testified he transferred shares.
19 That's different than an appointment power.

20 THE COURT: Response? I can't remember the exact way
21 you worded it, to be honest.

22 MR. MORRIS: Neither can I, but I'll even take it
23 that way.

24 THE COURT: Okay.

25 MR. MORRIS: I think he's wrong, but I'll even take

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1 it that way.

2 THE COURT: Okay.

3 BY MR. MORRIS:

4 Q Mr. Dondero, did you listen to Mark Patrick say that you
5 are the person who made the decision to transfer the shares to
6 Mr. Scott in 2012?

7 A Yes, I heard him say that.

8 Q Okay. So, do you -- do you dispute that testimony?

9 A I -- I don't have any better knowledge to dispute or
10 confirm.

11 Q You and Mr. Scott have known each other since high school,
12 correct?

13 A Yes.

14 Q You spent a couple of years at UVA together, correct?

15 A Yes.

16 Q You were housemates together, correct?

17 A Yes.

18 Q He was the best man at your wedding, correct?

19 A Yes.

20 Q He's a patent lawyer, correct?

21 A Yes.

22 Q He had no expertise in finance when -- when he was
23 appointed as your successor to the DAF, correct?

24 A Correct.

25 Q To the best of your knowledge, at the time Mr. Scott

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1 assumed his position, he had never made any decisions
2 concerning collateralized loan obligations, correct?

3 A Correct, but he wasn't hired for that. That wasn't his
4 position.

5 Q Was he the person who was going to make the decisions with
6 respect to the DAF's investments?

7 A My understanding on how it was structured was the DAF was
8 paying a significant investment advisory fee to Highland.
9 Highland was doing portfolio construction and the investment
10 selection of -- or the investment recommendations for the
11 portfolio. There is an independent trustee protocol that I
12 believe was adhered to, but it was never my direct
13 involvement. It was always the portfolio managers or the
14 traders.

15 You have to provide three similar or at least two other
16 alternatives, and then with a rationale for each of them, but
17 a rationale for why you think one in particular is better.
18 And the trustee looks at the three, evaluates them. And the
19 way I understand it always worked, that it works at pretty
20 much every charitable trust or trust that I'm aware of, they
21 generally, if not always, pick alongside the -- or, pick the
22 recommendation of their highly-paid investment advisory firm.

23 Q And are you the highly-paid investment advisory firm?

24 A Highland was at the time, yes.

25 Q And you controlled Highland, right?

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1 A Yes.

2 Q Okay. But at the end of the day, is it your understanding
3 that Mr. Scott had the exclusive responsibility for making
4 actual decisions on behalf of the charitable trust that you
5 had created?

6 A Yeah, I mean, subject to the protocol I just described.

7 Q Yeah, okay, so let's keep going. Mr. Scott had no
8 experience or expertise running charitable organizations at
9 the time you decided to transfer the shares to him, correct?

10 A Yes, I believe that's correct.

11 Q Okay. You didn't recommend Mr. Scott to serve as the
12 DAF's investment advisor, did you?

13 A No.

14 Q And until early 2021, as you testified, I believe,
15 already, HCMLP served as the DAF's investment advisor,
16 correct?

17 A Yes.

18 Q And until early 2021, all of the DAF's day-to-day
19 operations were conducted by HCMLP pursuant to a shared
20 services agreement, correct?

21 A Yes.

22 Q And from the time the DAF was formed until January 9,
23 2020, you controlled HCMLP, correct?

24 A Yes.

25 Q You can't think of one investment decision that HCMLP

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1 recommended that Mr. Scott ever rejected in the ten-year
2 period, correct?

3 MR. SBAITI: Objection, Your Honor. Lacks
4 foundation.

5 THE COURT: Response?

6 MR. MORRIS: I'm not quite sure what to say, Your
7 Honor. The witness has already testified that HCMLP was the
8 investment advisor, made recommendations to Mr. Scott, and
9 that Mr. Scott was the one who had to make the investment
10 decisions at the end of the day.

11 MR. SBAITI: He's not here as a witness for HCMLP.
12 He's here in his personal capacity. There's no foundation
13 he'd have personal knowledge of which specific investments
14 were proposed, which ones were rejected or accepted. He said
15 it was done by the portfolio manager.

16 THE COURT: Okay. I overrule. He can answer if he
17 has an answer.

18 BY MR. MORRIS:

19 Q Sir, you can't think of one investment decision that HCMLP
20 ever recommended to Mr. Scott that he rejected, correct?

21 A I can't think of one, but I would caveat with I wouldn't
22 have expected there to be any.

23 Q So you expected him to just do exactly what HCMLP
24 recommended, correct?

25 A No. I would expect him to sort through the various

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1 investments when he was given three or four to choose from and
2 be able to discern that, just as we had with our expertise,
3 which was much greater than his, discern which one was the
4 best and most suitable investment, the best risk-adjusted
5 investment, that he would come to the same conclusion.

6 Q Okay. You can't think of an investment that Mr. Scott
7 ever made on behalf of the DAF that didn't originate with
8 HCMLP, correct?

9 A Again, no, but I wouldn't expect there to be.

10 Q Okay. And that's because you expected all of the
11 investments to originate with the company that you were
12 controlling, correct?

13 A We were the hired investment advisor with fiduciary
14 responsibility --

15 Q Uh-huh.

16 A -- and with a vested interest in making sure the DAF
17 performance was the best it could be.

18 Q Okay. Let --

19 A He was, as you said, a patent attorney. It would have
20 been unusual for him to second-guess. I'm sure, in any
21 private investment or any investment that was one off or
22 didn't have comps, you know, he probably sought third-party
23 valuations. But you would have to talk to him about that, or
24 the people at Highland that did that.

25 MR. MORRIS: I move to strike. It's a very simple

005404

1 question.

2 THE COURT: Sustained.

3 BY MR. MORRIS:

4 Q Sir, you can't think of one investment that Mr. Scott made
5 on behalf of the DAF that did not originate with HCMLP,
6 correct?

7 A I'm going to give the same answer.

8 Q Okay. Let's go to Page 371 of the transcript, please.
9 Lines 7 through 11.

10 Oh, I apologize. I think I might -- I think I meant 317.
11 I think I got that inverted. Yeah.

12 Did I ask this question and did you give this answer:
13 "Can you think of any investment that Mr. Scott made on behalf
14 of the DAF that didn't original with HCMLP?" Answer, "He
15 wasn't the investment advisor, but no, I don't -- I don't
16 recall."

17 Is that the answer you gave on Friday?

18 A Yes.

19 Q Thank you. Let's --

20 MR. SBAITI: Just for clarification, Your Honor, --

21 THE COURT: Pardon?

22 MR. SBAITI: -- the deposition was last Tuesday, not
23 on Friday.

24 MR. MORRIS: I stand corrected, Your Honor.

25 THE COURT: Okay.

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1 MR. MORRIS: I apologize.

2 THE COURT: Okay.

3 MR. MORRIS: I apologize if the Court thinks I misled
4 it.

5 BY MR. MORRIS:

6 Q Let's talk about Mr. Scott's decision during the
7 bankruptcy case that preceded his resignation. After HCMLP
8 filed for bankruptcy, CLO Holdco, Ltd. filed a proof of claim,
9 correct?

10 MR. ANDERSON: Your Honor, I haven't objected yet,
11 but we literally haven't covered anything that deals with
12 commencing or pursuing a claim or cause of action. I'm going
13 to object. This is way outside, again, the bounds of the
14 contempt hearing. It's -- otherwise, it's other discovery for
15 something else. It literally has nothing to do with pursue a
16 claim or cause of action.

17 THE COURT: We have another relevance objection.
18 Your response?

19 MR. MORRIS: Your Honor, the evidence is going to
20 show that Mr. Dondero told Mr. Scott on three separate
21 occasions that his conduct, which were acts of independence,
22 were inappropriate and were not in the best interests of the
23 DAF. Within days of the third strike, he resigned. Okay?

24 I think it's relevant to Mr. Dondero's control of the DAF.
25 I think that the moment that Mr. -- this is the argument I'm

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1 going to make. I'll make it right now. You want me to make
2 it now, I'll make it now. The moment that Mr. Scott exercised
3 independence, Mr. Dondero was all over him, and Mr. Scott
4 left. That's what happened. The evidence is going to be
5 crystal clear.

6 And I think that that control of the DAF is exactly what
7 led to this lawsuit. And what led -- and I'm allowed to make
8 my argument. So that's why it's relevant, Your Honor, because
9 I think it shows that Mr. Scott -- Mr. Scott, after exercising
10 independence, was forced out.

11 MR. ANDERSON: That doesn't move the needle one bit
12 as to whether a lawsuit was commenced or a claim or cause of
13 action was pursued, which is the subject of the contempt
14 motion. It doesn't move the needle one bit as to those two
15 issues, as to whether that has any bearing on was it commenced
16 or was it pursued.

17 MR. MORRIS: Your Honor, I appreciate the very narrow
18 focus that counsel for a different party is trying to put on
19 this, but it is absolutely relevant to the question of whether
20 Mr. Dondero was involved in the pursuit of these claims. All
21 right? That's what the order says. Pursue.

22 THE COURT: All right. Overruled.

23 BY MR. MORRIS:

24 Q After HCMLP filed for bankruptcy, CLO Holdco filed a proof
25 of claim, correct?

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1 A I believe so.

2 Q And in the fall of 2020, Mr. Scott amended the proof of
3 claim to effectively reduce it to zero, correct?

4 A I -- I guess.

5 Q And Mr. Scott made that decision without discussing it
6 with you in advance, correct?

7 A Yes.

8 Q But you did discuss it with him after you learned of that
9 decision, correct?

10 A I don't -- I don't recall. I'm willing to be refreshed,
11 but I don't remember.

12 Q Well, you told him specifically that he had given up bona
13 fide claims against the Debtor, correct?

14 A Let me state or clarify my testimony this way. Um, --

15 MR. MORRIS: Your Honor, it's really just a yes or no
16 question. His counsel can ask him if he wants to clarify, but
17 it's really just a yes or no question.

18 BY MR. MORRIS:

19 Q You told Mr. Scott that he gave up bona fide claims
20 against the Debtor, correct?

21 THE COURT: Okay.

22 THE WITNESS: I don't know if I told him then with
23 regard to those claims.

24 BY MR. MORRIS:

25 Q Okay. Can we go to Page 321 of the transcript? At the

1 bottom, Line 21? 22, I apologize.

2 Did I ask this question and did you give this answer?

3 "And what do you" -- Question, "And what do you recall about
4 your discussion with Mr. Scott afterwards?" Answer, "That he
5 had given up bona fide claims against the Debtor and I didn't
6 understand why."

7 Did I ask that question and did you give that answer last
8 Tuesday?

9 A Yes.

10 Q Okay. A short time later, in December, the Debtor filed
11 notice of their intention to enter into a settlement with
12 HarbourVest, correct?

13 A Yes.

14 Q And CLO Holdco, under Mr. Scott's direction, filed an
15 objection to that settlement, correct?

16 A Yes.

17 Q And that settlement, the substance of that settlement was
18 that the Debtor did not have the right to receive
19 HarbourVest's interests in HCLOF at the time, correct?

20 A I don't remember the exact substance of it.

21 Q Okay. But you do remember that you learned that Mr. Scott
22 caused CLO Holdco to withdraw the objection, correct?

23 A Yes, ultimately.

24 Q Okay. And again, Mr. Scott did not give you advance
25 notice that he was going to withdraw the HarbourVest

1 objection, correct?

2 A No, he -- he did it an hour before the hearing. He didn't
3 give anybody notice.

4 Q You learned that Mr. Scott caused CLO Holdco to withdraw
5 its objection to the HarbourVest settlement at the hearing,
6 correct?

7 A Yes.

8 Q And you were surprised by that, weren't you?

9 A I believe everybody was.

10 Q You were sur... you were surprised by that, weren't you,
11 sir?

12 A Yes.

13 Q And you were surprised by that because you believed Mr.
14 Scott's decision was inappropriate, right?

15 A Partly inappropriate, and partly because 8:00 o'clock the
16 night before he confirmed that he was going forward with the
17 objection. And I think the DAF's objection was scheduled to
18 be first, I think.

19 Q After you learned that Mr. Scott instructed his attorneys
20 to withdraw the CLO Holdco objection to the HarbourVest
21 settlement, you again spoke with Mr. Scott, correct?

22 A Yes.

23 Q And that conversation took place the day of the hearing or
24 shortly thereafter, correct?

25 A Yes.

1 Q And during that conversation, you told Mr. Scott that it
2 was inappropriate to withdraw the objection, correct?

3 A Yes.

4 Q And in response, Mr. Scott told you that he followed the
5 advice of his lawyers, correct?

6 A Yes.

7 Q But that didn't -- that explanation didn't make sense to
8 you, right?

9 A Yes.

10 Q In fact, you believed that Mr. Scott failed to act in the
11 best interests of the DAF and CLO Holdco by withdrawing its
12 objection to the HarbourVest settlement, correct?

13 A Yes.

14 Q And while you didn't specifically use the words fiduciary
15 duty, you reminded Mr. Scott in your communications with him
16 that he needed to do what was in the best interests of the
17 DAF, correct?

18 A Yes.

19 Q You're the founder of the DAF, correct?

20 A I put it -- I put it in motion. Yeah. I tasked Mark
21 Patrick and third-party law firms to do it, but if that boils
22 down to founder, I guess yes.

23 Q Uh-huh. And you're the primary donor to the DAF, correct?

24 A Yes.

25 Q You're the investment advisor to the DAF, or at least you

1 were at that time?

2 A Yes.

3 Q And because you served in these roles, you expected Mr.
4 Scott to discuss his decision to withdraw the HarbourVest
5 objection in advance, correct?

6 A Yes, I -- I think it was even broader than that. I mean,
7 he was having health and anxiety issues, and to the extent he
8 felt overwhelmed, I -- you know, yeah, you should do what's in
9 the best interests at all times, but -- but yes, I thought it
10 would be helpful if he conferred with me or Mark Patrick or
11 whoever he was comfortable with.

12 Q Mr. Dondero, you specifically believed that Mr. Scott's
13 failure to tell you that he was going to withdraw the
14 HarbourVest objection in advance was inappropriate, right?

15 A Yes.

16 Q Even though he was the sole authorized representative, you
17 believed that, because you were the founder of the DAF, the
18 primary donor of the DAF, and the investment advisor to the
19 DAF, he should have discussed that before he actually made the
20 decision, correct?

21 A No. What I'm saying is at 8:00 o'clock at night, when he
22 confirms to numerous people he's ready to go first thing with
23 his objection, and then he or counsel or some combination of
24 them change their mind and don't tell anybody before the
25 hearing, that's odd and inappropriate behavior.

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1 MR. MORRIS: Can we go to Page 330 of the transcript,
2 please?

3 And Your Honor, before I read the testimony, there is an
4 objection there. So I'd like you to rule --

5 THE COURT: Okay.

6 MR. MORRIS: -- before I do that. It can be found at
7 -- on Page 330 at Line 21.

8 (Pause.)

9 MR. MORRIS: Here we go. Page 30, beginning at Line
10 19. 330, rather.

11 THE COURT: Okay.

12 (Pause.)

13 THE COURT: Okay. I overrule that objection.

14 BY MR. MORRIS:

15 Q Mr. Dondero, were you asked this question and did you give
16 this answer last Tuesday? Question, "Do you believe that he
17 had an obligation to inform you in advance?" Answer, "I don't
18 know if I would use the word obligation, but, again, as the
19 founder or the primary donor and continued donor to the DAF,
20 and as the investment advisor fighting for above-average
21 returns on a daily basis for the fund, significant decisions
22 that affect the finances of the fund would be something I
23 would expect typically a trustee to discuss with the primary
24 donor."

25 Did you give that answer the other day, sir?

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1 A Yes.

2 Q If Mr. Patrick decides tomorrow to withdraw the lawsuit
3 that's in District Court, does he have an the obligation to
4 tell you in advance?

5 A Again, I wouldn't use the word obligation. But something
6 that I think ultimately is going to be a \$20 or \$30 million,
7 if not more, benefit to the DAF, to the detriment of Highland,
8 if you were to give that up, I would expect him to have a
9 rationale and I would expect him to get other people's
10 thoughts and opinions before he did that.

11 Q Okay. But does he have to get your opinion before he
12 acts?

13 A No, he does not.

14 Q Okay. So he -- Mr. Patrick could do that tomorrow, he
15 could settle the case, and if he doesn't come to you to
16 discuss it in advance, you won't be critical of him, right?

17 A He doesn't have the obligation, but there's -- there's a
18 reasonableness in alignment of interests. I -- a growing
19 entrepreneur sets up a trust, a lot of times they'll put their
20 wife in charge of it, and she hires investment advisers and
21 whatever, but they've got the best interests at mind for the
22 charity or the children or whatever.

23 You know, people who go rogue and move in their own self-
24 interest or panic, that stuff can happen all the time. It
25 doesn't make it appropriate, though.

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1 Q A couple of weeks after Mr. Scott withdraw the objection
2 to the HarbourVest settlement, he entered into a settlement
3 agreement with the Debtor pursuant to which he settled the
4 dispute between the Debtor and CLO Holdco, correct?

5 A Yes.

6 Q Okay. You didn't get advance notice of that third
7 decision, correct?

8 A No.

9 Q Can we go to Page -- Exhibit 32 in your binder? And this
10 is the settlement agreement between CLO Holdco and the Debtor,
11 correct? Attached as the exhibit. I apologize.

12 A Yes.

13 Q And do you understand that that's Mr. Scott's signature on
14 the last page?

15 A Yep.

16 Q And you learned about this settlement only after it had
17 been reached, correct?

18 A Yep.

19 Q And you believed Mr. Scott's decision not to pursue
20 certain claims against the Debtor or to remove HCMLP as the
21 manager of the CLOs was not in the best interests of the DAF,
22 correct?

23 A Correct.

24 Q And you let Mr. Scott know that, correct?

25 A Yes.

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1 Q After learning about the settlement agreement on January
2 26th, you had one or two conversations with Mr. Scott on this
3 topic, correct?

4 A Yes.

5 Q And your message to Mr. Scott was that the compromise or
6 settlement wasn't in the DAF's best interest, correct?

7 A It was horrible for the DAF.

8 Q Uh-huh. And you told him that, right?

9 A Yes.

10 Q Okay. From your perspective, any time a trustee doesn't
11 do what you believe is in the trust's best interest, you leave
12 yourself open to getting sued, correct?

13 A Who is "you" in that question?

14 Q You. Mr. Dondero.

15 A Can you repeat the question, then, please?

16 Q Sure. From your perspective, any time you're a trustee
17 and you don't believe that the trustee is doing what's in the
18 best interests of the fund, the trustee leaves himself open to
19 getting sued, correct?

20 A I don't know who the trustee leaves himself open to, but
21 as soon as you go down a path of self-interest or panic, you
22 -- you potentially create a bad situation. But I don't know
23 who holds who liable.

24 Q Did you believe that Mr. Scott was acting out of self-
25 interest or panic when he decided to settle the dispute with

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1 the Debtor on behalf of CLO Holdco?

2 A Yes.

3 Q Did you tell him that?

4 A He told me that.

5 Q He told you that he was acting out of panic or
6 desperation? With self-int... withdrawn. Withdrawn. Did he
7 tell you that he was acting out of self-interest?

8 A He was having health problems, anxiety problems, and he
9 didn't want to deal with the conflict. He didn't want to
10 testify. He didn't want to come to court. He didn't want to
11 do those things. And I told him I didn't think the settlement
12 was going to get him out of that stuff. I think, you know, it
13 got him out of some issues, but I think you guys are going to
14 go after him for other stuff. But he -- he panicked.

15 MR. MORRIS: I move to strike the latter remark.

16 THE COURT: Sustained.

17 BY MR. MORRIS:

18 Q Shortly after you had the conversation with Mr. Scott, he
19 sent you notice of his intent to resign from his positions at
20 the DAF and CLO Holdco, correct?

21 A Yes.

22 Q Okay. Let's take a look at that, please. Exhibit 29.
23 This is Mr. Scott's notice of resignation, correct?

24 A Yes.

25 Q He sent it only to you, correct?

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1 A Yes.

2 Q A couple of days before he sent this, he told you he was
3 considering resigning; isn't that right?

4 A Yes.

5 Q Okay. And he told you he was considering resigning
6 because he was suffering from health and anxiety issues
7 regarding the confrontation and the challenges of
8 administering the DAF given the bankruptcy, correct?

9 A Yes.

10 Q He didn't tell you that he made the decision -- withdrawn.
11 Did you tell him in this same conversation -- withdrawn. Is
12 this the same conversation where you conveyed the message that
13 the compromise or settlement wasn't in the best interests of
14 the DAF?

15 A You mean the conversation -- or the resignation? Is that
16 -- can you rephrase the question, please?

17 Q Yeah, I apologize. It's my fault, sir. You testified
18 that after the January 26th hearing you had a conversation
19 with Mr. Scott where you told him that the compromise or
20 settlement was not in the best interests of the DAF, correct?

21 A Yes.

22 Q Okay. Did Mr. Scott share with you his concerns about
23 anxiety and health issues in that same conversation, or was it
24 in a subsequent conversation?

25 A It was at or around that time. I -- I don't remember

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1 which conversation.

2 Q Okay.

3 A But it was right at or around that time.

4 Q All right. You never asked Mr. Scott to reconsider, did
5 you?

6 A No.

7 Q You don't recall sending this notice of resignation to
8 anyone, do you?

9 A No.

10 Q You don't remember notifying anyone that you'd received
11 notice of Mr. Scott's intent to resign from the DAF, do you?

12 A It was -- yeah, no, I -- I don't remember. It was a busy
13 time around that time and this was a secondary issue.

14 Q Okay. So the fact that the person who has been running
15 the DAF for a decade gives you and only you notice of his
16 intent to resign was a secondary issue in your mind?

17 A Yes, because when I talked to him at about that time, I
18 said, okay, well, it's going to take a while. I don't even
19 know how the mechanism works. But don't do anything adverse
20 to the DAF, don't do anything else until, you know, you've
21 figured out transition.

22 Q Uh-huh.

23 A And so once he had confirmed he wouldn't do anything
24 outside normal course until he transitioned, I didn't worry
25 about this. I had bigger issues to worry about at the time.

1 Q In the third paragraph of his email to you, he wrote that
2 his resignation will not be effective until he approves of the
3 indemnification provisions and obtains any and all necessary
4 releases. Do you see that?

5 A Yes.

6 Q And that was the condition that on January 31st Mr. Scott
7 placed on the effectiveness of his resignation, correct?

8 A Condition? Yeah, I -- I think he's trying to state the
9 timing will happen after that.

10 Q After he gets the release, right?

11 A Yes.

12 Q And he wanted the release because you'd told him three
13 different times that he wasn't acting in the best of the DAF,
14 correct?

15 MR. TAYLOR: Objection, Your Honor.

16 MR. SBAITI: Objection. Calls for --

17 MR. TAYLOR: Objection. Calls for speculation.

18 THE WITNESS: Yeah, I --

19 THE COURT: Sustained.

20 THE WITNESS: I can't take that jump. Yeah.

21 BY MR. MORRIS:

22 Q In response to this email from your lifelong friend, you
23 responded, if we could scroll up, about whether divest was a
24 synonym -- if we can look at the first one -- whether divest
25 is a synonym for resigned. Do I have that right?

1 A (no immediate response)

2 Q If you will look at your response on Monday morning at
3 9:50.

4 A Yes.

5 Q Okay. And then after Mr. Scott responds, you respond
6 further, if we can scroll up, and you specifically told him,
7 "You need to tell me ASAP that you have no intent to divest
8 assets." Correct?

9 A Yes.

10 Q And you wrote that because you believed some of his
11 behavior was unpredictable, right?

12 A I think I wrote that because the term divest in investment
13 terms means sale or liquidate, but I guess it had a different
14 legal term in the way he was looking at it. I wasn't aware at
15 that time of the shares that could be bequeathed to anybody,
16 and I think the divest refers to that, but I wasn't aware that
17 that's how the structure worked at that time, and I was
18 worried that divest could be the investment term and I -- it
19 wouldn't have been appropriate for him to liquidate the
20 portfolio.

21 Q So, and you wanted to make sure he wasn't liquidating or
22 intending to liquidate any of the CLOs, correct?

23 A Correct.

24 Q Okay. So he's still the authorized, the sole authorized
25 representative, but you wanted to make sure that he didn't do

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1 anything that you thought was inappropriate. Fair?

2 A It's because I had talked to him before this and he said
3 he wasn't going to do anything outside normal course, and then
4 the word divest scared me, but I didn't realize it was a legal
5 term in this parlance here.

6 Q And so after he explained, you still wanted to make sure
7 that he wasn't divesting any assets, correct?

8 A Yes.

9 Q Okay. Since February 1st, you've exchanged exactly one
10 text messages with Mr. Scott; is that right?

11 A I think there've been several, several text messages. But
12 one on his birthday.

13 Q Yeah. And you haven't spoken to him in months, correct?

14 A In a couple months, yes.

15 Q All right. Let's talk about the replacement of Mr. Scott.
16 With -- with Mr. Scott's notice, someone needed to find a
17 replacement, correct?

18 A Yes.

19 Q And the replacement was going to be responsible for
20 managing a charitable organization with approximately \$200
21 million of assets, most of which was seeded directly or
22 indirectly through you, correct?

23 A Yes.

24 Q And the replacement was going to get his and her -- his or
25 her investment advice from you and NexPoint Advisors; do I

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1 have that right?

2 A That was the plan.

3 Q Okay. Ultimately, Mr. Patrick replaced Mr. Scott,
4 correct?

5 A Yes.

6 Q But it's your testimony that you had no knowledge that Mr.
7 Patrick was going to replace Mr. Scott until after it happened
8 on March 24, 2021. Correct?

9 A That's correct. I believe it happened suddenly.

10 Q So, for nearly two months after you had received notice of
11 Mr. Scott's intent to resign, you were uninvolved in the
12 process of selecting his replacement, correct?

13 A I was uninvolved. I'd say the process was dormant for an
14 extended period of time until Mark Patrick came on board, and
15 then Mark Patrick ran the process of interviewing multiple
16 potential candidates.

17 Q Mark Patrick didn't have any authority prior to March
18 24th, correct?

19 A Is March 24th the date that he transitioned the shares to
20 himself from Grant Scott?

21 Q Yep.

22 A That's when he then became the trustee of the DAF, yes.

23 Q Do you know -- do you know who was instructing Mr. Patrick
24 on who to interview or how to carry the process out?

25 A He was doing that on his own with, I think,

1 recommendations from third-party tax firms.

2 Q So Mr. Patrick was trying to find a successor to Mr.
3 Scott, even though he had no authority to do that, and you
4 were completely uninvolved in the whole process? Do I have
5 that right?

6 A I was uninvolved, yes. He was trying to facilitate it for
7 the benefit of his friendship with Grant Scott and knowing
8 that it -- it -- with his resignation, it had to transition to
9 somebody. And he enjoys working on the DAF, he enjoys the
10 charitable stuff in the community, and he was the most
11 appropriate person to work on helping Grant transition.

12 MR. MORRIS: All right. I move to strike, Your
13 Honor. It's hearsay.

14 THE COURT: Sustained.

15 BY MR. MORRIS:

16 Q You're aware that Mr. Seery was appointed the Debtor's CEO
17 and CRO last summer, correct?

18 A Yes.

19 Q And you're aware that Mr. Seery's appointment was approved
20 by the Bankruptcy Court, correct?

21 A Yes.

22 Q And you were aware of that at the time it happened,
23 correct?

24 A Yes.

25 Q And even before that, in January of 2020, you consented to

1 a settlement where you gave up control of the Debtor.

2 Correct?

3 A To the independent board for a consensual Chapter 11
4 restructuring that would leave Highland intact.

5 Q And do you understand that the gatekeeper provision in the
6 July order is exactly like the one that you agreed to in
7 January except that it applies to Mr. Seery instead of the
8 independent directors?

9 A I -- I learned a lot about that today, but I don't think
10 it's appropriate to move what applied to the board to the CEO
11 of a registered investment advisor.

12 Q Okay. I'm just asking you, sir. Listen carefully to my
13 question. Were you aware in January 2020 that you agreed to a
14 gatekeeper provision on behalf of the independent board?

15 A Generally, but not specifically.

16 Q Okay.

17 A Not -- not like what we've been going over today.

18 Q Okay. And you knew that Mr. Seery had applied to be
19 appointed CEO subject to the Court's approval, correct?

20 A Wasn't it backdated to March? I -- I think the hearing
21 was in June, but it was backdated for -- for money and other
22 purposes, right? I -- that's my recollection. I don't
23 remember otherwise.

24 Q You do remember that Mr. Seery got -- he got -- his
25 appointment got approved by the Court, right?

1 A Yes. But, as far as the dates are concerned, I thought it
2 was either in March or retroactive to March. Maybe it was
3 June or July.

4 Q And you --

5 A But I don't remember.

6 Q Did you have your lawyers review the motion that was filed
7 on behalf of the Debtor?

8 A I'm -- I assume they do their job. I -- if they didn't, I
9 don't know.

10 Q Okay. That's what you hired them to do; is that fair?

11 A Yes.

12 Q Okay. Can we go to Exhibit 12, please? I think it's in
13 Binder 1. You've seen this document before, correct?

14 A Yes.

15 Q In fact, you saw versions of this complaint before it was
16 filed, correct?

17 A Yes, I saw one or two versions towards the end. I don't
18 know if I saw the final version, but --

19 Q Sir, you participated in discussions with Mr. Sbaiti
20 concerning the substance of this complaint before it was
21 filed, correct?

22 A Some. I would just use the word some.

23 Q Okay. Can you describe for me all of your conversations
24 with Mr. Sbaiti concerning the substance of this complaint?

25 MR. SBAITI: Your Honor, I would object on the basis

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1 of work product privilege and attorney-client communications.
2 He was an agent for my client, the DAF, at the time he was
3 having these discussions with us, and our discussions with him
4 were work product. So to the extent he can reveal the
5 conversations without discussing the actual content, we would
6 raise privilege objection, Your Honor.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Your Honor, there is no privilege here.
9 That's exactly why I asked Mr. Patrick the questions earlier
10 today. Mr. Dondero is not party to any agreement with the DAF
11 today. It's an informal agreement, perhaps, but there is no
12 contractual relationship, there is no privity any longer
13 between Mr. Dondero or any entity that owns and controls in
14 the DAF, as far as I know. If they have evidence of it, I'm
15 happy to listen, but that -- that's exactly why I asked those
16 questions of Mr. Patrick earlier today.

17 THE COURT: All right.

18 MR. SBAITI: Your --

19 THE COURT: That was the testimony. There's an
20 informal arrangement, at best.

21 MR. SBAITI: Well, Your Honor, I would suggest that
22 that doesn't necessarily mean that he isn't an agent of the
23 DAF. It doesn't have to be a formal agreement for him to be
24 an agent of the DAF.

25 Everyone's agreed he was an advisor. Everyone's agreed he

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1 was helping out. That is an agency relationship. It doesn't
2 have to be written down. It doesn't have to be a formal
3 investment advisory relationship. He's still an agent of the
4 DAF. He was requested to do something and agreed to do it
5 under the expectation that all of us had that those would be
6 privileged, Your Honor. That is -- that is sufficient -- that
7 is sufficient, I would argue, to get us where we need to be.
8 The privilege should apply, Your Honor, and they don't have a
9 basis for, I would say, invading the privilege, Your Honor.

10 THE COURT: Well, do you have any authority? Because
11 it just sounds wrong. He's not an employee of your client.
12 He doesn't have any contractual arrangement with your client.

13 MR. SBAITI: Your Honor, I would dispute the idea
14 that he has no contractual arrangement with my client. The
15 question was asked, do you have a -- do you have a written
16 agreement, and then the question was, so you don't have a
17 contract, and the answer was no, I don't have a contract,
18 building upon that first -- that first question. But the
19 testimony as he just recounted is that there is an agreement
20 that he would advise Mr. Patrick and he would advise the DAF.

21 THE COURT: Okay.

22 MR. SBAITI: That's -- that's a contract.

23 THE COURT: Okay. My question was, do you have any
24 legal authority? That's what I meant when I said authority.
25 Any legal authority to support the privilege applying in this

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1 kind of --

2 MR. SBAITI: In an informal arrangement, Your Honor?
3 I don't have one at my fingertips at the moment, Your Honor,
4 but I don't know that that should be a reason to invade the
5 privilege.

6 And I would just add, Your Honor, I would just add, we've
7 already -- because of the purpose of these questions, you've
8 heard Mr. Morris state several times that the purpose is to
9 show that Mr. -- that Mr. Dondero had some role in advising
10 and participating in the creation of this complaint. That's
11 been conceded by myself. I believe it was conceded by Mr.
12 Dondero.

13 The actual specific facts, the actual specific
14 conversations, Your Honor, shouldn't be relevant at this point
15 and they shouldn't be admissible, given -- given the
16 relevancy, given the perspective of the privilege.

17 THE COURT: Okay.

18 MR. MORRIS: If I might --

19 THE COURT: I overrule your objection. I don't think
20 a privilege has been shown here --

21 MR. SBAITI: And Your Honor, --

22 THE COURT: -- and I think it's relevant.

23 MR. SBAITI: -- I would ask if we could *voir dire* the
24 witness on the basis of the privilege, if that's --

25 THE COURT: All right. You may do so.

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1 VOIR DIRE EXAMINATION

2 BY MR. SBAITI:

3 Q Mr. Dondero, do you have a relationship with the DAF?

4 A Yes.

5 Q How would you describe that relationship?

6 A I view myself and my firm as the investment advisor. I
7 was actually surprised by the testimony today that there
8 wasn't a contract in place, but there should be one. There
9 should be one soon, in my opinion.

10 Q Have you -- did you hear Mr. Patrick testify earlier that
11 he comes to you for advice?

12 A Yes.

13 Q Is that --

14 A As he should. Yeah.

15 Q Is that true?

16 A Yes.

17 Q When you render that advice, do you render that advice
18 with some expectation about him following or listening to that
19 advice?

20 A Okay, I think there's only been one investment or one
21 change in the DAF portfolio since Mark Patrick's been
22 involved, only one, and it was a real estate investment that I
23 wasn't directly involved in. And so the people who put that
24 investment forward worked with Mark without my involvement,
25 and then I think Mark got third-party appraisal firms and

1 third-party valuation firms involved to make sure he was
2 comfortable, which was a good process.

3 Q When you supplied information to Mr. Patrick, do you do so
4 under the belief that there is a contractual, informal or
5 formal, relationship?

6 MR. MORRIS: Objection to the form of the question.

7 THE COURT: Overruled.

8 MR. SBAITI: What specific form?

9 THE COURT: Overruled.

10 MR. SBAITI: Thank you.

11 THE WITNESS: Yes. I believe it -- it's a
12 relationship that can and should be papered as -- soon.
13 That's my -- I mean, unless I get some reason from counsel not
14 to, I think it's something that should be memorialized.

15 BY MR. SBAITI:

16 Q And when you have that -- in that relationship, when you
17 communicate with Mr. Patrick about matters, investment or
18 otherwise, is there an expectation of privacy?

19 A Yes.

20 Q When Mr. Patrick -- did Mr. Patrick request that you
21 interface with my firm and myself, as he testified earlier?

22 A Yes.

23 Q And when he did so, did he ask you to do so in an
24 investigatory manner?

25 MR. MORRIS: Objection to the form of the question.

1 THE COURT: Sustained. Rephrase.

2 BY MR. SBAITI:

3 Q Did he tell you why he wanted you to talk to us?

4 A Yeah. At that point, he had started an investigation into
5 the HarbourVest transaction.

6 Q And -- and when he -- when you were providing information
7 to us, did he tell you whether he wanted you to help the
8 Sbaiti firm conduct the investigation?

9 A The -- overall, the financial numbers and tables in there
10 were prepared by not myself, but I -- I did -- I did help on
11 -- on the -- some of the registered investment advisor issues
12 as I understood them.

13 Q Okay. And the communications that you had with us, was
14 that part of our investigation?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 BY MR. SBAITI:

19 Q And did you understand that we had been retained by Mr.
20 Patrick on behalf of the DAF and CLO Holdco?

21 A Yes.

22 Q And did you appreciate or have any understanding of
23 whether or not you were helping the law firm perform its legal
24 function on behalf of the DAF and CLO Holdco?

25 A Perform its legal function? I was just helping with

1 regard to the registered investment advisor aspects of the
2 overall, you know, like that.

3 Q Let me ask a more simple question. Did you -- did you
4 appreciate that you were assisting a law firm in its
5 representation of the DAF?

6 A Yes.

7 Q And you were helping the law -- and were you helping the
8 law firm develop the facts for a complaint?

9 A Yes. I would almost say, more importantly, I wanted to
10 make sure that there weren't errors in terms of understanding
11 either how CLOs worked or how the Investment Advisers Act
12 worked. So I was -- it was almost more of a proofing.

13 MR. SBAITI: Your Honor, based upon that, I mean,
14 he's helping a law firm perform its function for the client.
15 That's an agency relationship that gets cloaked. You can call
16 him a consulting expert. You can call him, to a certain
17 extent, a fact witness, Your Honor. If we want to take a
18 break, I'm sure we could find authority on that basis for a
19 work product privilege pretty easily.

20 But he's an agent of the DAF. Even if it's an informal
21 agency relationship, that's still agency. He's in some
22 respects, I guess, an agent of the law firm, to the extent
23 he's helping us perform our legal work. And it seems like
24 invading that privilege at this juncture is (a) unnecessary,
25 because we've already conceded that there's been

1 conversations, which I think is the relationship they wanted
2 to establish. And it's not unusual for a law firm to use
3 someone with specialized knowledge to understand some of the
4 intricacies of the actual issues that they're -- that they're
5 getting ready to litigate.

6 THE COURT: Okay. I find no privilege. All right.
7 That's the ruling.

8 MR. BRIDGES: Your Honor, may I add one thing to the
9 objection for the record?

10 THE COURT: Okay, we have a rule, one lawyer per
11 witness. Okay? So, thank you. A District Court rule, by the
12 way, not mine.

13 MR. SBAITI: Your Honor, may we take a short recess,
14 given the Court's ruling?

15 THE COURT: Well, I'd really like to finish this
16 witness. How much longer do you have?

17 MR. MORRIS: About eight more questions.

18 THE COURT: All right. We'll take a break after the
19 direct, okay?

20 MR. SBAITI: Your Honor, I would ask that we -- if
21 he's going to ask him more questions about the content of the
22 communications, I ask respectfully for a recess so we can
23 figure out what to do about that. Because, right now, there's
24 a ruling that he's going to have to reveal privileged
25 information, and we don't have a way to go around and figure

1 out how to resolve that issue if we needed to.

2 THE COURT: Okay. I've ruled it's not privilege.

3 Okay?

4 MR. SBAITI: I understand that, Your Honor, but --

5 THE COURT: Your client is CLO Holdco and the DAF.

6 MR. SBAITI: Yes, Your Honor.

7 THE COURT: Representative, Mark Patrick. No
8 contract with Mr. Dondero. The fact that he may be very
9 involved I don't think gives rise to a privilege. That's my
10 ruling.

11 MR. SBAITI: I understand, Your Honor. I understand,
12 Your Honor, but I'm asking for a recess so that we can at
13 least undertake to provide Your Honor with some case law on a
14 reconsideration before we go there, because that bell can't be
15 unrung.

16 MR. MORRIS: Your Honor, if I may?

17 MR. SBAITI: And it's --

18 THE COURT: Uh-huh.

19 MR. MORRIS: I'm happy to give them ten minutes, Your
20 Honor, as long as they don't talk to the witness.

21 THE COURT: Okay.

22 MR. MORRIS: I want to give them the opportunity. Go
23 right ahead.

24 THE COURT: All right. We'll take a ten-minute
25 break.

1 MR. SBAITI: Thank you.

2 THE COURT: It's 3:05.

3 THE CLERK: All rise.

4 (A recess ensued from 3:03 p.m. until 3:17 p.m.)

5 THE CLERK: All rise.

6 THE COURT: Okay. Please be seated. Going back on
7 the record in Highland. Mr. Sbaiti?

8 MR. SBAITI: Yes, Your Honor. May I approach?

9 THE COURT: You may.

10 MR. SBAITI: Your Honor, we have some authority to
11 support the position we'd taken. We'd ask the Court to
12 reconsider your ruling on the privilege.

13 The first bit of authority is Section 70 of the
14 Restatement (Third) of Law Governing Lawyers. Privileged
15 persons within the meaning of Section 68, which governs the
16 privilege, says that those persons include either agents of
17 either the lawyer or the client who facilitate communications
18 between the two in order for the lawyers to perform their
19 function.

20 Another case that we found is 232 F.R.D. 103 from the
21 Southern District of New York, 2005. It's *Express Imperial*
22 *Bank of U.S. v. Asia Pulp Company*. And in that case, Your
23 Honor, the consultant was a -- had a close working
24 relationship with the company and performed a similar role to
25 that of the employee and was assisting the law firm in

1 performing their functions, and the court there found that the
2 work product privilege -- actually, the attorney-client
3 privilege -- attached in what they called a Functional
4 Equivalents Doctrine, Your Honor.

5 And here we have pretty much the same set of facts that's
6 pretty much undisputed. The fact that there -- and the fact
7 that there isn't a written agreement doesn't mean there isn't
8 a contractual arrangement for him to have rendered services
9 and advice. And the fact that he's, you know, recruited by us
10 to help us perform our functions puts him in the realm, as I
11 said, of something of a consulting expert.

12 Either way, the work product privilege, Your Honor, should
13 apply, and we'd ask Your Honor not to invade that privilege at
14 this point, Your Honor. And I'll ask you to reconsider your
15 prior ruling.

16 Furthermore, I believe Mr. Morris, you know, in making his
17 argument, is trying to create separation. The fact that he
18 has no relationship, that the privilege can be invaded, seems
19 to defeat the whole premise of his whole line of questioning.

20 So, once again, Your Honor, I just -- it's a tit for a tat
21 there, and it seems to kind of eat itself. Either he is
22 working with us, which we've admitted he is working with us,
23 us being the law firm, and helping us do our jobs, or he's
24 not. And if he's not, then this should be done.

25 THE COURT: Okay.

1 MR. MORRIS: Your Honor, briefly?

2 THE COURT: Well, among other things, what do you
3 want me to do? Take a break and read your one sentence from
4 the Restatements and your one case? And could you not have
5 anticipated this beforehand?

6 MR. SBAITI: Your Honor, --

7 THE COURT: This is not the way we work in the
8 bankruptcy courts, okay? We're business courts. We have
9 thousands of cases. We expect briefing ahead of time.

10 MR. SBAITI: Your Honor, this has been a rather
11 rushed process anyway. And to be honest, --

12 THE COURT: When was the motion filed?

13 MR. SBAITI: Your Honor, --

14 THE COURT: More than a month ago.

15 MR. SBAITI: -- his deposition was a week ago.

16 THE COURT: Well, okay. So you could not have
17 anticipated this issue until his deposition one week ago?

18 MR. SBAITI: Your Honor, this issue arose at the
19 deposition, obviously, because that's what he's quoting from.
20 However, at least to us, this is such a well-settled area, and
21 to be honest, --

22 THE COURT: Such a well-settled area that you have
23 one sentence from the Restatement and one case from the
24 Southern District of New York?

25 MR. SBAITI: No, Your Honor. I think the work

1 product privilege lexicon -- we had ten minutes to try to find
2 something more on point than the general case law that applies
3 the work product privilege to people that work with lawyers,
4 consultants who work with lawyers, employees who work with
5 lawyers, even low-down employees who normally wouldn't enjoy
6 the privileges that attach to the corporation, when they work
7 with the company for -- when they work with the company
8 lawyers, it typically attaches.

9 THE COURT: You know, obviously, I know a few things
10 about work product privilege, but he doesn't check any of the
11 boxes you just listed out.

12 MR. SBAITI: I disagree, Your Honor.

13 THE COURT: He's not an employee. He's not a low-
14 level employee.

15 MR. SBAITI: He's a consultant.

16 THE COURT: With no agreement.

17 MR. SBAITI: With a verbal agreement. He's an
18 advisor. And he was recruited by us, and at the request of
19 the DAF, of the head of the DAF, Mr. Patrick, to help us do
20 our job for the DAF. I don't --

21 THE COURT: Okay. Mr. Morris, what do you want to
22 say?

23 MR. MORRIS: Just briefly, Your Honor. This issue
24 has been ripe since last Tuesday. They directed him not to
25 answer a whole host of questions about his involvement at the

1 deposition last Tuesday, so they've actually had six days to
2 deal with this. That's number one.

3 Number two, there's absolutely nothing inconsistent with
4 the Debtor's position that Mr. Dondero is participating in the
5 pursuit of claims and at the same time saying that his
6 communications with the Sbaiti firm are not privileged.
7 There's nothing inconsistent about that.

8 So the argument that he just made, that somehow because
9 we're trying to create separation, that that's inconsistent
10 with our overall arching theme that Mr. Dondero is precisely
11 engaged in the pursuit of claims against Mr. Seery, I think
12 that takes care of that argument.

13 Finally, your Honor, with respect to this consultancy
14 arrangement, not only isn't there anything in writing, but
15 either you or Mr. Sbaiti or I, I think, should ask Mr. Dondero
16 the terms of the agreement. Is he getting paid? Is he doing
17 it for free? Who retained him? Was it Mr. -- because the --
18 there's no such thing. There's no such thing.

19 The fact of the matter is what happened is akin to I have
20 a slip-and-fall case and I go to a personal injury lawyer and
21 I bring my brother with me because I trust my brother with
22 everything. It's not privileged. Any time you bring in
23 somebody who is not the attorney or the client, the privilege
24 is broken. It's really quite simple. Unless there's a common
25 interest. They can't assert that here. There is no common

1 interest. So --

2 THE COURT: Okay. Mr. Sbaiti, I'll give you up to
3 three more minutes to *voir dire* Mr. Dondero to try to
4 establish some sort of agency relationship or other evidence
5 that you think might be relevant.

6 VOIR DIRE, RESUMED

7 BY MR. SBAITI:

8 Q Mr. Dondero, when you provided information to the law
9 firm, were you doing so under an agency relationship? Do you
10 know what an agency relationship is?

11 A Generally. When you're working on the -- or why don't you
12 tell me?

13 Q Tell me your understanding, so we can use --

14 A That you're working for the benefit or as a proxy for the
15 other entity or the other firm or the other person.

16 Q Right. So you're working for the DAF?

17 A Yes.

18 Q Do you do work for the DAF?

19 A Yes. As I stated, I'm surprised there isn't -- when we
20 reconstituted after leaving Highland, we put in shared
21 services agreements in place and asset management agreements
22 in place and tasked people with doing that for most of the
23 entities. There might be still a few contracts that are being
24 negotiated, but I thought most of them were in place.

25 So I would imagine that there'll be an asset management

1 agreement with the DAF back to NexPoint sometime soon, so it
2 -- it's --

3 Q Let me ask you this question. When you were providing
4 information to us and having conversations with us, were you
5 doing that as an agent of the DAF, the way you described it,
6 --

7 A Yes.

8 Q -- on their behalf?

9 A Yes.

10 Q Were you also doing it to help us do our jobs for the DAF?

11 A Yes.

12 Q Did you respond to requests for information from myself?

13 A Yes.

14 Q Did you help coordinate other -- finding other witnesses
15 or sources of information at my request?

16 A Yes.

17 Q Did you do so based upon any understanding that I was
18 working on behalf of the DAF for that?

19 A Yes. I knew -- I knew you were working for the DAF. No
20 one else, yeah.

21 Q And so -- and so did you provide any expertise or any in-
22 depth understanding to myself in helping me prepare that
23 complaint?

24 A I think so, but I give a lot of credit to your firm for
25 researching things that I -- I knew reasonably well but then

1 you guys researched in even more depth.

2 MR. MORRIS: I'd move to strike the answer as
3 nonresponsive.

4 THE COURT: Sustained.

5 BY MR. SBAITI:

6 Q Let me ask the question again. When you were providing us
7 information and expertise, were you doing so knowing you were
8 working -- helping us work for the DAF?

9 A Yes.

10 Q Now, did you demand any compensation for that?

11 A No.

12 Q Do you require compensation necessarily to help the DAF?

13 A No.

14 Q Do you do other things for the DAF sometimes without
15 compensation?

16 A Right. We do the right thing, whether we get paid for it
17 or not. Yes.

18 Q Had you known that our communications were not necessarily
19 part of an agency relationship with the DAF, as you understood
20 it, that you were just some guy out on the street, would you
21 have had the same conversations with us?

22 A (sighs)

23 Q Let me ask a better question. If I had come to you
24 working for someone that wasn't the DAF, you didn't already
25 have a relationship with, would you have given us the same

1 help?

2 A I wouldn't have been involved if it was somebody else.

3 Q Is the reason you got involved because we were the lawyers
4 for the DAF?

5 A Correct.

6 MR. MORRIS: Objection. It's just leading. This is
7 all leading.

8 THE WITNESS: Correct.

9 THE COURT: Sustained.

10 MR. SBAITI: Can --

11 THE WITNESS: Yeah. Sorry.

12 BY MR. SBAITI:

13 Q Do you get -- do -- did you -- did you do work for the --
14 did you provide the help for the DAF laboring under the
15 understanding that there was an agreement?

16 MR. MORRIS: Objection; leading.

17 THE COURT: Sustained.

18 BY MR. SBAITI:

19 Q Earlier you testified you believed there was an agreement?

20 A I thought that was an agreement, and I thought there will
21 be one shortly if there isn't one, yes.

22 Q Okay.

23 A And so we -- I've been operating in a bona fide way in the
24 best interests of the DAF throughout -- assuming there was an
25 agreement, but even if there wasn't a formal one, I would

1 still be moving in the best interests of the DAF and helping
2 your firm out or --

3 Q And you did that because you believed there was an
4 agreement or soon would be?

5 A Yes.

6 MR. SBAITI: Your Honor, I mean, I believe we've
7 established a dual role here, both as an agent of the DAF and
8 as an agent of the law firm, Your Honor.

9 THE COURT: Okay. Just a minute. I'm looking at
10 Texas authority on common interest privilege to see if there's
11 anything that --

12 (Pause.)

13 THE COURT: All right. Again, it would have been
14 very nice to get briefing ahead of time. I think this
15 absolutely could have been anticipated.

16 I do not find the evidence supports any sort of protection
17 of this testimony under work product privilege, common
18 interest privilege. I just haven't been given authority or
19 evidence that supports that conclusion. So the objections are
20 overruled.

21 Mr. Morris, go ahead.

22 DIRECT EXAMINATION, RESUMED

23 BY MR. MORRIS:

24 Q Can you describe for the Court the substance of your
25 communications with Mr. Sbaiti concerning the complaint?

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1 A As I've stated, directing him toward the Advisers Act and
2 then largely in a proofing function regarding CLO nomenclature
3 and some of the other fund nomenclature that sometimes gets
4 chaotic in legal briefs.

5 Q Did you communicate in writing at any time with anybody at
6 the Sbaiti firm regarding any of the matters that are the
7 subject of the complaint?

8 A I can't remember anything in writing. Almost everything
9 was verbal, on the phone.

10 Q You don't tend to write much, right?

11 A Periodically.

12 Q Did you communicate with Mr. Patrick? Did you communicate
13 with anybody in the world in writing regarding the substance
14 of anything having to do with the complaint?

15 MR. SBAITI: Objection, Your Honor. Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I --

18 MR. SBAITI: Your Honor, may I just -- one
19 housekeeping. Rather than raise the same objection, may we
20 have a standing objection, just so we're not disruptive, as to
21 the privilege, just for preservation purposes, on the content
22 of these communications? Otherwise, I'll just make the same
23 objections and we can go through it.

24 THE COURT: Well, disruptive as it may be, I think
25 you need to object to every --

005446

Dondero - Direct

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1 MR. SBAITI: Okay.

2 THE COURT: -- question you think the privilege
3 applies to.

4 MR. SBAITI: I will do so. Thank you, Your Honor.
5 Uh-huh.

6 BY MR. MORRIS:

7 Q Mr. Dondero, the question was whether you've ever
8 communicated with anybody in the world in writing concerning
9 anything having to do with the complaint?

10 A Not that I remember.

11 Q Okay.

12 MR. MORRIS: I will point out, Your Honor, that last
13 week, when the privilege was asserted, I had requested the
14 production of a privilege log. I was told -- I forget exactly
15 what I was told, but we never received one. I'll just point
16 that out as well.

17 THE COURT: Okay.

18 BY MR. MORRIS:

19 Q You provided comments to the drafts of the complaint
20 before it was filed, correct?

21 A Yes, a few.

22 Q Can you describe for the Court all of the comments that
23 you provided to earlier drafts of the complaint?

24 MR. SBAITI: Your Honor, we object on the basis of
25 privilege and work product and joint -- joint interest

005447

1 privilege.

2 THE COURT: Overruled.

3 THE WITNESS: It's along the lines of things I've
4 said in this court several times. The obligations under the
5 Advisers Act cannot be negotiated away and they cannot be
6 waived by the people involved, full stop. I remember giving
7 the -- Mazin the example of the only reason why we're in a
8 bankruptcy is from an arbitration award that, even though we
9 did what was in the best interests of the investors, we got
10 the investors out more than whole over an extended period of
11 time, they got an arbitration award that said when we
12 purchased some of the secondary interests we should have
13 offered them up to the other 800 members in the committee
14 besides the -- the 800 investors in the fund besides the eight
15 people on the committee who had approved it and that the
16 committee couldn't approve a settlement that went against the
17 Advisers Act and the Advisers Act stipulates specifically that
18 you have to offer it up to other investors before you take an
19 opportunity for yourself. And someday, hell or high water, in
20 this court or some other, we will get justice on that. And
21 that was the primary point that I reminded Mazin about.

22 BY MR. MORRIS:

23 Q And that's exactly the conversation you had with Mark
24 Patrick that started this whole thing, correct?

25 A No.

1 Q You told Mark Patrick that you believe the Debtor had
2 usurped a corporate opportunity that should have gone to the
3 DAF, didn't you?

4 A That was not our conversation.

5 Q So when Mr. Patrick testified to that earlier today, he
6 just got it wrong, right?

7 A Well, maybe later on, but it wasn't that in the beginning.
8 The beginning, any conversation I had with Mark Patrick in the
9 beginning was smelling a rat in the way that the Debtor had
10 priced the portfolio for HarbourVest.

11 Q Hmm. So you're the one, again, who started that piece of
12 the discussion as well, correct?

13 A Started the -- I -- I guess I smelled a rat, but I put the
14 person who could do all the numbers in touch with the Sbaiti
15 firm.

16 Q And was the rat Mr. Seery?

17 A Was the rat Mr. Seery? Or the independent board. Or a
18 combination thereof. I believe the independent board knew
19 exactly what Seery was doing with --

20 Q Do you have any idea --

21 A -- HarbourVest.

22 Q Do you have any idea why, why the Sbaiti firm didn't name
23 the whole independent board in the -- in the motion for leave
24 to amend?

25 A I don't know. Maybe they will at some point.

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1 Q Yeah.

2 A I don't know.

3 Q But did you tell the Sbaiti firm that you thought the
4 whole independent board was acting in bad faith and was a rat?

5 MR. SBAITI: Your Honor, I object on the basis of
6 privilege.

7 THE COURT: Overruled.

8 MR. SBAITI: All three.

9 THE WITNESS: I knew Jim Seery was and I knew Jim
10 Seery had weekly meetings with the other independent board
11 members, so the HarbourVest settlement was significant enough
12 that it would have been approved, but I don't have direct
13 knowledge of their involvement.

14 BY MR. MORRIS:

15 Q And so you -- but you believed Jim Seery was certainly a
16 rat, right?

17 A Oh, I -- there was a defrauding of third-party investors
18 to the tune of not insignificant 30, 40, 50 million bucks, and
19 it was obfuscated, it was -- it was highly obfuscated in the
20 9019.

21 Q Did you think Mr. Seery was a rat, sir? Yes or no?

22 A I believe he had monthly financials. He knew that the
23 numbers presented in the 9019 were wrong. And if that makes
24 him a rat, that makes him a rat. Or maybe he's just being
25 aggressive for the benefit of his incentive or for the estate.

005450

1 But I -- I believe those things wholeheartedly.

2 Q Did you tell the Sbaiti firm you thought Jim Seery was a
3 rat?

4 MR. SBAITI: Objection, Your Honor. Privilege.

5 THE COURT: Overruled.

6 THE WITNESS: I -- I don't remember using those
7 words.

8 BY MR. MORRIS:

9 Q Did you tell the Sbaiti Firm that you thought Jim Seery
10 had engaged in wrongful conduct?

11 MR. SBAITI: Your Honor, objection. Privilege.

12 THE COURT: Overruled.

13 THE WITNESS: I believe he violated the Advisers Act,
14 and I was clear on that throughout.

15 BY MR. MORRIS:

16 Q Listen carefully to my question. Did you tell the Sbaiti
17 firm that you believed that Jim Seery engaged in wrongful
18 conduct?

19 MR. SBAITI: Objection, Your Honor. Calls for
20 privileged communications.

21 THE COURT: Overruled.

22 THE WITNESS: I think I gave the answer. I'll give
23 the same answer. I believe he violated the Advisers Act.

24 BY MR. MORRIS:

25 Q What other wrongful conduct did you tell the Sbaiti firm

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1 you thought Mr. Seery had engaged in?

2 MR. SBAITI: Same objection, Your Honor.

3 THE COURT: Overruled.

4 MR. SBAITI: Calls for privileged communications.

5 THE COURT: Overruled.

6 THE WITNESS: I -- I just remember the obfuscating
7 and mispricing portfolio violations of the Advisers Act was
8 all I discussed with the Sbaiti firm regarding Seery's
9 behavior.

10 BY MR. MORRIS:

11 Q Did you talk to them about coming to this Court under the
12 gatekeeper order to see if you could get permission to sue Mr.
13 Seery?

14 A I --

15 MR. SBAITI: Objection, Your Honor. Calls for
16 privileged communication.

17 THE COURT: Overruled.

18 THE WITNESS: I wasn't involved in any of the --

19 BY MR. MORRIS:

20 Q Did you --

21 A -- tactical stuff on who to sell or -- who to sue or when
22 or whatever.

23 Q Did you tell the Sbaiti firm that you thought they should
24 sue Mr. Seery?

25 MR. SBAITI: Objection, Your Honor. Calls for

005452

1 privileged communication.

2 THE COURT: Overruled.

3 MR. SBAITI: I'll also say, Your Honor, the question
4 is getting a little argumentative.

5 THE WITNESS: I didn't get directly --

6 THE COURT: Overruled.

7 THE WITNESS: I didn't get directly involved in who
8 was -- who was specifically liable.

9 BY MR. MORRIS:

10 Q How many times did you speak with the Sbaiti firm
11 concerning the complaint?

12 A Half a dozen times, maybe.

13 Q Did you ever meet with them in person?

14 A I've only met with them in person a couple, three times.
15 And I don't think any of them -- no, it was, excuse me, it was
16 on deposition or other stuff. It wasn't regarding this.

17 Q Did you send them any information that was related to the
18 complaint?

19 A I did not.

20 Q Did you ask anybody to send the Sbaiti firm information
21 that related to the complaint?

22 A I did not. I -- I was aware that Hunter Covitz was
23 providing the historic detailed knowledge to the firm, but it
24 -- it wasn't -- I don't believe it was me who orchestrated
25 that.

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1 Q Did you talk to anybody at Skyview about the allegations
2 that are contained in the complaint before it was filed?

3 A I don't -- I don't remember.

4 Q Have you ever talked to Isaac Leventon or Scott Ellington
5 about the allegations in the complaint?

6 A No. They weren't involved.

7 Q How about -- how about D.C. Sauter? You ever speak to him
8 about it?

9 A I don't --

10 MR. TAYLOR: Objection, Your Honor.

11 THE WITNESS: I don't remember.

12 MR. TAYLOR: At this point, D.C. Sauter is indeed an
13 employee of Skybridge and is a general counsel for some of the
14 entities which he worked for. And to the extent he's trying
15 to ask for those communications, that would be invasion of the
16 privilege.

17 MR. MORRIS: I'll withdraw it, Your Honor. That's
18 fair.

19 THE COURT: Okay

20 MR. MORRIS: That's fair.

21 THE COURT: Question withdrawn.

22 THE WITNESS: I thought you only had eight more
23 questions.

24 MR. MORRIS: Opened the door.

25 BY MR. MORRIS:

005454

1 Q Can you describe the general fact -- withdrawn. You
2 provided facts and ideas to the Sbaiti firm in connection with
3 your review of the draft complaint, correct?

4 A Ideas and proofreading.

5 Q Anything beyond what you haven't described already?

6 A Nope.

7 Q Okay. Who is your primary contact at the Sbaiti firm, if
8 you had one?

9 A Mazin.

10 Q Okay. Did you suggest to Mr. Sbaiti that Mr. Seery should
11 be named as a defendant in the lawsuit before it was filed?

12 MR. SBAITI: Your Honor, calls for privileged
13 communication. We object --

14 THE COURT: Overruled.

15 MR. SBAITI: -- to that answer.

16 MR. SBAITI: Okay.

17 THE WITNESS: Again, no. I wasn't involved with the
18 tactics on who would be defendants and when or if other people
19 would be added.

20 BY MR. MORRIS:

21 Q Did you -- are familiar with the motion to amend that was
22 filed by the Sbaiti firm?

23 A I'm more familiar with it after today --

24 Q Right.

25 A -- than I was before.

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1 Q And were you aware that that motion was going to be filed
2 prior to the time that it actually was filed?

3 A I -- I don't remember. Probably.

4 Q And who would have been the source of that information?
5 Would that have been Mr. Sbaiti?

6 A Yes.

7 Q Okay. And did you express any support for the decision to
8 file the motion for leave to amend in the District Court?

9 A I -- I wasn't involved. It was very complicated legal
10 preservation conver... -- I wasn't involved. I knew the
11 conversations were going on between different lawyers, but I
12 wasn't involved in the ultimate decision. I didn't encourage,
13 applaud, or even know exactly what court it was going to be
14 filed in.

15 MR. MORRIS: All right. I have no further questions,
16 Your Honor.

17 THE COURT: All right. Pass the witness.

18 MR.

19 ANDERSON: We have no questions, Your Honor.

20 THE COURT: Okay. Any questions from Respondents?

21 MR. SBAITI: No questions.

22 THE COURT: Okay. Mr. Taylor?

23 CROSS-EXAMINATION

24 BY MR. TAYLOR:

25 Q Mr. Dondero, --

005456

1 A Yes, sir.

2 Q -- you are not the authorized representative of CLO
3 Holdco, are you?

4 A No.

5 Q You're not the authorized representative for the DAF, are
6 you?

7 A No.

8 Q Do you know who that person is as we sit here today?

9 A Yes.

10 Q Who is that?

11 A Mark Patrick.

12 Q Thank you.

13 MR. TAYLOR: No further questions.

14 THE COURT: Any redirect on that cross?

15 MR. MORRIS: I do not, Your Honor. I would just like
16 to finish up the Debtor's case in chief by moving my exhibits
17 into evidence.

18 THE COURT: Okay. Mr. Dondero, you're excused.

19 (The witness steps down.)

20 THE COURT: All right. So you have no more
21 witnesses; you're just going to offer exhibits?

22 MR. MORRIS: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. MORRIS: So, at Docket #2410, --

25 THE COURT: Uh-huh.

1 MR. MORRIS: -- the Court will find Exhibits 1
2 through 53.

3 THE COURT: Uh-huh.

4 MR. MORRIS: In advance, Your Honor, I've conferred
5 with the Respondents' counsel. They had previously objected
6 to Exhibits 15 and 16, which I believe were the Grant Scott
7 deposition transcripts. They objected to them on the grounds
8 of lack of completeness because I had taken the time to make
9 deposition designations, but I'm happy to put the entirety of
10 both transcripts into evidence, and I hope that that will
11 remove the objections to Exhibits 15 and 16.

12 THE COURT: All right. Before we confirm, let's just
13 make sure we have the right one.

14 MR. MORRIS: Oh, I apologize.

15 THE COURT: I have 16 as the July order.

16 MR. MORRIS: I apologize. You're absolutely right,
17 Your Honor. What I was referring to was -- oh, goodness. One
18 second. (Pause.) I was referring to Exhibits 23 and 24.
19 Those are Mr. Scott's deposition designations. They had
20 lodged an informal objection with me on grounds of
21 completeness. And in order to resolve that objection, we're
22 happy to put the entirety of both transcripts in.

23 THE COURT: All right. So if our Respondents could
24 confirm with the agreement to put in the entire depositions at 23
25 and 24, you stipulate to 1 through 53?

1 MR. PHILLIPS: We also -- Your Honor, --

2 MR. MORRIS: Yeah, I was going to take them one at a
3 time. Just take those two.

4 MR. PHILLIPS: Yeah, can we just take those two?
5 Confirmed?

6 MR. MORRIS: Okay.

7 THE COURT: Oh, okay.

8 MR. PHILLIPS: Because there are other -- there are
9 other -- we exchanged objections to each other's witness and
10 exhibit lists. And so I think you can handle the rest of them
11 kind of in a bunch, right?

12 MR. MORRIS: Yeah. Yeah, there's two bunches,
13 actually.

14 MR. PHILLIPS: Yeah.

15 THE COURT: Okay. So you have just now stipulated to
16 23 and 24 being admitted --

17 MR. MORRIS: Correct.

18 THE COURT: -- with the full depositions? Okay.

19 MR. PHILLIPS: Yes, ma'am. Thank you.

20 THE COURT: All right.

21 (Debtor's Exhibits 23 and 24 are received into evidence.)

22 MR. MORRIS: And then the next two that they objected
23 to are Exhibits 15 and 16. 15 is the January order and 16 is
24 the July order. They objected on relevance grounds. I think
25 16 -- these are the two orders that the Debtors contend the

1 Respondents have violated, so I don't understand the relevance
2 objection, but that's what it was and that's my response.

3 MR. PHILLIPS: Resolved, Your Honor.

4 THE COURT: Okay. 15 and 16 are admitted.

5 (Debtor's Exhibits 15 and 16 are received into evidence.)

6 MR. MORRIS: Okay. And then the last objection
7 relates to a group of exhibits. They're Exhibits 1 through
8 11. Those exhibits I think either come in together or stay
9 out together. They are exhibits that relate to the
10 HarbourVest proceedings, including deposition notices,
11 including I think the transcript from the hearing, the Court's
12 order, the motion that was filed.

13 The Debtor believes that those documents are relevant
14 because they go right to the issue of the gatekeeper order and
15 had they filed, had the Respondents followed the gatekeeper
16 order, this is -- this is why they didn't do it. You know
17 what I mean? That's the argument, is that the Respondents,
18 one of the reasons the Respondents -- argument -- one of the
19 reasons the Respondents didn't come to this Court is because
20 they knew this Court had that kind of record before it. And I
21 think that's very relevant.

22 THE COURT: All right. Response?

23 MR. PHILLIPS: Your Honor, we think that these
24 exhibits are not relevant. We have a very focused, we think,
25 -- we have the Court's order. Those objections are withdrawn.

1 We have the complaint. We have the motion to amend. And the
2 issue is whether the motion to amend, which was dismissed one
3 day, or the next day after it was filed, constitutes criminal
4 -- constitutes contempt.

5 So we think the prior proceedings go to their underlying
6 argument, which is the lawsuit or the complaint is no good,
7 and that has nothing to do with -- there's been no foundation
8 laid and it's not relevant what happened in connection with
9 the HarbourVest settlement. It is what it is, and there's no
10 dispute that it is what it is, but it's not relevant to
11 establish any type of -- they've even said intent is not even
12 relevant here. So we -- that's -- we think all of that goes
13 out and simplifies the record, because it has nothing to do
14 with whether or not there was a contempt.

15 THE COURT: Response?

16 MR. MORRIS: We withdraw the exhibits, Your Honor.
17 I'm just going to make it simple for the Court.

18 THE COURT: Okay.

19 MR. MORRIS: I'm just going to make it simple for the
20 Court.

21 THE COURT: 1 through 11 are withdrawn.

22 (Debtor's Exhibits 1 through 11 are withdrawn.)

23 MR. MORRIS: So, the balance, there was no objection.
24 So all of the Debtor's exhibits on Docket #2410 -- let me
25 restate that. Exhibits 12 through 53 no longer have an

1 objection. Is that correct?

2 MR. PHILLIPS: Yes.

3 MR. MORRIS: Okay. And then --

4 MR. PHILLIPS: Confirmed.

5 THE COURT: Okay.

6 (Debtor's Exhibits 12 through 53 are received into
7 evidence.)

8 MR. MORRIS: Okay. Thank you. And then we filed an
9 amended list, I believe, yesterday --

10 THE COURT: Uh-huh.

11 MR. MORRIS: -- to add Exhibits 40 -- 54 and 55.

12 THE COURT: Uh-huh.

13 MR. MORRIS: And those exhibits are simply my firm's
14 billing records.

15 THE COURT: Okay.

16 MR. MORRIS: You know, we added Mr. Demo to the
17 witness list in case there was a need to establish a
18 foundation. That's the only thing he would testify to. I
19 don't know if there's an objection to those two exhibits,
20 because we hadn't had an opportunity to confer.

21 THE COURT: Any objection?

22 MR. PHILLIPS: Your Honor, we're not going to require
23 authenticity and foundation for -- we have the right, we
24 think, to say that they're not a ground -- we're not going to
25 challenge that they are the bills, and the bills say what they

1 say. We don't need Mr. -- we don't need a witness to
2 authenticate those exhibits. But we reserve all substantive
3 rights with respect to the effect of those exhibits.

4 THE COURT: All right. 54 and 55 are admitted.

5 (Debtor's Exhibits 54 and 55 are received into evidence.)

6 MR. MORRIS: And with that, Your Honor, the Debtor
7 rests.

8 THE COURT: Okay. All right. Respondents?

9 (Counsel confer.)

10 MR. PHILLIPS: If I could have a second?

11 THE COURT: Okay.

12 A VOICE: Sorry, Your Honor.

13 (Pause.)

14 MR. PHILLIPS: Your Honor, we have filed in our
15 witness and exhibit list, and I have to say I don't have the
16 number, but we'll get the docket entry number, but we have 44
17 exhibits. There's an objection to Exhibit #2, which is --
18 thank you -- it's Document 2411, Your Honor. Thank you.

19 THE COURT: Uh-huh.

20 MR. PHILLIPS: There is a pending objection to
21 Exhibit #2 which we have not resolved. There's no objection
22 to any other exhibit. But in reviewing our exhibit list, I
23 found that we had some -- some mistakes and duplications.

24 So, with respect to 2411, we would withdraw Exhibit 13,
25 14, and 29, and we would offer Exhibit 1, and then 30 through

1 44, with 13, 14, and 29 deleted.

2 THE COURT: Okay. So 1, 3 through 12, --

3 MR. PHILLIPS: Yes.

4 THE COURT: -- 15 through 28, and then 30 --

5 MR. PHILLIPS: And then 30 through 44.

6 THE COURT: -- through 44? Do you confirm, Mr.

7 Morris?

8 MR. MORRIS: Yes, Your Honor. The only objection we
9 have is to Exhibit #2.

10 THE COURT: And that's -- he's not offering that?

11 MR. MORRIS: Yeah.

12 MR. PHILLIPS: Not at this time, Your Honor.

13 THE COURT: Okay.

14 MR. PHILLIPS: We would have to have testimony about
15 that.

16 THE COURT: Okay. All right. So those are admitted.

17 MR. PHILLIPS: Okay.

18 (Mark Patrick's Exhibits 1, 3 through 12, 15 through 28,
19 and 30 through 44 are received into evidence.)

20 THE COURT: By the way, it looks like Exhibit 44 is
21 at a different docket number, Docket 2420. Correct? You have
22 --

23 MR. SBAITI: Your Honor, I believe Exhibit 44 is the
24 hearing transcript from the July approval hearing. At least
25 that's what it's supposed to be.

1 THE COURT: Okay.

2 MR. SBAITI: It was Exhibit 2 on the Debtor's list,
3 and then I think they took it off, so we had to add it.

4 MR. PHILLIPS: Oh, okay. I was looking -- oh, that's
5 right. They -- that's correct, Your Honor.

6 THE COURT: Okay.

7 MR. PHILLIPS: Exhibit 44 was added --

8 THE COURT: Okay.

9 MR. PHILLIPS: -- because the Debtor's withdrew it,
10 and so it was added in the second -- in the supplemental and
11 amended list. The -- the one that I was talking about was the
12 prior list.

13 THE COURT: Okay. So that's at Docket 2420?

14 MR. PHILLIPS: Yes.

15 THE COURT: You're not offering 45 or 46?

16 MR. PHILLIPS: No, I think we'd offer 45 and 46 as
17 well. I'm sorry.

18 THE COURT: Okay. Any objections, Mr. Morris?

19 MR. MORRIS: No, Your Honor.

20 THE COURT: Okay. So 45 and 46 are admitted as well.
21 They're at Docket Entry 2420.

22 (Mark Patrick's Exhibits 45 and 46 are received into
23 evidence.)

24 THE COURT: All right. Your witnesses?

25 MR. PHILLIPS: Your Honor, could we have five minutes

1 to just see what we're -- our plan is, and then we'll be back
2 at 4:00?

3 THE COURT: Okay. We'll be back at 4:00.

4 MR. PHILLIPS: Thank you.

5 THE CLERK: All rise.

6 (A recess ensued from 3:55 p.m. until 4:04 p.m.)

7 THE CLERK: All rise.

8 THE COURT: Please be seated. All right. Back on
9 the record in Highland. Mr. Phillips?

10 MR. PHILLIPS: Your Honor, with the introduction of
11 the Respondents -- CLO Holdco, DAF Fund, LP, and Mark Patrick,
12 those Respondents, and we consider Mark Patrick a Respondent
13 although not formally named as a Respondent because he is the
14 party who authorized the filing of the Seery motion -- we
15 rest.

16 THE COURT: You rest? Okay. Well, Mr. Morris,
17 closing arguments?

18 MR. MORRIS: How much time do I have?

19 THE COURT: You've got a lot more time than you
20 probably thought you were going to. You're under an hour.

21 MR. MORRIS: 42 minutes?

22 THE COURT: How much?

23 THE CLERK: 42 minutes.

24 THE COURT: 42 minutes? Feel free not to use it all.

25 MR. SBAITI: Out of curiosity, how long do we have?

1 THE COURT: You have a lot of time, which I hope you
2 won't use.

3 THE CLERK: Hour and twenty-five minutes or so.

4 MR. SBAITI: I was afraid it was going to be an hour
5 and twenty, so --

6 MR. PHILLIPS: No, not either.

7 MR. MORRIS: I don't suspect I'll use all the time.

8 THE COURT: Okay. Thank you.

9 MR. MORRIS: May I proceed?

10 THE COURT: You may.

11 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

12 MR. MORRIS: Good afternoon, Your Honor. John
13 Morris; Pachulski Stang Ziehl & Jones; for the Debtor. I'd
14 like to just make some closing remarks after the evidence has
15 closed.

16 This is a very, very important motion, Your Honor. I take
17 this stuff seriously. It's only the second contempt motion
18 I've ever brought in my life. I've never gone after another
19 law firm. But these facts and circumstances require it,
20 because my client is under attack, and these orders were
21 entered to prevent that.

22 It is serious stuff. There's no question in my mind,
23 there's no question the evidence showed, clear and
24 convincingly, beyond reasonable doubt, that they violated this
25 Court's order.

1 I started off with three very simple prongs. So simple
2 you'd think I'd remember them. Number one, was a court order
3 in effect? There is no dispute. The court order was in
4 effect.

5 Number two, did the order require certain conduct by the
6 Respondent? We believe it did. We heard an hour-long
7 argument styled as an opening statement, but it was really
8 argument and not an opening statement, about all the defects
9 in the order. But the one thing that is crystal clear in the
10 order are the words commence or pursue. You've been told many
11 times by the Respondent that nobody has commenced an action
12 against Mr. Seery. That is true. We all know what the word
13 commence means. We all know what the word pursue means.

14 I heard argument this morning that pursue means after a
15 claim is filed you pursue a case. That's the way lawyers talk
16 about it. But that doesn't make any sense, Your Honor,
17 because once you've commenced the action you've violated the
18 order. It's commence or pursue, it's in the disjunctive, and
19 you can't read out of the order the concept of pursuit by
20 making it an event that happens after the commencement,
21 because that's exactly what they're trying to do. They're
22 trying to read out of the order the word pursuit.

23 And I ask you to use very simple common sense. If filing
24 a motion for leave to amend a complaint to add Mr. Seery as a
25 defendant is not pursuit, what is? What is? There's nothing

1 left. You commence an action or you do something less than
2 commencing an action when you're going after the man. That's
3 what pursuit means. They're going after the man. And they
4 asked the District Court to do what they knew they couldn't.

5 Mr. Phillips is exactly right. I made the point about
6 Rule 15 because they knew they couldn't do it. I'm not
7 suggesting that they should have. I'm suggesting that the
8 reason that they didn't is because they knew they were -- they
9 were in a bad place. Because if they really just wanted to
10 name Mr. Seery as a defendant, they wouldn't have done it.
11 They knew commence was crystal clear.

12 What they're trying to do is claim that somehow there's an
13 ambiguity around the word pursuit. Does that make any sense
14 at all? Filing a motion for leave to amend the complaint.
15 And Mr. Patrick, to his credit, candidly admitted that if the
16 motion was granted, they were suing, yeah, as long -- as long
17 as the Sbaiti firm, you know, recommended it. That's what
18 would have happened.

19 Those orders that you signed, nothing, absolutely
20 meaningless from their point of view. They believed they were
21 wrong. They believed that they were overbroad. They believed
22 they were too narrow. They believed they were vague. They
23 believed they were without authority. They don't get to be
24 the gatekeeper. They want to be the gate -- that's this
25 Court's decision. That's why we went through all of the

1 processes that we did. And they just flagrantly said, I don't
2 agree. I don't agree because it's wrong this way and it's
3 wrong that way and it's wrong the other way, and therefore let
4 me go find a higher authority to validate my thinking. That's
5 not the way this process is supposed to work.

6 The independent directors and Mr. Seery relied on the
7 gatekeeper in accepting their positions. It was a quid pro
8 quo. Mr. Dondero agreed to the exact same provision, the
9 exact same gatekeeper provision in the January order that he
10 now complains about today, that the DAF complains about today.
11 Where were these people?

12 As the Court knows, nobody appealed either order. The
13 Debtor, the independent board, Mr. Seery expected that the
14 plain and unambiguous words would be honored and enforced. I
15 think that's fair. I think that's the way the process is
16 supposed to work.

17 Instead, we have games. We have these linguistic
18 gymnastics. We have statements that are too cute by half.
19 Mr. Dondero won't even admit that he appointed Mr. Scott back
20 in 2012. I couldn't even get him to do that, really, even
21 though the documents say it, even though Mr. Patrick says it.

22 I'll take the Respondents one at a time in a moment, but I
23 just want to deal with some of the more interesting arguments
24 they make. The order was vague because it didn't say you
25 can't seek leave from the District Court to amend your

1 complaint to add Mr. Seery. They said that that's what makes
2 the order vague.

3 Your Honor, if you had thought to put that language in,
4 you know what they would have done? They would have sued Mr.
5 Seery in New York State Supreme Court, where he lives, and
6 said, the order didn't say I couldn't do that. Where does it
7 end?

8 There's a reason why the order was crafted broadly to say
9 no commencement or pursuit without Bankruptcy Court approval.
10 You have to bring a colorable claim.

11 We heard an argument this morning that they couldn't
12 possibly have brought that motion for reconsideration first.
13 You know, the one they filed about eight hours after we filed
14 the contempt motion. They couldn't possibly have brought that
15 motion before the motion for leave to amend because somehow
16 they would have been estopped or they would have been found to
17 have waived some right.

18 How could it be that anybody reasonably believes that
19 complying with a court order results in a waiver of some
20 right? It just -- these are games. These are not good
21 arguments. And they certainly don't carry the day on a
22 contempt motion.

23 We've heard repeatedly, the District Court denied the
24 motion without prejudice, how have you been harmed? They
25 shouldn't be able to rely on the District Court's prudence to

1 protect themselves. The question shouldn't be, have you been
2 harmed since the District Court didn't grant the motion? No.
3 The question should be, were we harmed by the attempt to name
4 Mr. Seery a defendant, in violation of court orders, without
5 notice? Without notice.

6 I'm told they assumed that I'd be checking the dockets. I
7 wasn't checking the docket, Your Honor. I hadn't filed an
8 appearance in the case. And, in fact, if you look at the
9 exhibits, because I could pull it out, but we put in the
10 communications between the lawyers. The last communication
11 was from Mr. Pomerantz, and the last communication from Mr.
12 Pomerantz said, Don't do it or we're going to file a motion
13 for contempt. That's now in the evidence.

14 So, having sent that message, I wasn't going to check the
15 docket to see if they really were going to go ahead and do it.
16 I didn't think they would. And if they did, I certainly
17 thought I'd get notice of it. Nothing.

18 And, again, I don't really need to establish intent at all
19 in order to meet my burden of clear and convincing evidence of
20 a contempt of court, but I think it is relevant when the Court
21 hopefully finds liability and is considering damages, because
22 that's really the most important point I have to make right
23 now, is the Court needs to enforce its own orders, because if
24 the Court doesn't, or doesn't impose a penalty that's
25 meaningful, this is just going to continue. And Your Honor,

1 it's all in the record. Your Honor knows this. Mr. Daugherty
2 has gone through it. Right? Mr. Terry went through it. UBS
3 went through it. You've seen litigation now for a year and a
4 half. It's happening in New York, right, the Sbaiti firm is
5 reopening the Acis case. we've got this other lawsuit that's
6 filed by an entity with like a five-tenths of one percent
7 interest who's complaining about the SSP transaction that Mr.
8 -- that the Debtor engaged in. There's no end here.

9 We need the Court to pump the brakes. We need the Court
10 to exercise its authority. We need the Court to protect the
11 estate fiduciary that it approved.

12 It is true, Mr. Seery is not a trustee. But it is also
13 true that he is a third-party outsider who came into this case
14 with the expectation and the promise in an order that he
15 wouldn't be subjected to frivolous litigation, that this Court
16 would be the arbiter of whether claims could be pursued
17 against him. That was the code of conduct. That was the quid
18 pro quo. That was the deal that Mr. Seery made. It's the
19 deal that the board members made.

20 What gives these people the right to just say, your order
21 is wrong, and because I think your order is wrong I'm going to
22 go to the District Court, and if the District Court agrees,
23 too bad, and if the District Court doesn't agree, we'll be
24 back before Your Honor, and no harm, no foul? No. It can't
25 be. It can't be that that's the way this process works. It

1 just can't.

2 So, Your Honor, let me take the Defendants one at a time,
3 the Respondents one at a time. CLO Holdco and the DAF are
4 corporate entities. They've done what they've done. Mr.
5 Patrick, bless him, I think he's a lovely man. I don't think
6 he quite bargained for what he's getting right now, but
7 nevertheless he is where he is and he's willing to stand up
8 and be counted, and for that, at least, I admire his courage.
9 He's willing to say, I authorized those. But you know what?
10 It's a violation of the law, it's a violation of this Court's
11 order to file that motion, and so he has -- and he was very
12 candid today. He knew of the order. Right? He knew it was
13 in effect. He pointed out that it was in their papers.
14 Right?

15 They're trying to be cute, they're trying to thread this
16 needle, but it has no hole in it. They keep -- they keep
17 doing this. Well, maybe if we do it this way, maybe if we do
18 it -- no. The order was crystal clear.

19 The Sbaiti firm. They're probably fathers and husbands
20 and good people and I wish them no ill will, but this is
21 wrong. This is wrong. To come into a court you've never been
22 in before and in less than twelve days to jump the shark like
23 this in twelve -- in less than twelve days, because Mr.
24 Patrick said they weren't hired until April, and the complaint
25 was filed on the 12th.

1 We're told that they understood this was an overwhelming
2 case with two -- why don't you take your time? What was the
3 rush? Why not wait until the Defendant -- the Debtor appeared
4 in the action before rushing to do this?

5 It's bad conduct, Your Honor, and that's really a very
6 important point that I have to make, is that there's lots of
7 lawyers who are engaging in highly-questionable conduct here
8 that, from my perspective, goes well beyond the bounds of
9 zealous advocacy.

10 It's not aggressive lawyering. I love aggressive
11 lawyering. I really do. Respectful, honest -- and I don't,
12 you know, I don't want to say that they're dishonest people.
13 I don't mean to do that. But I think, I think they made a
14 gross error in judgment, and there's no question that they
15 violated this Court's order.

16 And then that leaves Mr. Dondero. I don't even know what
17 to say about his testimony, Your Honor. He pursued claims
18 against Mr. Seery. He thinks he's a rat. He's the one who
19 started the whole process. He's the one who put the bug in
20 Mark Patrick's ear. All of this is uncontested. Right?
21 Uncontested.

22 I don't have to go back in time. We can talk about what
23 happened to Grant Scott. It's a very sad story. Mr. Scott, I
24 think, did his honest best to do what he believed, on the
25 advice of counsel, was in the best interest of the DAF. And

1 Mr. Dondero, as you hear time and time again when he speaks
2 about Mr. Seery, it was inappropriate. He's the arbiter of
3 what's in the best interest of entities that other people
4 control. And they pay a price. And they pay a price. And so
5 Mr. Dondero felt it was his job, even though he tries to
6 distance himself from the DAF -- I have no responsibility, I
7 don't -- I'm not involved -- until, until somebody wants to
8 sue Seery and the Debtor. Then he'll go all in on that, no
9 matter how specious the claim may be.

10 The Debtor's not going to fold its tent because a motion
11 for leave to amend was denied without prejudice. That's not
12 the point. The point is that people need to respect this
13 Court, people need to respect the Court's orders, and those
14 that aid and abet or otherwise support the violation of court
15 orders ought to be held to account, Your Honor.

16 I have nothing further.

17 THE COURT: All right. Thank you. Respondents?

18 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

19 MR. SBAITI: Your Honor, the fact that we're here on
20 a motion for leave, and the motion for leave is what they're
21 saying is pursuing a claim under the Court's order, and then
22 you hear that the mere act of investigating a claim against
23 Mr. Seery is also pursuing a claim, this goes to the infinite
24 regression problem with this word pursue the way they want to
25 construe it, Your Honor. Asking for permission is not

1 pursuing a claim and can't be the definition of pursuing a
2 claim because it's not doing anything other than asking for
3 permission.

4 We didn't file a suit. We didn't commence a suit. I
5 think that's established. We did not pursue a claim. Mr.
6 Morris ignores, I think, the very commonsensical aspect that
7 we put out in the opening, which is that the reason pursue --
8 and sometimes the language in these types of orders is,
9 instead of pursue, it's maintain -- but the reason that word
10 is there is because sometimes the case has already been
11 started when the order is entered. And so to pursue a claim,
12 *i.e.*, one that's already been filed as of the date of the
13 order, that would be lost if the commencement of that claim
14 hadn't happened until after the -- until the -- if the
15 commencement happened before the order was filed. That's the
16 --

17 THE COURT: Okay. So are you saying it's a
18 sequential thing?

19 MR. SBAITI: I'm not sure I understood your question,
20 Your Honor. I'm sorry.

21 THE COURT: Well, I'm trying to understand what it is
22 you're saying about how pursue should be interpreted.

23 MR. SBAITI: Sure.

24 THE COURT: I think you're saying you have to -- you
25 can either have -- well, we've got a prohibition on commencing

1 an action.

2 MR. SBAITI: Yes.

3 THE COURT: And then the separate word pursue, I
4 think you're saying that must refer to you already have an
5 action that's been commenced and you're continuing on with it.
6 Is that what you're saying?

7 MR. SBAITI: Yes, Your Honor.

8 THE COURT: Then why not use the word continue?

9 MR. SBAITI: Well, Your Honor, the choice of --

10 THE COURT: Kind of like 362(a) of the Bankruptcy
11 Code, you know, is worded.

12 MR. SBAITI: Well, Your Honor, the choice of the
13 wording of pursue at that point, Your Honor, I believe ends up
14 being ambiguous, because by filing the motion here that would
15 be pursuing a claim under that definition. So before I got
16 permission to pursue a claim, I've got to pursue a claim.
17 That's the problem that they have with the words that they're
18 trying to get you to adopt, or the meaning of the words
19 they're trying to get you to adopt.

20 If I came to this Court and said, Judge, I need
21 permission, I need leave to file suit against Mr. Seery, and
22 then the question is, well, you're not allowed to seek leave
23 because that's pursuing the claim, it's infinitely regressive.
24 And in fact, his closing argument just proved how it's
25 infinitely regressive.

1 THE COURT: Okay. Let me -- I'm not following this
2 infinitely regressive or whatever the term was.

3 MR. SBAITI: Yes.

4 THE COURT: Just answer this very direct question.
5 Why did you not file a motion for leave in the Bankruptcy
6 Court? That would have clearly, clearly complied with the
7 July order.

8 MR. SBAITI: Your Honor, I believe we explained this
9 in the opening. I took a stab at it. Mr. Bridges took a stab
10 at it. We did not believe coming here and asking for leave
11 and asking for -- for Your Honor to do what we don't believe
12 Your Honor can do, would effectuate an estoppel or a waiver,
13 which we didn't think was in the best interest of our client
14 to have. Your Honor, this happens -- I don't believe this is
15 the --

16 THE COURT: Okay. Connect the dots. Make that clear
17 as clear can be for me. You file a motion for leave --

18 MR. SBAITI: Yes.

19 THE COURT: -- to file this District Court action
20 against the Debtor and Seery, and if I say yes, everything is
21 fine and dandy from your perspective. If I say no, tell me
22 again what your estoppel argument is.

23 MR. SBAITI: Your Honor, the key question is whether
24 us putting the Court's ability to decide colorability and the
25 Court's gatekeeper functions, for us to invoke those functions

1 concerned us because there's case law that says that that
2 effectuates an estoppel. And so we don't get our chance in
3 front of an Article III judge to make that in the first
4 instance.

5 THE COURT: Okay. Tell me what cases you're talking
6 about and the exact context of those cases.

7 MR. SBAITI: Your Honor, I would have to defer to my
8 partner on this one, Your Honor.

9 THE COURT: Okay.

10 MR. SBAITI: So, --

11 THE COURT: Because I'm just letting you know --

12 MR. SBAITI: Yes.

13 THE COURT: -- I am at a complete loss. I'm at a
14 complete loss understanding what you're saying. I am.

15 MR. SBAITI: Well, Your Honor, the --

16 THE COURT: I don't understand. If you have followed
17 the order to the letter and I tell you no, --

18 MR. SBAITI: Then --

19 THE COURT: -- what, you're saying you were worried
20 you'd be estopped from appealing my order to the District
21 Court and saying abuse of discretion or invalid order in the
22 first place? You'd be estopped from taking an appeal?

23 MR. SBAITI: No, Your Honor. We wouldn't be estopped
24 from taking an appeal.

25 THE COURT: Then why didn't you follow the letter of

1 the order?

2 MR. SBAITI: For one thing, Your Honor, asking the
3 District Court made sense to us, given the order and given our
4 understanding of the law. Certainly, we had other options, as
5 Your Honor is pointing out. We could have come here. Our
6 read of the law, our understanding of what we were doing, made
7 it -- put us in, like I said, put us in the sort of
8 jurisdictional and paradoxical position.

9 THE COURT: This is your chance to tell me exactly
10 which law you think applies here. What case? What statute?

11 MR. SBAITI: Your Honor, like I said, I don't have
12 those at the moment.

13 THE COURT: Why not? Your whole argument rides on
14 this, apparently.

15 MR. SBAITI: Well, Your Honor, I don't know that our
16 whole argument rides on that.

17 THE COURT: Okay.

18 MR. SBAITI: I mean, our argument rides on we don't
19 think we violated the letter of the order. I think that's
20 really what I'm -- what we're here to say, is that we didn't
21 commence a lawsuit and we didn't pursue a claim by filing for
22 leave in the District Court, just like filing for leave in
23 this Court would not be pursuing a claim. It would be filing
24 for leave.

25 THE COURT: I agree. Filing a motion for leave in

1 this Court would be exactly what the order contemplated.

2 MR. SBAITI: I understand, Your Honor.

3 THE COURT: What you did is not exactly what the
4 order contemplated.

5 MR. SBAITI: Your Honor, but we're -- we're moving
6 back and forth between two concepts. One, your question is
7 why didn't we file for leave?

8 THE COURT: Uh-huh.

9 MR. SBAITI: And the answer to that, I've tried to
10 explain. And if we -- if you'd like us to bring up the case
11 law or to give you a better articulation of our concern, I'm
12 happy to defer to my partner.

13 What I'm really here to say, Your Honor, is a very simple
14 point, though. Just because we didn't file for leave here and
15 we filed for leave in the District Court doesn't mean we
16 violated your order, and that's the point I'm trying to make,
17 Your Honor. And I think that's the simplest point I can make.
18 Asking the Article III judge for leave to amend, for leave to
19 amend to add Mr. Seery, doesn't violate, facially, at least as
20 we read it, Your Honor's order. It's not commencing a suit
21 and it's not -- it's not pursuing a claim against him. It's
22 all preliminary to pursuing a claim against him, because a
23 claim hasn't even been filed.

24 The judge could have -- the judge could have -- the
25 District Court could have denied it, the District Court could

1 have referred it down here, the District Court could have
2 decided part of it and then asked Your Honor to rule on some
3 portion of it. There are innumerable ways that could have
4 gone. That fork -- those forks in the road is precisely why
5 we say this is not pursuing the claim. Otherwise, where does
6 it stop?

7 Does pursuing a claim happen just when we file the motion
8 for leave? Why didn't it happen when we started the
9 investigation? If pursuing a claim means having the intent
10 and taking steps towards eventually filing a lawsuit, that's
11 the point that I'm making that it is infinitely regressive,
12 and that's exactly what Mr. Morris argued to you.

13 He said Mr. Dondero, by merely speaking to me, is pursuing
14 a claim and that violates your order. Speaking to me. Even
15 if we had never filed it. Speaking is pursuing a claim.

16 THE COURT: I don't agree with that, for what it's
17 worth.

18 MR. SBAITI: Okay. But that was his argument. I'm
19 just responding to it.

20 THE COURT: Okay.

21 MR. SBAITI: And if that's not pursuing a claim,
22 filing a motion for leave likewise wouldn't be pursuing a
23 claim. I understand it's an official act in a court, but we
24 did it in a Court that is an adjutant to this Court. This
25 Court is an adjutant to that Court. It's the Court with

1 original jurisdiction over the matter. So we didn't go to New
2 York. We didn't go to the state court in New York where I
3 learned Mr. Seery lives. We came to the Northern District of
4 Texas, understanding that this Court and this Court's orders
5 had to be -- had to be addressed. And that's the very first
6 thing we did. We asked the Court to address it.

7 That judge could either decide to send it down here, which
8 is normally what I think -- what we understood would happen.
9 So it's not like we were avoiding it. But we wanted to invoke
10 the jurisdiction which we, as the Plaintiff, we believe we had
11 the right to invoke. We're allowed to choose our forum. So
12 that's the forum we chose for the primary case, which there's
13 not a problem, no one's raised an issue with us filing the
14 underlying lawsuit.

15 Adding Mr. Seery to that lawsuit and filing a motion for
16 leave in the same court where we actually had the lawsuit,
17 knowing that it might get -- that might get decided or
18 referred in some way, doesn't strike me as being anything
19 improper, because he didn't get sued and we don't know what
20 Judge Boyle would have said had the motion gone forward. And
21 for them to speculate and to say that, well, this is exactly
22 the type of thing you have to protect against, I completely
23 disagree.

24 The case law that they cited for you on these -- on most
25 of these orders really do discuss the fact that you have

1 somebody who is actually protecting the underlying property of
2 the Debtor. This claim comes from a complete third party that
3 Mr. Seery himself has admitted under oath he owes a fiduciary
4 duty to. Two third parties. One is an investor of a fund
5 that he manages, and one to a fund that the Debtor, with Mr.
6 Seery as the head of it, was an advisor for up until recently.

7 Those fiduciary duties exist. We felt like there was a
8 valid claim to be brought against Mr. Seery. And the only
9 reason -- and he says this like it's a negative; I view it as
10 a positive -- the reason he wasn't named is because of Your
11 Honor's orders. And so we asked a Court, the Court with
12 general jurisdiction, to address it for us or to tell us what
13 to do. And I don't see how that is a violation of this
14 Court's order, nor is it contemptuous of this Court's order.

15 If every time one of these issues came up it was a
16 contempt of the court that appointed a trustee, we'd see a lot
17 more contempt orders.

18 Interestingly, the cases that were thrown out to you in
19 the opening argument by the other side, for example, *Villages*
20 [sic] v. *Schmidt*, was a trustee case, but not one that
21 involved a sanction. And the trustee case specifically in
22 that case held that the Barton Doctrine didn't have an
23 exception for *Stern* cases, whereas the cases we cited to you,
24 *Anderson*, for example, in the Fifth Circuit, which is 520 F.2d
25 1027, expressly held that Section 959 is an exception to the

1 Barton Doctrine.

2 And my partner, Mr. Bridges, can walk through the issues
3 that we had on the enforceability of the order, but all -- to
4 me, all of that is sort of a secondary issue because, *prima*
5 *facie*, we didn't violate this order. I understand it may
6 irritate the Debtor and may raise questions about why the
7 motion wasn't filed here versus the District Court. But it
8 was a motion for leave. In order to sanction us, Your Honor
9 would have to find that asking for permission is sanctionable
10 conduct in the gatekeeper order. Even if we ask the wrong
11 court. Simply asking the wrong court is sanctionable, not
12 knowing what that court would have done, not knowing what that
13 court's mindset was, not even having the benefit of the
14 argument. And that's, I guess, where this bottom -- the
15 bottom line is for me.

16 The evidence that they put on for you, Your Honor.
17 Everything you heard was evidence in the negative. You know,
18 they talk about the transition from Mr. Dondero to Mr. Scott
19 and Mr. Scott to Mr. Patrick, but if you actually look at the
20 evidence he wants you to see and he wants you to rule on, it's
21 the evidence that wasn't there. It's the evidence that Mr.
22 Dondero had no control. In fact, I believe that was the basis
23 he argued for why there should be no privilege. And all he
24 said is that he was promoting it.

25 But the fact of the matter is, like I said, all of that is

1 secondary to the core issue that we didn't violate the order.
2 We didn't take steps to violate the order. We took steps to
3 try to not violate the order. And they want you to punish us
4 to send a message. Even used words like the Court needs to
5 enforce its own orders. And he did that as a transition away
6 from the idea that there were no damages, Your Honor, and I
7 think that has implications.

8 And then he said you have to enforce a meaningful penalty.
9 Well, Your Honor, I don't think that is the purpose of these
10 sanctions. These sanctions are supposed to be remedial,
11 according to the case law, according to the case law that they
12 cite. So a meaningful --

13 THE COURT: Coercive or remedial.

14 MR. SBAITI: Sorry?

15 THE COURT: Coercive or remedial. Civil contempt.

16 MR. SBAITI: Sure, Your Honor. But usually coercive
17 sanctions require someone to do something or they are
18 sanctioned until they do it.

19 THE COURT: Coerced compliance. Coerced compliance
20 --

21 MR. SBAITI: Yes.

22 THE COURT: -- with an existing order.

23 MR. SBAITI: Yes.

24 THE COURT: Uh-huh.

25 MR. SBAITI: The last thing, he says you have to

1 protect the estate of the fiduciary and his expectation -- I
2 believe he's talking about Mr. Seery -- his expectation that
3 the Court would be the gatekeeper. And Your Honor, that
4 argument rings a little bit hollow here, given that what
5 they're really saying is that we should have come here first
6 and asked for permission. But that insinuates that, by coming
7 here, the case is dead on arrival, which I don't think is the
8 right argument.

9 I think the issue for us has been, who do we have to ask
10 and who can we ask to deal with the Court's gatekeeper order?
11 I believe we chose a court, a proper court, a court with
12 jurisdiction, to hear the issue and decide the issue. Your
13 Court's -- Your Honor's indication of the jurisdiction of this
14 Court we believed invoked the District Court's jurisdiction at
15 the same time.

16 And so the last thing is he said -- the last thing, and
17 getting back to the core issue, is Mr. Morris wants you to
18 believe that we intended to violate the order, and now, as an
19 afterthought, we're using linguistic gymnastics to get around
20 all of that. But it's not linguistic gymnastics. Linguistic
21 gymnastics is saying that pursue means doing anything in
22 pursuit of a claim. That's a little -- I believe that's
23 almost a direct quote. They're chasing the man. Well, that's
24 the infinite regression that I talked about, Your Honor, that
25 it's going to be impossible in any principled way to reconcile

1 Mr. Morris's or the Debtor's definition of pursue with any
2 logical, reasonable limitation that is readable into the
3 order, Your Honor.

4 And I'm going to defer to my partner, Mr. Bridges -- oh,
5 go ahead.

6 THE COURT: I'm going to stop you. I mean, we have
7 the linguistic argument. But how do you respond to this?

8 MR. SBAITI: Sure.

9 THE COURT: What if I tell you, in my gut, this
10 appears to be an end run? An end run. I mean, I'm stating
11 something that should be obvious, right? An end run around
12 this Court. This Court spent hours, probably, reading a
13 motion to compromise issues with HarbourVest, issues between
14 the Debtor and HarbourVest. I had objections. An objection
15 from CLO Holdco that was very document-oriented, as I recall.
16 Right of first refusal. HarbourVest can't transfer its 49.98
17 percent interest in HCLOF, right? Talk about alphabet soup.
18 We definitely have it.

19 MR. SBAITI: Yes.

20 THE COURT: Without giving CLO Holdco the first right
21 to buy those assets. Read pleadings. Law clerk and I stay up
22 late. And then, you know, we get to the hearing and there's
23 the withdrawal -- we heard a little bit about that today --
24 withdrawal of the objection. We kind of confirmed that two or
25 three different ways on the record. And then I remember going

1 to Mr. Draper, who represents the Dugaboy and Get Good Trusts.
2 You know, are you challenging the legal propriety of doing
3 this? And he backed off any objection.

4 So the Court ended up having a hearing where we went
5 through what I would call the standard 9019 prove-up, where we
6 looked at was it in the best interest, was it fair and
7 equitable given all the risks, rewards, dah, dah, dah, dah.
8 You know, HarbourVest had initially, you know, started at a
9 \$300 million proof of claim, eye-popping, but this all put to
10 bed a very complicated claim.

11 MR. SBAITI: Yeah.

12 THE COURT: Tell me something that would make me feel
13 better about what is, in my core, in my gut, that this is just
14 a big, giant end run around the Bankruptcy Court approval of
15 the HarbourVest settlement, which is not on appeal, right?
16 There are a gazillion appeals in this case, but I don't think
17 the HarbourVest --

18 A VOICE: It is on -- it is on appeal, Your Honor.

19 THE COURT: Is it? Oh, it is on appeal? Okay. So I
20 may be told --

21 MR. SBAITI: I didn't know.

22 THE COURT: I may be told, gosh, you got it wrong,
23 Judge. You know, that happens sometimes.

24 So, this feels like an end run. You know, the appeal is
25 either going to prevail or not. If it's successful, then, you

1 know, do you really need this lawsuit? You know, I don't --
2 okay. Your chance.

3 MR. SBAITI: Thank you, Your Honor.

4 THE COURT: Uh-huh.

5 MS. SBAITI: Your Honor, this wouldn't be the first
6 case where finality or where there was a settlement -- I'm not
7 familiar as well with bankruptcy, but certainly in litigation
8 -- where the settlement then reveals -- well, after a
9 settlement is done, after everyone thinks it's done, some new
10 facts come to light that change people's views about what
11 happened before the settlement or before the resolution. And
12 that's what happened here, Your Honor. This is what we've
13 pled. And this is what we understand.

14 There were the instances of Mr. Seery's testimony where he
15 testified to the value of the HarbourVest assets. I believe,
16 as I recall, he testified in I believe it's the approval
17 hearing that Your Honor is talking about that the settlement
18 gave HarbourVest a certain amount of claims of I think it's,
19 Series 8 and then Series 9 claims, and that those were
20 discounted to a certain dollar value that he quantified as
21 about \$30, \$31 million. And the way he ratified and justified
22 the actual settlement value, the actual money or value he was
23 conferring on HarbourVest, given the critique of HarbourVest
24 claims that he was settling, is he explained it this way. He
25 said \$22-1/2 million of this whole pot that I'm giving them

1 pays for the HarbourVest -- HarbourVest's interests in HCLOF
2 -- it's alphabet soup again -- and Highland CLO Funding,
3 Limited. And so it's the other \$9 million that's really
4 settling their claims. And given the amount of expense it's
5 going to take, so on and so forth, \$9 million seems like a
6 reasonable amount to settle them with, especially since we're
7 just giving them claims.

8 So that \$22-1/2 million everyone apparently took to the
9 bank as being the value, including CLO Holdco at the time,
10 because they didn't have the underlying valuations. Highland
11 was supposed to give the updated valuations.

12 So, fast-forward a couple of months -- and this is what
13 we've played in our lawsuit, Your Honor; this is why I don't
14 think it's an end run -- we pled in our lawsuit just a couple
15 months later Highland -- I believe some of the people that
16 worked at Highland started leaving, according to some
17 mechanisms that I saw where Highland didn't want to keep all
18 the staff and so the staff was migrated to other places. And
19 one of those gentlemen, I believe Mr. Dondero referred to him
20 as a gentleman named Hunter Covitz, and Hunter Covitz, who's
21 also an investor in HCLOF, he owns a small piece of HCLOF, he
22 had the data, he had some of the information that showed that,
23 actually, in January, when Mr. Seery said that the HarbourVest
24 settlement was worth 22 -- excuse me, the HarbourVest
25 interests in HCLOF were worth \$22-1/2 million, that they're

1 actually worth upwards of \$45 million.

2 And so that information, Your Honor, we believe gives us a
3 different -- a different take on what happened and what was
4 supposed to happen. This is strictly about the lack of
5 transparency.

6 THE COURT: Okay. Assuming --

7 MR. SBAITI: Yeah.

8 THE COURT: -- I buy into your argument that this is
9 newly-discovered evidence --

10 MR. SBAITI: Yes.

11 THE COURT: -- CLO Holdco would not have had reason
12 to know -- I guess that's what you're saying, right?

13 MR. SBAITI: I'm saying they -- they didn't know.

14 THE COURT: That they didn't know.

15 MR. SBAITI: Uh-huh.

16 THE COURT: And didn't have reason to know. I'm
17 trying to figure out who's damaged here.

18 MR. SBAITI: Well, CLO Holdco, my client, is damaged,
19 Your Honor.

20 THE COURT: How?

21 MR. SBAITI: Because one of the aspects of the -- of
22 Highland, one of the issues under, excuse me, of Highland's
23 advisory, is that it has a fiduciary duty. And that fiduciary
24 duty, at least here, entails two, if not, three prongs. The
25 first prong is they have to be transparent. You can't say --

1 THE COURT: How is -- you know, I know a lot about
2 fiduciary duties, believe it or not. How is CLO Holdco harmed
3 and the DAF harmed?

4 MR. SBAITI: Because, Your Honor, they lost out on an
5 investment opportunity to buy the piece of -- the HarbourVest
6 piece. They would have been able to go out and raise the
7 money. They had the opportunity --

8 THE COURT: Okay.

9 MR. SBAITI: They would have had the opportunity to
10 make a different argument.

11 THE COURT: What you're saying, you're saying, if
12 they had known what they didn't have reason to know, that it
13 was worth, let's say, \$45 million, that they would have gone
14 out and raised money and said, oh, we do want to exercise this
15 right of first refusal that we decided we didn't have and gave
16 in on, we're going to press the issue and then outbid the \$22
17 million, because we know it's worth more? Is that where
18 you're going? I'm trying to figure out where the heck you're
19 going, to be honest.

20 MR. SBAITI: That's -- Your Honor, I'd push back on a
21 little of the phrasing, only because the way these duties --
22 the way we understand the SEC's duties work when you're an
23 investment advisor is you have a transparency obligation and
24 an obligation --

25 THE COURT: Yes. Yes.

1 MR. SBAITI: -- not to divert these. So, yes, CLO
2 Holdco would have at least had the opportunity and been
3 offered the opportunity, which it could have taken advantage
4 of, to, if the assets were really on the block for \$22-1/2
5 million, they should have been able to buy their percentage
6 pro rata share of that \$22-1/2 million deal. I mean, in a
7 nutshell, that's -- that's where we believe we've been harmed.
8 And we believe that the obfuscation of those values and, to a
9 certain extent, the misrepresentation of those values in the
10 settlement is not cleansable by the argument, well, you should
11 have asked.

12 Well, you should have asked is fine in normal litigation,
13 but when the person you should have asked actually owes you a
14 positive duty to inform, we believe that the should-have-asked
15 piece doesn't really apply and there's -- and that's, that's
16 the basis of our case.

17 So it's not an end run around the settlement, Your Honor.
18 I think I opened with we're not trying to undo the settlement.
19 We're not saying HarbourVest has to take its interest back.
20 We're not saying the settlement has to go on. We're not even
21 saying any of the things that happened in Bankruptcy Court
22 need to change. But Section 959 is pretty clear that this is
23 management of third-party property --

24 THE COURT: I guess -- okay. Again, rabbit trail,
25 maybe. But CLO Holdco still owns its same 49.02 percent

1 interest that it did before this transaction. So if there's
2 value galore in HCLOF, it still has its 49.02 percent
3 interest. What am I missing?

4 MR. SBAITI: Oh, I think Your Honor's assuming that
5 HCLOF bought the piece back from HarbourVest. It didn't.

6 THE COURT: No, I'm not.

7 MR. SBAITI: Oh.

8 THE COURT: I'm not assuming that.

9 MR. SBAITI: Well, --

10 THE COURT: I know that now the Debtor has, what,
11 fifty point, you know, five percent of HCLOF, whereas it only
12 had, you know, a fraction.

13 MR. SBAITI: Point six-ish. Yeah.

14 THE COURT: Point six-ish, and HarbourVest had 49.98.

15 MR. SBAITI: Right.

16 THE COURT: So, again, please educate me. I'm really
17 trying to figure out how this lawsuit isn't just some crazy
18 end run around a settlement I approved. And moreover, what's
19 the damages?

20 MR. SBAITI: Well, Your Honor, --

21 THE COURT: What's the damages? CLO Holdco still has
22 its 49.02 percent interest in HCLOF.

23 MR. SBAITI: Your Honor, again, --

24 THE COURT: What am I missing? I must be missing
25 something.

1 MR. SBAITI: I think so, Your Honor.

2 THE COURT: What?

3 MR. SBAITI: The damages is the lost opportunity, the
4 lost opportunity to own more of HCLOF.

5 THE COURT: Oh, it could have owned the whole darn
6 thing?

7 MR. SBAITI: I could have owned 90 -- whatever 49
8 plus 49.98, 98.98 percent.

9 THE COURT: But --

10 MS. SBAITI: Or some pro rata portion.

11 THE COURT: But Mr. Seery had some information that
12 you think he was holding back from CLO Holdco that CLO Holdco
13 had no reason to know?

14 MR. SBAITI: Yes, Your Honor. The -- the -- what he
15 testified to that the value of those assets, excuse me, the
16 value of the HarbourVest interests in HCLOF or its share of
17 the underlying assets being \$22-1/2 million was either, one,
18 intentionally obfuscated, or, two, and I don't think this
19 excuses it at all, he simply used ancient data and simply
20 never updated himself, not for the Court and not for any
21 representations to the investors, who he himself testified
22 under oath in this Court that he has a fiduciary duty to under
23 the Investment Advisers Act.

24 THE COURT: This could get very --

25 MR. SBAITI: So that's injury to my client, Your

1 Honor.

2 THE COURT: This could get really dangerous. Maybe

3 --

4 MR. SBAITI: I'm sorry.

5 THE COURT: This could get really dangerous. Maybe I
6 should cut off where I'm going on this.

7 MR. SBAITI: Okay.

8 THE COURT: Of course, someone dangled it out there
9 in a pleading. You know where I'm going, right?

10 MR. SBAITI: I'm not sure I do, Your Honor.

11 THE COURT: Hmm. I do read the newspaper, but
12 someone put it in a pleading. HCLOF owns MGM stock, right?
13 Is that what this is all about? Is that what this is all
14 about? Or shall we not do this on the record?

15 MR. SBAITI: Well, Your Honor, this has nothing -- I
16 don't -- I don't think this has anything to do with the MGM
17 stock one way or the other.

18 THE COURT: You don't? OH?

19 MR. SBAITI: Your Honor, my charge as a counsel for
20 the DAF is pretty straightforward. We looked at the claims.
21 We looked at the newly-discovered information. We talked to
22 the people who had it, Your Honor. That was our
23 investigation. We put together a complaint. We believed that
24 we had a good basis to file suit, despite Your Honor's -- the
25 settlement approval. We expressly, because we understand how

1 finality is so critical in a bankruptcy context, we expressly
2 didn't ask for rescission. We expressly didn't ask for
3 anything that would undo the settlement.

4 Asking for damages because of how the settlement happened,
5 through no fault of the Court's, of course, but asking for
6 damages is not, at least not as I see it, an end run around
7 the Court's settlement, and it's a legitimate claim. And I
8 don't think this is far from the first time that new evidence
9 has come up that's allowed someone to question how something
10 was done that actually -- that actually damaged them.

11 THE COURT: Usually, they come in for a motion to
12 reopen evidence to the court who issued the order approving
13 the settlement.

14 MR. SBAITI: Well, Your Honor, I mean, that's --

15 THE COURT: Newly-discovered evidence.

16 MR. SBAITI: That would be the case in a final
17 judgment, Your Honor. But, you know, our understanding of the
18 way the settlement worked was that that was not necessarily
19 going to be -- not the direction anybody wanted to go, but
20 seeking damages on a straight claim for damages, which we're
21 allowed to seek, which I think is our prerogative to seek, we
22 went that direction.

23 THE COURT: Okay. Okay.

24 MR. SBAITI: But this --

25 THE COURT: My last question.

1 MR. SBAITI: Yes, Your Honor.

2 THE COURT: Again, I have to know. You have filed
3 some sort of pleading to reopen litigation against Acis in New
4 York? I'm only asking this because it's part of what's going
5 on here. What is going on here?

6 MR. SBAITI: Your Honor, that's a -- that's a
7 separate lawsuit, and it's not to reopen litigation against
8 Acis. It deals with post-plan confirmation mismanagement by
9 Acis.

10 THE COURT: Oh, okay. Okay.

11 MR. SBAITI: Yeah.

12 THE COURT: All right.

13 MR. SBAITI: But I believe there's a motion in front
14 of Your Honor, just to -- that gave notice that the suit was
15 filed, but I believe Mr. -- well, a bankruptcy lawyer filed
16 it. I don't know.

17 THE COURT: A motion or a notice? I don't know.

18 MR. SBAITI: I don't know, Your Honor. That's above
19 my paygrade.

20 THE COURT: I have not seen it. Okay?

21 MR. SBAITI: Okay.

22 THE COURT: Maybe it's there, but no one has called
23 it to my attention.

24 MR. SBAITI: With the Court's permission, I'm going
25 to yield time to Mr. Bridges.

1 THE COURT: Okay. Mr. Bridges?

2 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

3 MR. BRIDGES: Thank you, Your Honor. I'm grateful
4 that you asked most of those questions to Mr. Sbaiti. I would
5 not have been able to answer them. The one I can answer is
6 the one about judicial estoppel. Apparently, I did a pretty
7 lousy job earlier. I think I'm prepared to do a better job
8 now.

9 The case law I'd like to refer you to is the Texas Supreme
10 Court's 2009 decision in *Ferguson v. Building Materials*, 295
11 S.W.3d 642. And this was my concern and my issue, perhaps
12 because I used to teach it and so it was at the front of my
13 mind. But contrary to what you would think and what you said
14 earlier, it's not your ruling against us that would create a
15 judicial estoppel problem. It's if you ruled in our favor.
16 And I know that seems weird. Let me explain.

17 The two things that have to take place for there to be
18 judicial estoppel are, first, successfully maintaining a
19 position in one proceeding, and then taking an inconsistent
20 position in another. And Your Honor, what we talked about
21 earlier is the notion that your July order forecloses the key
22 claim that Mr. Sbaiti was just describing, that Mr. Seery
23 should have known. Not that he was grossly negligent or did
24 intentional wrong, but that he breached fiduciary duties
25 because he should have known and should have disclosed.

1 And if your order forecloses that and we come and convince
2 you that we nonetheless have colorable claims, colorable
3 claims of gross negligence or willful wrongdoing, that we
4 ultimately are unable to prove, our lawsuit could fail, even
5 though we had proved -- in the lawsuit we had proved he should
6 have known and that he breached fiduciary duties, but we would
7 be estopped, having succeeded from coming here and asking in
8 compliance with the order and its colorability rule, that we
9 would be estopped from then saying that this Court lacked the
10 authority to have issued that order in the first place, to
11 have released the claim on the mere breach of fiduciary duty
12 or ordinary negligence. That's the inconsistency that I was
13 concerned about.

14 By coming here rather than trying to make our objection
15 and our position known without submitting to the foreclosure
16 of that claim that is, in many ways, the most important, the
17 headliner from our District Court complaint, is the concern,
18 Your Honor. And frankly, if Your Honor's order does foreclose
19 that, then we're in serious trouble. That's the claim that
20 we're trying to preserve.

21 But Your Honor, I don't think it was in anyone's
22 contemplation in July of 2000 that what that order would do is
23 terminate -- 2020; sorry, Your Honor -- in July of 2020, that
24 that order would terminate future claims that might arise
25 based on future conduct that had not yet happened in Mr.

1 Seery's role. Not in his role as a manager of the Debtor's
2 property, but in his role as a registered investment advisor
3 on behalf of his clients and their property. And that is the
4 concern that the judicial estoppel argument is about.

5 THE COURT: I still don't understand. I'm very well
6 aware of judicial estoppel, the old expression, you can't play
7 fast and loose with the court. Take one position in one
8 court, you're successful, and then take another position in
9 another court. That's the concept.

10 MR. BRIDGES: Coming here --

11 THE COURT: How is this judicial estoppel if you had
12 done what I think the order required and asked this Court for
13 leave? What -- and I said fine, you have leave. Where's the
14 judicial estoppel problem?

15 MR. BRIDGES: If you say fine, you have leave, but
16 that leave is only, as the order states, because we have
17 colorable claims of gross negligence, colorable claims of
18 intentional wrongdoing, what happens to our mere negligence
19 and mere breach of fiduciary duty claims? Are they
20 foreclosed? The order on its face --

21 THE COURT: Well, I would interpret the order to be
22 yes, and then you could appeal me, and the Court would either
23 say it's too late to appeal that because you didn't appeal it
24 in July 2020, or fine, I'll hear your appeal. Where's the
25 estoppel?

1 MR. BRIDGES: Your Honor, our claims that this Court
2 lacks the authority either to have made that order in the
3 first place or the jurisdiction to rule on colorability now
4 because of Section -- the mandatory abstention provision,
5 whose section number I've now lost. That if we come to you
6 and ask you to rule on those things, have we not thereby
7 waived on appeal our claim that you couldn't rule in the first
8 place on those things?

9 That is what our motion for leave in the District Court
10 argues, is that there's -- there are jurisdictional
11 shortcomings with your ability to decide what we're asking
12 that Court to decide. And Your Honor, by coming here first
13 and then appealing, that's what we fear we would have lost.
14 And instead of coming here and appealing, what we -- what we
15 would have done, in the alternative, I guess, would be to come
16 here and ask you not to rule but move to withdraw the
17 reference of our own motion.

18 That two-step, filing here and filing a motion to withdraw
19 the reference on the thing we filed here, we didn't think was
20 required, nor could we find any case law or rule saying that
21 that was appropriate.

22 THE COURT: Okay.

23 MR. BRIDGES: These are not games, Your Honor. We
24 were not trying to play games. We aren't bankruptcy court
25 lawyers. We're not regularly in front of the Bankruptcy

1 Court. So the notion why didn't we come here first isn't
2 exactly at the top of our mind. The question for trial
3 lawyers typically is, where can we file this, what are the
4 permissible venues, not why don't we come to Bankruptcy Court?
5 Especially when your order appears to say that causes of
6 action that don't rise to the level of gross negligence or
7 intentional wrongdoing are already foreclosed.

8 Your Honor, the January order, I think I have to just
9 briefly address again, even though I don't understand why it
10 makes a difference. Apparently, counsel thinks it makes a
11 difference because Mr. Dondero apparently supported it in some
12 way. Our position is, for whatever difference it makes, the
13 January versus the July, we don't believe there's anything in
14 the District Court complaint putting at issue Mr. Seery's role
15 as a director, so we don't understand how that order is
16 implicated.

17 Again, I'm not sure that matters at all. I'm not raising
18 it as a defense. I'm just telling Your Honor this is all
19 about the July order, from our perspective. Certainly, the
20 July order puts his role as a CEO -- certainly, the District
21 Court case puts his role as a CEO at issue, and that's what
22 the July order is about.

23 Your Honor, the *Applewood* case requires specifics in order
24 to terminate our rights to sue and to bring certain causes of
25 action, and without that kind of specificity, Your Honor, we

1 believe that that order fails to preclude, fails to have
2 preclusive effect as to these later-arising claims. And we
3 would submit not only that it was not contemplated, but that
4 it was not intended to have that effect, and that even Mr.
5 Seery's testimony suggests that that's not how he understood
6 that order to be effective.

7 Counsel argued that the Barton Doctrine does apply here
8 and rattled off the names of cases that don't -- to my
9 knowledge, no case, no case that I can find deals with this
10 type of deferential order where someone is asked -- where a
11 court is asked to defer to the business judgment of an entity
12 in approving an appointment, and nonetheless deciding that the
13 Barton Doctrine applies. That's not what *Villegas* holds.
14 That's not what *Espinosa* holds. I don't think *Barton* is
15 applicable in a situation like that. Certainly, it's outside
16 of the context of what *Barton* anticipated itself over a
17 century ago when it was decided.

18 Your Honor, if we're wrong, please know we're wrong in
19 earnest. These are not games. These are not sneakiness. No
20 such motivation is at issue here. I was hopeful that that
21 would be plain from the text of the motion for leave itself.
22 If it's not, I'd offer this in addition. The docket at the
23 District Court shows that immediately upon filing the motion
24 for leave, a proposed order was filed with it asking to have
25 the proposed complaint deemed filed, which as soon as I saw I

1 asked us to immediately retract it and to substitute a new
2 proposed order that does not ask for the amended complaint to
3 be deemed filed. That is not what we wanted.

4 And the fear was what if our motion is granted because the
5 District Court says you have the right, you don't even need
6 leave, but as to the Bankruptcy Court, you're on your own,
7 this is at your own risk, I'm not going to rule on any of the
8 jurisdictional questions that you attempt to raise? We did
9 not want our complaint deemed filed for that reason. What we
10 did want was for a court where we did not risk judicial
11 estoppel to decide whether or not our key claim under the
12 Advisers Act had been foreclosed by your July order, and that
13 was the key and motivating factor.

14 On top of that, Your Honor, instead of arguing the meaning
15 of the word pursue, let me just say this. We understood
16 pursue in that context to refer to claims or causes of action,
17 not potential, unfiled, unasserted, contemplated claims or
18 causes of action. That until a claim or cause of action is
19 actually asserted in some way, that it can't be pursued, and
20 that the reference here was to two kinds of action, those that
21 had not yet been commenced -- and your order foreclosed the
22 commencing of them without permission -- and those that had
23 been commenced. And your order couldn't foreclose the
24 commencing of them because they hadn't been commenced yet, but
25 your order did foreclose pursuing them.

1 And that was my reading of what that order said. And it
2 fits with this notion that a claim or cause of action isn't
3 something you're considering or even researching. It didn't
4 dawn on us that researching or talking to a client about a
5 potential claim could violate the order because in some
6 respect that conversation could be in pursuit of the claim.

7 By the same notion, we didn't think asking a court with
8 original jurisdiction according to Congress, asking a court to
9 decide whether or not we were foreclosed from bringing our
10 claims in a motion for leave was violating your order.

11 We don't have much else, Your Honor. In terms of the need
12 to enforce compliance with your orders, if we understand them,
13 we sure as heck are going to follow them. And if we've
14 misconstrued the term pursue, I'm certainly very sorry about
15 that.

16 I appreciate counsel saying he thinks we're probably good
17 people. I did not think what we did was any kind of gross
18 error in judgment. I thought that what we were doing was
19 preserving our clients' rights, going to a court of competent
20 jurisdiction, and asking the question, can we do what we think
21 we ought to be able to do, but is -- frankly, Your Honor,
22 we're a bit confused about because of the order that seems on
23 its face to foreclose the very lawsuit that we think we should
24 be bringing on behalf on this charitable organization that
25 foreclosed it months before the conduct at issue that gave

1 rise to the complaint. And with that conundrum, knowing what
2 to do was not obvious or easy for the lawyers or for the
3 client who was dependent on his lawyers to give him good,
4 sound advice.

5 I'm very grateful for you giving us the time and for your
6 very pointed questions. Thank you, Your Honor.

7 THE COURT: Thank you. All right. Who's next?

8 CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

9 MR. ANDERSON: May it please the Court, Michael
10 Anderson on behalf of Mr. Patrick, Mark Patrick.

11 You know, this is a contempt proceeding. It's very
12 serious. And, you know, my stomach aches for the people here.

13 THE COURT: Mine does, too, by the way.

14 MR. ANDERSON: It truly aches.

15 THE COURT: Uh-huh.

16 MR. ANDERSON: And I mean what I said when I did
17 opening, when I said we don't need a hearing, an evidentiary
18 hearing. And I still don't believe we did, because it comes
19 down to what does the word pursue mean, because there's
20 already been an acknowledgement --

21 THE COURT: Do you all want to withdraw all your
22 exhibits? I've got a lot of exhibits that I now need to go
23 through. If I admit them into evidence, I'm going to read
24 them.

25 MR. ANDERSON: No, I understand.

1 THE COURT: Uh-huh.

2 MR. ANDERSON: But it does come down to the word
3 pursue. Counsel has already said commence doesn't do it, and
4 so then it's pursue.

5 And I could ask Your Honor, what did you mean when you
6 said pursue in the July order, but I'm not going to say that.
7 And I asked my client on the stand, you know, did you pursue a
8 claim or cause of action? And then it was very telling. What
9 happened with counsel? He stood up and objected to me even
10 asking if it was pursued. And it dawned on me, if he's going
11 to object, does pursue have some sort of legal -- that was his
12 objection. It was he objected on legal grounds. Does that
13 have some sort of legal meaning?

14 This is contempt. You can't be held in contempt unless it
15 is bright-line clear that you have deviated from a standard of
16 conduct and there's no ambiguity. Well, clearly, there is
17 ambiguity, because over on this side of the room we say filing
18 a motion for leave can't be pursue. We can look at the order
19 and we know it doesn't mean pursue because I just heard Your
20 Honor say you should have filed a motion for leave in this
21 Court before doing anything. All right? So if that -- if
22 that is what without the Bankruptcy Court first determining,
23 if that's what the motion for leave is, well, then if we go up
24 to the first sentence, No entity may commence or pursue a
25 claim or cause of action, then it has this, without the

1 Bankruptcy Court first determining, that means -- if pursue
2 means a motion for leave, if that's what that means, then that
3 order says you can't commence or file a motion for leave
4 before you file a motion for leave. Because that's what it
5 means. If pursue means motion for leave and you've said you
6 should have come here and filed a motion for leave because it
7 says, Debtor, without the Bankruptcy Court first determining
8 that notice that such claim or cause of action represents a
9 colorable claim, and specifically authorizing. The vehicle to
10 do that would be a motion for leave, right? And you can't
11 pursue anything until a motion for leave has been filed.

12 Now, where was the motion for leave? And I understand,
13 Your Honor, you know, no expert at reading the room,
14 obviously, you're frustrated that the motion for leave was
15 filed in the District Court and not in this Court. But it
16 doesn't change the fact, and neither did any of the evidence,
17 change anything, is what does pursue mean?

18 And if someone says, well, it's obviously clear it means
19 x, well, is it really obviously clear it means filing a motion
20 for leave? Because nobody on my side, when you read it, when
21 you say pursue, can read it that way. And if we're going to
22 have contempt sanctions being posed, and there has to be clear
23 and convincing evidence or beyond reasonable doubt, depending
24 upon, you know, I don't think you have to get to that part,
25 but clear --

1 THE COURT: This is not criminal contempt.

2 MR. ANDERSON: Clear and convincing is the civil
3 standard for contempt.

4 THE COURT: Right.

5 MR. ANDERSON: And if pursue is open to that much
6 interpretation, it's not the kind of thing that can be held in
7 contempt on. And I understand the frustration. I hear the
8 frustration. I hear counsel talk about that was not their
9 intent when they filed it. You know, I heard Mr. Patrick get
10 up there. I heard counsel say, hey, Mr. Patrick's doing his
11 job, he's a good guy, seems like a good guy. Well, Mr.
12 Patrick's up there. Look, they filed the underlying lawsuit.
13 Nobody -- there's no motion for that in this Court about the
14 underlying lawsuit. It's only about the motion for leave.
15 That's all we're here about.

16 And so you go to that, and we've heard all these arguments
17 about it, and we've been here almost as long as the motion for
18 leave was actually on file before it was sua sponte dismissed
19 without prejudice.

20 And so I go back to that and I say that, if pursue means
21 filing a motion for leave, then that order would require an
22 order for anyone to violate -- it would be violated upon the
23 filing of a motion for leave, because you can't pursue
24 something until the Bankruptcy Court has already first
25 determined, after notice, that such claim or cause of action

1 represents a colorable claim and specifically authorizing the
2 entity to bring such a claim. Because that -- we already know
3 that's a motion for leave in and of itself. Therefore,
4 pursue, just simply filing a motion for leave will put you in
5 that.

6 But that gets into all these -- we don't need to be having
7 this discussion about, you know, is a motion for leave pursue?
8 Is pursue a motion for leave? I've heard both arguments here.
9 It doesn't justify contempt. And I know -- and so certainly
10 with respect to my side, I, you know -- given that, I would
11 request that the Court deny the request for contempt.

12 And again, I want to say, too, look, we hear you.
13 Absolutely hear you. Understand the frustration. Totally
14 hear you on that.

15 I'm going to turn over the balance of my time to Mr.
16 Phillips, --

17 THE COURT: Okay.

18 MR. ANDERSON: -- unless you have any questions, Your
19 Honor. I appreciate it.

20 THE COURT: Okay. I do not.

21 CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

22 MR. PHILLIPS: Your Honor, Louis M. Phillips, and
23 I'll be brief. I'm going to try to bring it down to -- I was
24 not involved. We are -- we are here because of the
25 indemnification provisions of CLO Holdco representing Mr.

1 Patrick individually. My firm was not involved in the
2 litigation. We were hired to represent CLO Holdco and some of
3 the defendants in the UCC litigation, and our role has
4 expanded to do some other stuff, particularly represent Mr.
5 Patrick because of the indemnification provisions of the
6 Holdco entity documents. He's entitled to indemnification and
7 we're providing a defense for him. That's why we're here.

8 So I come way after the order. We have not been involved
9 in anything. But I think I'm just going to try to distill
10 everything about the order and about the concern and about the
11 litigation, because the Court is asking about is this an end
12 run on the settlement? The Court is also saying, all you had
13 to do was come here first.

14 But let's look. We're here about one thing, the motion
15 for leave. And as Mr. Anderson pointed out, the commence or
16 pursue a claim, according to the order, commence or pursue can
17 only occur after the Court has authorized the litigation.
18 Okay. So that's what the order says. You can't commence or
19 pursue.

20 Counsel for the Debtors says, well, it can't be after
21 commencement because you've already commenced the action. So
22 pursue has to mean something before the commencement of the
23 action. It would mean something before the commencement of
24 the action under this order.

25 But it doesn't mean something before the Court approves

1 the commencement of the action, because commence or pursue
2 under this order does not occur before the Court has acted.
3 That's the language of the order. It only occurs after the
4 Court has authorized it. That's the context in which commence
5 or pursue exists, after this Court has authorized.

6 Okay. So it can't be pursuit before the Court has
7 authorized without commencement because it only is triggered
8 by the Court's authorization of the action, which means,
9 before you commence it, actions in time take time, before you
10 commence the action, you have to pursue the action to commence
11 it. But you can't do that until you've approved it. All
12 right?

13 That's the temporal concern and why we say the motion for
14 leave can't be pursuit of an action under this order. It
15 might be pursuit under another definition or another order.
16 In other words, maybe an order could be issued saying, you
17 can't file a motion for leave in any other court but this one.
18 I don't know whether it'd be a good order, but the order could
19 say that. But when you say all you had to do was file a
20 motion for leave in this Court and everything would be okay,
21 no. The motion for leave is not, under this order, pursuit.
22 Pursuit only occurs under this order after you've done
23 something, after Your Honor has done something.

24 So if a motion for leave is violative at the District
25 Court, the motion for leave would be violative here, because

1 it occurs before Your Honor has taken action.

2 Now, clearly, you want people to ask, but just as clearly,
3 and this was the point of my remarks earlier at the tail-end
4 of opening, just as clearly, I have a question, because
5 frankly, I understand what these guys are saying. These guys
6 haven't really said it. They're a little shame-faced at what
7 these guys are asking. Because what these guys are asking is
8 whether or not an employee Seery, as the CRO -- and we heard,
9 oh, he bargained for it, he wouldn't have done it without
10 getting the order and the protections because -- did he
11 bargain for not having to comply with the Investor Advisory
12 Act? Did he bargain for not having a fiduciary duty to third
13 parties? Because the one thing that Mr. Bridges has been
14 trying to tell you is that, under this order, if it's
15 interpreted one way, you would never authorize a violation of
16 the Investment Advisory Act because it wouldn't necessarily be
17 gross negligence or willful misconduct.

18 In other words, in employing Seery, did the Debtor go out
19 in this disclosure statement and say, we are advisor to \$1.2
20 billion of third-party money, and guess what, our CRO has no
21 fiduciary duty to you? We have forestalled any claim under
22 the Investment Advisory Act in our employment order. Did that
23 happen?

24 Because if that happened, I don't know if the Court was
25 really thinking that way, because that -- that can't happen in

1 a confirmation order before, under the Fifth Circuit
2 authority, after disclosure statement, plan, et cetera, et
3 cetera, because that's a third party release of claims that
4 may -- that haven't occurred yet. You would be releasing
5 because you would be saying you have no right. You have no
6 right. This is not temporal. This is saying you have no
7 right, if it's saying that, to bring an Investment Advisory --
8 Investment Advisory Act or a Breach of Fiduciary Duty Act
9 that's not gross negligence or willful misconduct forever upon
10 an employment order.

11 Now, if that's not what it means, then we have another
12 conundrum. The other conundrum -- and I'm new to this, maybe
13 this has been thought out by everybody, but I don't think so.
14 The other conundrum is this order doesn't apply to actions
15 that don't involve willful -- gross negligence or willful
16 misconduct. It only applies to those types of actions. So,
17 frankly, I don't know what the order does.

18 I think the problem -- I probably shouldn't be the
19 purviewer of who ought to know because my standard's probably
20 really low, given my capacity here. But I'm a guy off the
21 street. Seery gets hired to run the Debtor. Seery testifies
22 and he admits, we've got Investment Advisory Act all over the
23 place. We're making lots of fees out of administering all
24 this third-party money. Do they know? Do they know he's
25 immune? Do the third parties know?

1 Now, a standard about managing the Debtor? Absolutely.
2 That's just pure D Chapter 11, pure D corporate, pure D
3 standard liability if you're operating an entity. You're not
4 liable for gross negligence or willful misconduct. You're
5 not. And so any claim for damage to the Debtor or to the
6 estate by actions taken in the CRO capacity, absolutely.
7 Absolutely. You don't want a bunch of yoyos suing, you did
8 something against the Debtor and the Debtor is now worth \$147
9 less than it was because you did something, you were negligent
10 and you forgot to put the dog out. No. It's got to be gross
11 negligence or willful misconduct if you are talking about
12 running the Debtor and running the estate.

13 But that's not what we have here. And you can ask all the
14 questions you want about whether the lawsuit's any good, but
15 that's not what's up before the Court. What's up before the
16 Court is whether filing a motion for leave is contempt. And
17 under this order, you're saying, all you had to do is come
18 here. Well, in one reading of it, you'd have never got relief
19 because you can't bring the kind of action. I foreclosed it
20 by employing Seery. He no longer has a fiduciary duty and is
21 no longer bound by the Investment Advisory Act. Case closed.
22 Get out of here. Unless you can formulate something around so
23 that you can establish gross negligence or willful misconduct,
24 I've done away with all those causes of action.

25 I don't think that's what happened. And if that's not

1 what happened, this doesn't apply because it shouldn't apply
2 to third-party actions. It should apply to actions for damage
3 to the estate by creditors of the estate for whom Seery is
4 acting as CRO of the Debtor, who is the -- in possession of
5 the estate. That makes perfect sense. Perfect sense. And
6 nobody would say that you shouldn't have sole authority to
7 determine whether a CRO who's acting for the estate and
8 damages the estate -- because that'd be a claim against the
9 estate. That would be an administrative claim against the
10 estate. That is just hornbook law.

11 That's the way I see this order. And I admit I didn't
12 write it. I admit I didn't submit it. I admit I didn't
13 litigate it. I admit I'm coming in late. But sometimes maybe
14 a fresh pair of elderly, trifocal-assisted eyes doesn't hurt.
15 Because I will tell you, Judge, on one read this Court says
16 don't bother coming here because you don't have the kind of
17 claim that can be brought, even if you're a third party. And
18 the only way that happens is if Seery's released from any
19 obligation under the Investment Advisory Act, and I think
20 everybody would like to know that. And he can't be sued for
21 breach of fiduciary duty to third parties that he admits he
22 owes. I think people would like to know that.

23 And if it doesn't, then this is not -- this order is not
24 about that. But the fact -- I've been at this 40 years, and I
25 usually don't want to talk about myself. There's really not a

1 lot to talk about. But I hear Mr. Morris how he's never done
2 this, he's never done that. I hear this, I'm a good -- you
3 know, whatever. I'm confused. I've been doing this 41 years.
4 Bankruptcy, 39.7. I must be crazy, but that's what I've been
5 doing. And I'm confused because I don't even know if they
6 needed to come here. I don't even know if, had they come
7 here, if they could have even presented an action for gross --
8 for negligence or breach of fiduciary duty, could have --
9 gross negligence or willful misconduct? I don't know whether
10 this order just applies to Seery's duties as CRO vis-a-vis
11 creditors of the estate and property of the estate and damage
12 to the estate. Because that's not what we're dealing with
13 here.

14 The point is, Judge, this is contempt. And I understand
15 Your Honor knows all about contempt. Your Honor knows about
16 *Matter of Hipp*. Your Honor knows about civil contempt
17 authorization for bankruptcy courts. Your Honor knows that
18 you can't operate without the right to impose civil contempt
19 sanctions. And Your Honor knows, and I agree with Your Honor,
20 that civil contempt is both remedial and coercive.

21 But how do you coerce around my questions? Maybe I am all
22 wet, but if I am, I don't think I am, and I don't understand
23 that I am, and that's why I'm concerned about going off into
24 this contempt wilderness and millions in fees, when the motion
25 for leave was dismissed and when the lawsuit doesn't ask for

1 or includes most of its claims. I don't even -- I have not
2 studied the lawsuit. I wasn't involved in it. But if it's a
3 breach of fiduciary duty and Advisory Act and it says what
4 you've been told it says, that he should have pulled up
5 different stuff, that the valuation metrics were different,
6 that he shouldn't have used it, I don't know that they're
7 saying fraud. I don't know that they're saying he knew he was
8 doing -- I think they're saying he breached the Investment
9 Advisory Act. And that's not gross negligence or willful
10 misconduct. Then does this order apply or this order -- does
11 this order foreclose that?

12 The fact is, I think we could have decided this on the
13 pleadings and on the order. We didn't. The fact that Mr.
14 Dondero did A, B, C. And I will tell you this. Mr. Patrick
15 has stood up. He's going to get a harpoon, he's going to get
16 a harpoon, subject to his right to appeal. But he has told
17 this Court. We represent him. We're not trying to get him
18 out of having authorized the order. It's very important for
19 this Court to understand. Mr. Patrick is one of these
20 entities. Mr. Dondero can holler and scream all he wants to.
21 Mr. -- and look, did he terminate Grant Scott? If I'm Grant
22 Scott, and this is my best friend and I was in his wedding and
23 I was his roommate and I was his best friend and I'm doing
24 this stuff for \$5,000 and I do something and \$5,000 a month
25 and I do something and I get hollered at and I've got a full a

1 law practice, I'm an IP lawyer, why don't I just tell him to
2 go jump in a lake, which is the other way you could look at
3 Grant Scott leaving. I want you to jump in a lake. I'm out
4 of here. I don't need this.

5 Thank you.

6 THE COURT: All right. Thank you.

7 MR. DEMO: Your Honor, how much time do they have
8 left, --

9 THE COURT: Um, --

10 MR. DEMO: -- to be honest?

11 THE COURT: Nate, are you -- 26 minutes? All right.

12 MR. TAYLOR: I'll go way under, Your Honor.

13 THE COURT: Okay.

14 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

15 MR. TAYLOR: Your Honor, Clay Taylor. I'm here on
16 behalf of Mr. Dondero. He was named as an individual alleged
17 violator within the order.

18 THE COURT: Okay. I'm getting lawyers mixed up. Mr.
19 Anderson, who did you represent?

20 MR. ANDERSON: Mr. Patrick. Mr. Phillips and I
21 represent --

22 THE COURT: You're Mr. Patrick?

23 MR. PHILLIPS: We're Mr. Patrick.

24 THE COURT: You're both --

25 MR. PHILLIPS: Mr. Patrick.

1 THE COURT: Okay. I'm sorry. I'm getting my Fort
2 Worth law firms mixed up. Okay.

3 MR. TAYLOR: That's quite all right. Clay Taylor
4 from Bonds Ellis here on behalf of Mr. Dondero. And we're
5 here because he was named in the alleged violator motion
6 within the order as an alleged violator. We don't think that
7 he is, for the reasons that we're about to explain, but we
8 were ordered to appear --

9 A VOICE: No.

10 MR. TAYLOR: -- and so therefore we are appearing and
11 telling you why we're not an alleged violator.

12 First of all, for all the reasons that Mr. Sbaiti and Mr.
13 Bridges and Mr. Phillips and Mr. Anderson said, the court
14 order was in effect. We agree with that. It required certain
15 conduct to be done. Yes, it did. It said you couldn't
16 commence something. It said you couldn't pursue it. I think
17 we have gone through what the pursuit and commence. Nobody is
18 arguing that anything was commenced. It comes down to
19 pursuit.

20 But let's talk about what the evidence shows about Mr.
21 Dondero. It shows that Mr. Dondero believes that there have
22 been breaches of fiduciary duty. He thinks that there has
23 been negligence committed. He believes that actions should be
24 taken. We don't run away from that. He, frankly, told you
25 that.

1 But here, he didn't take any action to pursue it. The DAF
2 did. CLO Holdco did. It's undisputed that he's not an
3 officer, director, or control person for either of those
4 entities. The act we're here on is a motion for leave to file
5 an amended complaint to include Mr. Seery. That's -- Mr.
6 Dondero didn't take any of those acts. He believes it should
7 have been done, but he's not the authorizing person.

8 He might have -- let's just pretend that he thought he was
9 authorizing something. It doesn't matter that he thought he
10 could authorize something or that he was trying to push for
11 it. The fact remains he can't authorize it. You know, he can
12 say, I declare war on Afghanistan. Well, he can't. Congress
13 can't. He can write a letter to his Congressman. He already
14 wrote a letter to his Congressman. He talked. He talked with
15 the head of the acting CLO -- CLO Holdco and he said, I think
16 there's something wrong here. I think you should be looking
17 into it. You know what, he goes, you might be right. Go talk
18 with Mazin about it. Give him some data. Conduct an
19 investigation. They did. And then they went to the
20 authorizing person and they filed a motion for leave to
21 include Mr. Seery. Mr. Dondero did nothing wrong in that.

22 Now, there is some personal animosity. I think that Your
23 Honor has probably seen there seems to be some personal
24 animosity between Mr. Seery and Mr. Dondero, and that's
25 unfortunate. But just because there's some personal animosity

1 doesn't mean that maybe something wasn't done wrong. Maybe
2 that Mr. Dondero -- he's certainly allowed to at least tell
3 people, well, I think there was something done wrong. And if
4 there is an action to be had, then those appropriate entities
5 can take it. But he didn't do those things.

6 And so even if he says, just like Michael Scott, "I
7 declare bankruptcy," it doesn't matter. You have to take the
8 certain actions.

9 THE COURT: I got it. I don't know if everyone did.

10 MR. TAYLOR: Yes, well, yeah, you have to be a *The*
11 *Office* fan.

12 But so that's where we stand. And for all the reasons the
13 prior people have discussed, I don't think that there was any
14 violation of this Court's order. But even if there was, Mr.
15 Dondero in this situation was not the one. We're going to
16 have to deal with the other order that came out yesterday in
17 due course, but for this discrete issue that is before this
18 Court today, Mr. Dondero didn't violate anything.

19 Thank you.

20 THE COURT: All right. Mr. Morris, you get the last
21 word.

22 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

23 MR. MORRIS: Thank you, Your Honor. These are going
24 to be discrete points because it's truly rebuttal. I'm going
25 to try to respond to certain points.

1 Mr. Bridges and Mr. Phillips made extensive arguments
2 about why they believe the order is wrong, why it's
3 overreaching. They tried to get into your head to think about
4 what you intended or what you thought. The fact of the matter
5 is, the answer to all of those questions -- first of all, none
6 of it's relevant to this motion because we've got the order --
7 but the answer is very simple. Forget about coming here to
8 seek leave to amend to add Mr. Seery. We can avoid Mr.
9 Sbaiti's concerns about judicial estoppel or something. Why
10 didn't they just file the motion for reconsideration? They
11 filed that after they filed the motion for leave to amend,
12 after we filed the motion for contempt. Only then did they
13 file the motion for reconsideration.

14 Now, we think it's ill-thought-out. We think it's
15 problematic. Probably not today, is my guess, we'll argue to
16 you as to why we think that motion ought to be denied. But if
17 they truly believed that the order was infirm in any way,
18 wouldn't the proper thing to have been to come here and tell
19 you that? Wouldn't the proper thing to be to come to the
20 court that issued the order that you have a problem with and
21 ask the court to review it again? And if Your Honor overruled
22 the motion, to appeal it.

23 Why are we even doing this? Why did they do it? It's not
24 we. Why did they do it? Right? And that solves almost
25 everything they've said. That's point one.

1 Point two, the January order. The January order is very
2 important. It's important not just because it applies to
3 directors, but it's important because Mr. Dondero agreed to
4 it, and it also applies -- I want to get it -- Paragraph 10.
5 It's Exhibit 15. It applies to the independent directors and
6 the independents directors' agents. If a CEO is not an agent
7 of an independent director, I'm not sure what is. The
8 independent directors are the body that appointed the CEO.
9 The CEO, Mr. Seery, is acting on behalf of the board. This is
10 the order that Mr. Dondero agreed to. It's the order -- take
11 out the word independent director; put in Mr. Seery -- it's
12 the order everybody's complaining about. But even the January
13 order certainly applied to Mr. Seery. That's point two.

14 Point three. I've heard a lot of concerns about the
15 slippery slope and what does pursuit mean and does talking to
16 a lawyer mean pursuit and doing an investigation being
17 pursuit. I don't know, Your Honor, and I don't care, because
18 that's not what we're here to talk about. We're here to talk
19 about a specific act -- not a hypothetical, not a slippery
20 slope. We're talking about the filing of a motion for leave
21 to amend a complaint to add Mr. Seery as a defendant. That's
22 all we're talking about. So, you know, the rest of it, it's
23 just noise. And the only question is whether, and I think
24 it's pretty clear, that means pursuit.

25 Another version on the theme of was there any alternative

1 to filing the motion in the District Court, I think there was.
2 The Sbaiti firm did file that suit against Acis in New York.
3 And if Your Honor checks the docket in the Acis bankruptcy, I
4 think you'll find that there's a motion from Mr. Rukavina, for
5 a comfort order, basically, saying that -- asking the court to
6 declare that the filing of the complaint in New York against
7 Acis didn't violate the plan injunction. I think I have that
8 right.

9 But I point that out, Your Honor -- it's not evidence in
10 the record, but the Court can certainly take judicial notice
11 of what's on its docket -- I point that out because there's
12 another example of a lawyer who is very active in this case
13 who actually -- now, he already commenced the suit, so he did
14 -- they did both simultaneously, so I don't want to suggest
15 that that's the perfect thing to have done, but at least he's
16 here asking for -- he's bringing it to your attention, he's
17 telling you it's happened, he's asking for a comfort order,
18 and someday Your Honor may rule on it. I don't know.

19 Number six, what's with the pursuit of Mr. Seery? What is
20 with the pursuit of Mr. Seery? Is there any doubt in
21 anybody's mind that the Debtor is going to have to indemnify
22 Mr. Seery and will bring in another law firm? And while I
23 don't think it will ever happen in a hundred billion years, if
24 there is a judgment against Mr. Seery, isn't that going to be
25 the Debtor's responsibility? Why are they even bothering to

1 do this? I think it's a fair question for the Court to ask.

2 I think Mr. Taylor came up and talked about animosity.

3 How do you explain going after Jim Seery? How do you do it?

4 He's going to be indemnified. It's in -- it's in like three

5 different orders. It's in the confirmation order. It's in

6 the CEO order. It's -- it's probably as a matter of law.

7 It's in the Strand partnership agreement. It's -- he's been

8 indemnified like 12 different times. What is the purpose,

9 other than to make Mr. Seery's life miserable? There is none.

10 You'll never hear a rational explanation for why they're doing

11 this.

12 THE COURT: Just so you know, I've not looked at any

13 of the pleadings in the District Court --

14 MR. MORRIS: And I'm not asking you to.

15 THE COURT: -- other than what has been presented to

16 me today.

17 MR. MORRIS: Yeah. That's fine, Your Honor.

18 THE COURT: But I'm very flipped out about the causes

19 of action against the Debtor, --

20 MR. MORRIS: Yeah.

21 THE COURT: -- who hasn't reached an effective date.

22 MR. MORRIS: Well, --

23 THE COURT: And I'm most interested to know what the

24 defenses, motions --

25 MR. MORRIS: We'll get to that.

1 THE COURT: -- are going to be raised in that regard.

2 MR. MORRIS: We will get to that in due course.

3 I do want to point out, just to be clear, because we keep
4 hearing that they learned about, you know, all of these
5 horrible things after the fact. In the complaint, which I
6 think is Exhibit 12, --

7 THE COURT: I'm there.

8 MR. MORRIS: -- at Paragraph 127, the Plaintiffs
9 allege, "Mr. Seery was informed in late December 2020 at an
10 in-person meeting in Dallas, to which Mr. Seery had to fly,
11 that HCO" -- excuse me "HCLF and HCM had to suspend trading in
12 MGM Studios' securities because Seery had learned from James
13 Dondero, who was on the board, of a potential purchase of the
14 company. The news of the MGM purchase should have caused
15 Seery to revalue."

16 I cannot begin to tell you the problems with that
17 paragraph. We're not going to discuss them today. I made a
18 promise to these folks that we wouldn't get into the merits of
19 the complaint. But Your Honor was onto something before, and
20 those issues, you know, may see the light of day one day. And
21 if they do, folks are going to have to deal with it. But I
22 will point out that at the time the communication was made,
23 the other TRO was in effect. We didn't bring that one to the
24 Court's attention. But the important point there, Your Honor,
25 is December 2020. It is December 2020. That is the

1 allegation that's being made against Mr. Seery. And the fact
2 of the matter is, because I've done the research myself, the
3 Court will find that on December 23rd, the day the HarbourVest
4 settlement motion was filed, it was fully public knowledge
5 that Amazon and Apple, I think, had shut down negotiations
6 with MGM at that time. Right? So the big secret information,
7 it was in the public domain on December 23rd.

8 There will also never be any evidence ever that Mr. Seery
9 got on a plane and flew to Dallas in December 2020, but that's
10 a minor point.

11 I'd like to just conclude, Your Honor, by saying I've
12 heard pleas that they understand. They understand, Your
13 Honor, now they understand. It would be good if they promised
14 the Court that they won't seek to assert claims against Mr.
15 Seery anywhere but in this Court and comply with the order as
16 it's written. That, that, that would be taking a little bit
17 of responsibility.

18 I have nothing further, Your Honor.

19 THE COURT: Okay. Thank you.

20 All right. Let me give you some clue of when I'm going to
21 be able to rule. I've been glancing at my email in hopes that
22 something set tomorrow would go away, but that's not
23 happening. I've got a hearing that I've been told will take
24 all day tomorrow on a case involving a half-built hotel,
25 luxury hotel in Palm Springs, California. So I have to spend

1 the next I don't know how long getting ready for that hearing
2 tomorrow, and then I have what looks like a full day of
3 hearings Thursday, including you people coming back on
4 something.

5 MR. POMERANTZ: Your Honor, I was going to address
6 that. We have Dugaboy's motion to enforce compliance on the
7 2015(3) reports.

8 THE COURT: That's what it was.

9 MR. POMERANTZ: Since we haven't gotten to the motion
10 to modify the Seery order, my suggestion would be we use that
11 time -- of course, Dugaboy, I'm not sure if they're on the
12 phone. They're not here. I'm not sure that's time sensitive.
13 But if Your Honor wanted to have a hearing on that motion,
14 which was contemplated to take place today, the Debtor would
15 be okay having that motion heard on Thursday, perhaps by
16 WebEx, unless Your Honor wants us to stay here, which we would
17 if you do, and then reschedule the 2015(3) motion.

18 But again, that wasn't my motion. It's Dugaboy's. I'm
19 not sure Mr. Draper is on. But we obviously have some
20 calendar issues.

21 MR. MORRIS: And Your Honor, just to complete it, I
22 think also on Thursday the Court is supposed to hear HCRE and
23 Highland Capital Management Services motions for leave to
24 amend their complaint in the promissory note litigation
25 against each of them. I think that's also on the calendar for

1 Thursday. I don't expect that -- I hope that doesn't take
2 very long, but that's also, I believe, on the calendar.

3 THE COURT: Okay. Mr. Draper, are you out there?

4 MR. PHILLIPS: I didn't see him on the list, Your
5 Honor. I was just looking. But --

6 THE COURT: Okay. All right. Well, --

7 MR. PHILLIPS: What is the question? I can send him
8 a text real quick.

9 THE COURT: Well, just have -- if you all could
10 follow up with Traci Ellison, my courtroom deputy, tomorrow, I
11 am perfectly happy to continue the motion to modify the Seery
12 order to Thursday morning at 9:30 if Draper is willing to
13 continue the 2015 motion.

14 MR. POMERANTZ: I know, if I was him, my first
15 question would be is what times does the Court have available?
16 We could work that through Ms. Ellison.

17 THE COURT: Yes. And I'm just letting you know --
18 talk to her. Okay. Number one, I'll do these by video, okay?
19 WebEx. But I know I don't have any time Wednesday, and
20 Thursday's a busy day.

21 We have court Friday morning at 9:30 in--?

22 THE CLERK: Cici's Pizza.

23 THE COURT: Cici's Pizza? That's not going to take
24 very long, right?

25 THE CLERK: I don't think so.

1 THE COURT: I can potentially do something, you know,
2 10:00 o'clock Friday morning. Other than that, then you've
3 got to wait a while, because I have a seven-day trial, live
4 human beings in the courtroom starting next Monday. And so my
5 point is mainly to tell you, as much as I would like to rule
6 very, very fast, it's going to be, it looks like, a couple of
7 weeks or so before I can give you a ruling on this.

8 MR. BRIDGES: Your Honor?

9 THE COURT: Yes?

10 MR. BRIDGES: May I? It's our motion. I would
11 propose, if counsel would agree, that we just submit it on the
12 papers.

13 THE COURT: Everybody good with that? I'm certainly
14 good with that.

15 MR. POMERANTZ: Your Honor, I'd like there to be
16 argument. I have a lengthy argument. I think I'd like to
17 address a number of the things that -- Mr. Bridges made his
18 argument today. Okay?

19 THE COURT: Okay.

20 MR. POMERANTZ: His deck, it was entitled, Motion to
21 Modify.

22 THE COURT: Okay.

23 MR. POMERANTZ: So that's very nice of him, but I
24 would like to make my argument.

25 THE COURT: Okay. Let's try to nail this down right

1 now. Friday at 10:00 o'clock, can we do the oral argument
2 WebEx?

3 MR. POMERANTZ: On that one, yes, Your Honor.

4 THE COURT: On that one? Everybody good? Okay. So
5 we'll come back Friday, 10:00 o'clock, WebEx, for that motion.

6 You know, I'm going to say a couple of things where --
7 I've leaned toward thinking this is a pretty simple motion
8 before me, the motion for contempt, but when people offer into
9 evidence documents, I read your documents. Okay? That's my
10 duty. And so I have however many exhibits I admitted today
11 that I am going to look at and see how they sway me one way or
12 another on this issue. But I will tell you that my gut is
13 there has been contempt of court. Okay? I don't see anything
14 ambiguous at all about Paragraph 5 of my July 16th, 2020
15 order. Somebody may think I overreached, but if that was the
16 case, someone should have argued at the time I was
17 overreaching. Someone should have appealed the order. And I
18 think it's a *Shoaf/Espinosa* problem at this point for anyone
19 to argue about the enforceability of that order.

20 I think there's nothing ambiguous in the wording. Pursue
21 is not ambiguous. There's nothing confusing about the
22 requirement that any entity who wanted to sue or pursue a
23 claim, you know, commence claim, pursue a claim against Mr.
24 Seery, had to come to the Bankruptcy Court. Standard-fare
25 gatekeeping order.

1 So what I'm going to be looking at is, do these documents
2 I admitted into evidence change my view on that, and then the
3 harder question is who of the alleged contemnors am I going to
4 think it's clear and convincing committed contempt and -- who
5 are the contemnors, and then, of course, what are the damages?
6 Coercive or compensatory damages?

7 So, again, you know how I feel, to the extent that's
8 helpful in your planning purposes. I'm pretty convinced
9 contempt of court has occurred. It's just a matter of who's a
10 contemnor and what are the damages.

11 I'll say a couple of remaining things. I continue to be
12 frustrated, I think was the word people used, about
13 unproductive ways we all spend our time. I am going to spend
14 I don't know how many more hours drafting another ruling on a
15 contempt motion, and attorneys' fees are through the roof.
16 And, you know, I dangled out there a question I couldn't
17 resist about MGM.

18 And I will tell you, I mean, someone mentioned about their
19 stomach aching. Personal story, I could hardly sleep the
20 night it became public about the Amazon purchase, because,
21 silly me, maybe, I'm thinking game-changer. This is such
22 potentially a windfall, an economic windfall. Maybe this
23 could be the impetus to make everyone get in a room and say
24 look, we've got this wonderful windfall of money. I don't
25 know how much is owned directly or indirectly by the Debtor of

1 MGM stock. I don't know how much the Debtor manages. I
2 don't know how much, you know, some other entity. I know it's
3 probably spread out in many different entities. But I know, I
4 know because I listen, that one or more of the Highland-
5 managed CLOs has some of this, and I think I read -- remember
6 that HCLOF, which now Highland owns more than 50 percent of,
7 has some of this stock. Right?

8 MR. DONDERO: Do you want to know what happened?

9 THE COURT: Oh.

10 A VOICE: No.

11 THE COURT: Well, okay. So, you know, I can
12 understand I'm getting into maybe uncomfortable territory in a
13 public proceeding, so I'll stop.

14 But, you know, do we need to set up a status conference?
15 Do you all need to like talk about this? Am I just being
16 naïve? Couldn't this be a game-changer, where maybe it would
17 give new incentive to --

18 MR. POMERANTZ: Your Honor, I would -- he's been
19 pretty quiet through the whole hearing, Mr. Clemente. He has
20 the Committee, that a couple of people you've heard have sold
21 claims. They're now held by other parties.

22 You know, the door is always open. I don't think this is
23 going to be game-changer, unfortunately. We would like
24 nothing more, as Debtor's counsel. We don't enjoy coming to
25 Your Honor for contempt hearings.

1 Mr. Clemente said that it was productive. We would sure
2 participate. But right now, we have creditors who are very
3 angry that millions and millions of dollars have been spent on
4 really a waste of time and a waste of the Court's time and a
5 waste of everyone's time and eating into the creditors' money.
6 So I would ask Mr. Clemente to address that.

7 MR. CLEMENTE: I'm here.

8 THE COURT: Yes, he's way in the back, hoping to be
9 ignored.

10 MR. CLEMENTE: It's too cold, Your Honor, where I was
11 sitting. For the record, Your Honor, --

12 THE COURT: I noticed some entity called Muck
13 Holdings bought HarbourVest, according to the docket.

14 MR. CLEMENTE: That's correct. Muck Holdings bought
15 HarbourVest, and I believe also the Acis claim, and then
16 there's a different entity that bought the Redeemer claim.

17 THE COURT: Uh-huh.

18 MR. CLEMENTE: So, as we mentioned in our -- one of
19 our pleadings, I think it was the retention pleading for
20 Teneo, the Committee consists of two members currently, Meta-e
21 and UBS.

22 THE COURT: Uh-huh.

23 MR. CLEMENTE: Obviously, Your Honor just approved
24 the UBS settlement recently. The U.S. Trustee is aware of the
25 make-up of the Committee, and is currently comfortable with

1 the Committee maintaining a two-person membership at this
2 point.

3 In terms of whether the MGM transaction is a game-changer,
4 we've not yet seen, to Your Honor's point, how all of that
5 rolls up through the various interests that the Debtor may or
6 -- you know, may have --

7 THE COURT: Okay.

8 MR. CLEMENTE: -- that would be implicated by the MGM
9 transaction. If ultimately the MGM transaction has to
10 actually occur, right? I mean, so, you know, just based on
11 what I read in the public documents, we're not sure when that
12 transaction may actually happen. But obviously it's a good
13 thing for the Debtor's estate because it's going to recognize
14 value for the estate.

15 In terms of whether it ultimately changes how Mr. Dondero,
16 you know, wishes to proceed, that's entirely up to him, Your
17 Honor. But we don't see it as something at this point that
18 would suggest that there's an overall back to let's talk about
19 a pot plan because of where the MGM transaction might
20 ultimately come out.

21 So I don't know if that's helpful to Your Honor, but those
22 are -- that's my perspective.

23 THE COURT: Well, and I'm not trying to, you know,
24 push a pot plan on anyone.

25 MR. CLEMENTE: No, I understand.

1 THE COURT: I'm just saying it looked like an
2 economic windfall. I just -- I don't know how much is
3 Highland versus other entities in the so-called byzantine
4 complex, but, gosh, I just hoped that there might be something
5 there to change the dynamic of, you know, lawsuit, lawsuit,
6 lawsuit, lawsuit, motion for contempt, motion for contempt.

7 MR. CLEMENTE: Agreed, Your Honor.

8 THE COURT: Uh-huh.

9 MR. CLEMENTE: And like I said, it was a very
10 positive development obviously for the creditors for the
11 Debtor. But whether it's the game-changer that Your Honor
12 would envision, I'm not sure that I can suggest at this point
13 that it is.

14 I think that, you know, obviously, we don't like to see
15 these lawsuits continue to be filed. That's the whole point
16 of the gatekeeper order, Your Honor.

17 THE COURT: Uh-huh.

18 MR. CLEMENTE: I didn't say anything during the
19 hearing, but obviously the January 9th order, as Your Honor
20 has said many times, was in the context of a trustee being
21 appointed.

22 THE COURT: Right. Right.

23 MR. CLEMENTE: Right? So, and the July 16th order,
24 very similar vein, it's an outshoot of that. In fact, it was
25 contemplated in the January 9th settlement that a CEO could be

1 appointed.

2 So I think, again, it's just -- it's important, the
3 context in which that January 9th order came into play, for
4 this very reason, so we could avoid this type of litigation,
5 Your Honor.

6 THE COURT: Uh-huh.

7 MR. CLEMENTE: And so again, I didn't -- I obviously
8 didn't rise to mention that during the hearing, but Your Honor
9 is already aware of that. I didn't need to remind Your Honor
10 of that.

11 THE COURT: Uh-huh. Okay.

12 MR. CLEMENTE: Anything else for me, Your Honor?

13 THE COURT: No. Thank you.

14 MR. CLEMENTE: Okay, then, Your Honor.

15 THE COURT: Sorry I picked on you. But, all right.
16 Well, again, I hope the message has landed in the way I hope
17 will matter, and that is I'm going to look at your documents
18 but I feel very strongly that, unless there's something in
19 there that, whoa, is somehow eye-opening, I'm going to find
20 contempt of court. It's just a matter of who and what the
21 damages are. There's just not a thing in the world ambiguous
22 about Paragraph 5 of the July 9th, 2020 order. So I'll get to
23 it as soon as we humanly can get to it.

24 Mr. Morris, anything else?

25 MR. MORRIS: Nothing. No, thank you.

1 THE COURT: I guess I'll see you Thursday on the
2 WebEx. Thank you.

3 THE CLERK: All rise.

4 (Proceedings concluded at 6:00 p.m.)

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CERTIFICATE

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

23

/s/ Kathy Rehling

06/09/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

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